VOTES AND SEATS. PROPORTIONAL REPRESENTATION IN TIERRA DEL FUEGO

VOTOS Y BANCAS. LA REPRESENTACIÓN PROPORCIONAL EN TIERRA DEL FUEGO

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Abstract

The Provincial Supreme Law established a regulatory scheme that was not limited to the mere enunciation of principles to be observed by the electoral regime to be sanctioned. It expressly provided that the electoral law regulating the election of collegiate body members should guarantee "effectively proportional representation". The constitutional provision was regulated by the Provincial Act No. 201, which established the process of renewal of elective authorities and adopted the proportional D'Hondt formula to determine the composition of the Legislative Branch. A brief analysis of electoral processes that took place between 1991 and 2015 will show how close to constitutional ambitions were the results produced by the electoral system.

Keywords

Electoral Law - Tierra del Fuego - Proportional Representation

Resumen

La Ley Suprema Provincial estableció un esquema normativo que no se limitó a la mera enunciación de principios a observar por el régimen electoral que debía sancionarse. Expresamente dispuso que la ley electoral que regulara la elección de integrantes de cuerpos colegiados garantizara una "representación efectivamente proporcional". La reglamentación del precepto constitucional se realizó con la sanción de la Ley Provincial Nro. 201 que estableció el proceso de renovación de autoridades de base electivas y adoptó la fórmula proporcional D´hont para establecer la composición del Poder Legislativo. Un breve análisis de los procesos electorales realizados entre los años 1991 y 2015 nos dirá cuan cercanos a la aspiración constitucional fueron los resultados producidos por el sistema electoral.

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Palabras clave
Derecho electoral – Tierra del Fuego – Representación proporcional

I. Introduction

After twenty-four years in force, evaluating the provincial electoral system's performance and results can provide some interesting insight. This job can be carried out by purely describing its normative features to expose its components and existing legislation; however, we can also try to reach beyond and perform a systemic analysis of its workings, incorporating into the vision of electoral law some tools offered by political science and statistics. This will help us to draw conclusions from a perspective that covers broader horizons than those set by law[1] .

The traditional view on electoral norms, generally emerging from other legal fields, has placed these in an exogenous position regarding the political game intended to regulate, in disregard of the fact that they arise from an agreement between preterit political stakeholders -or maybe, not so preterit- who transformed them in imperative rules to abide by in the processes of renewal of elective authorities[2].

Therefore, that is the axis of the analysis that will follow below: a legal one, but also acknowledging contributions from other fields of knowledge. These will help us reconstruct the provincial electoral system movements throughout time in order to study if their outcomes are "effectively proportional" regarding seat allocation and if not, to learn to what extent.

II. Electoral Regime & Electoral System. Electoral System Classification. Majority and Proportional Systems. Types

An **"electoral regime"** consists of a set of norms, organized in single or dispersed legal bodies, which includes the positive rules which regulate candidate elections for elective positions in a particular State. The expression constitutes an essentially-legal notion.

The concept of **"electoral system"** is different as it determines the way voter decisions turn into seats and also takes into account the interaction of the different variables that come together in it - district magnitude, electoral formula, electoral barrier or threshold, voting ballot structure, blank vote, among others.

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[1] It should be noted that many consider electoral law as a legal field with no scientific autonomy, subsumed in a grey area between constitutional law, provincial public law, and even administrative law. Fortunately, for a few years now, this country's doctrine has begun to transform the "rara avis" view that pervades the electoral field, echoing the Latin American and international trend towards considering that electoral law has autonomy, and a proper and specific object. In this regard, we share Nohlen's words (2007: 31) that read: "Our discipline is self-contained; it is independent for it is based on principles, methods and has its own object of study. It covers public law phenomena that require particular definitions that are only adequate when applying its own rules. These definitions affect procedures, the safeguard system, and the enforcing authority, among many other particularly specific elements."

[2] This is a concept asserted by Escolar (2011: 55): "A determining factor in electoral governance is the institutions thereof are intrinsically endogenous (Kheoane & Martin, 2003) to the electoral process. In fact, its regulatory scheme and its responsible authorities are directly or indirectly historical outcomes of the political authorities elected by it (in stable democratic backgrounds) or that brought them into existence in the first place (in democratic transition backgrounds)."

Basically, electoral systems can be classified into majority and proportional systems. The former weight the greatest number of votes gained by a particular political force or candidacy to assign the contested seats[3] ; while the latter consider all votes received by the intervening political groups to allocate the concerned seats through some mathematical method. The reason behind this is that the basis for the proportional representation system lies in the deliberate conversion of the share of votes won by a party into an equivalent share of seats in the Legislature[4] .

The aforementioned suggests that the aims pursued by both systems are dissimilar: for the former, building legislative majorities; and for the latter, representing the diverse sectors that converge in an election.

Majority systems have been credited with advantages such us avoiding party fragmentation; fostering government stability; promoting political moderation; favoring alternation in the exercise of the public function, and offering voters the chance to directly elect candidates. Conversely, proportional systems are recognized for allowing for the maximum representation of opinions in parliament; preventing the formation of artificial legislative majorities; providing for negotiation and compromise of political forces to form majorities; reflecting social change and deterring the formation of dominant parties[5] . Payne (2006: 41 ss.) adds that proportional representation systems prevent high numbers of "worthless" or lost votes and highlights that they contribute to the representation of minority parties.

Based on the premises that majority systems' outcomes open a significant gap between votes and seats allocated to a certain political force[6] , it is important to mention that proportional representation systems emerged historically in Europe with the extension of the right to vote to other social strata that had not been entitled to such; which is the reason why they aimed at seeing correspondence between received votes and allocated seats so

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[3] Some examples are: a) Complete list (Arts. 44 and 44, National Act No. 140, which were in force in this country until the electoral reform of 1912; b) Incomplete list (as per National Act No. 8871 -Sáenz Peña Act - and the current method of national senatorial election set forth by art. 54 of the National Constitution); c) Single-member elections by constituency (in force under National Act No. 4161, arts. 18, 19 21; and No. 14032).

[4] In this regard, we can refer to Reynolds, Reilly and Ellis 2006: 67.

[5] This is Nohlen's stance (1995): 50.

[6] To illustrate the distortion caused by the majority system, suppose a territory with 5 single-member districts that are to choose 1 legislator each by a simple maximum of votes. Three political parties take part in the election and they obtain the following percentages of votes:

Party	District 1	District 2	District 3	District 4	District 5	Average
White	*32%*	*33%*	24%	21%	*31%*	28,2%
Green	27%	29%	22%	*28%*	26%	26,4%
Red	18%	20%	*36%*	25%	13%	22,4%
Blue	14%	5%	11%	8%	16%	10,8%
Black	9%	13%	7%	18%	14%	12,2%

Applying the simple maximum-of-votes criterion, the White party will get 3 seats; the Green party will get 1 seat, and the Red party, 1 seat. This means that the White party, having an average of 28.2% of vote share, is granted 60% of the seats; the Green party with an average of 26.4% of vote share, gets 20% of the seats; the Red party with an average of 22.4% of vote share, gets 20% of the seats; and the other parties do not get to be represented at all.

as to ensure a minimum number of seats to the political elites displaced by the progress of suffrage[7].

However, the description above does not exhaust the basic typology of both systems. There is a series of variants adopted by states throughout time, which have transformed them into sort-of-pure forms.

Within proportional systems subtypes, there are three primary formulas[8]: **a)** the Hare Quota ; **b)** the D'Hondt method (greater average); and c) the Sainte-Lagüe system. The first one establishes seat allocation favoring smaller parties; the second favors bigger parties; and the last one is half way between those two[9].

Hare Quota: It is the best proportional method, from a mathematical point of view, and consists in determining a quotient (q) by the relation between the number of votes (v) and seats (e) subject to election, which is represented by the following formula:

$$0=00$$

Once the quotient is determined, seats are allocated in the same number of times that it is contained in the results secured by the candidate list. As regards seats that do not make it to the formula, these are usually allocated using varied methods, with the higher reminder method being the most widely used.

D'Hondt Method: The number of votes (v) for each candidate list is divided by 1, 2, 3... until reaching the total amount of seats (e) subject to election. Quotients (q) are decreasingly arranged, regardless of the list they belong to, in order to allocate seats.

This is represented with the following formula, with value e starting from 0:

$$0=00+1$$

Sainte-Lagüe: This system is similar to the D'Hondt method, only quotients are obtained from divisions by odd numbers (1, 3, 5, 7, 9, and so on), and then arranging the results in decreasing order.

This is represented with the formula below, with value e starting from 0:

$$0=020+1$$

It is worth mentioning that there are mixed methods, which are intended to leverage the advantages of majority systems as well as the benefits of proportional representation. These solutions force two systems to coexist, which use different mathematical formulations, given that they couple majority representation single-member districts with proportional representation by lists[10] .

While I did include opinions on the characteristics of proportional systems, I must add that these fail to mention the distortion produced when under- or over- representing political

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[7] This is Stein Rokkan's argument, which was cited, analyzed and criticized by Charles Boix in his article "Setting the Rules of the Game. The Choice of Electoral Systems in Advanced Democracies" (1999: 609-644).

[8] I only mention those that I considered paramount for this work's object, given that there are more variants and modified versions.

[9] Sartori 1994: 21.

[10] Payne, Zovatto, & Mateo Díaz 2006: 105. Some examples are Germany and, at the sub-national level in Argentina, the provinces of Cordoba, which has a unicameral Legislature -with 26 legislators chosen by majority system in single-member constituencies and 44, by the proportional D'Hondt method- and Santa Cruz, which has a unicameral Legislature - with also, 14 legislators elected by single-member constituencies and 10, by the proportional D'Hondt method.

forces. Consequently, it should be stated that there is no electoral system that completely prevents distortion or disproportion between votes and seats, however minimal. The level of distortion caused in a proportional representation system exists due to the impact that different variables have on the mathematical equation used to allocate seats. These will be dealt with below to establish their effect on the provincial electoral system chosen to elect legislators.

III. Electoral System Components. District Magnitude. Ballot Structure. Candidate List Structure. Legal Threshold. Blank Vote

Certain interacting variables in the proportional electoral system make the seats subject to popular election more or less accessible for political parties.

We identify the following:

a) **District Magnitude**: Refers to the number of seats subject to election in a predetermined territorial unit. It is central for the intervening political parties to get any chance in an election, as it is the most important factor that determines the proportionality or disproportionality in a proportional representation system. The bigger the district, the greater its proportionality will be[11].

b) **Electoral Formula:** Refers to the mathematical procedure that enables the calculation that will make for the conversion of electorate's valid votes into seats. This element determines, in theory, whether the system is proportional -in any of its variants-, or works as a majority system, either absolute or relative.

c) **Ballot Structure** [12]**:** Refers to the voting slip design, which includes the candidate lists to be considered by the electorate. It can be a single ballot with all candidates presented

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[11] Nohlen 1995: 59; Sartori 1994: 21. Let us analyze an example: Suppose a district with a magnitude (M) of 3 disputed seats and another with 13 disputed seats. Both apply the D'Hondt method, both register the same amount of total ballots, both include the same political parties, and both produce identical results. These would be the comparative details for both districts:

Party	Votes		M3		M13	
	Quantity	%	Legislators	%	Legislators	%
A	25000	28.57	1	33.33	4	30.77
B	21500	24.57	1	33.33	3	23.08
C	16300	18.63	1	33.33	3	23.08
D	15800	18.06	0	0	2	15.38
E	8900	10.17	0	0	1	7.69
Total	87500	100.00	3	100	13	100.00

This clearly illustrates how the M3 district functions as a majority system with implied overrepresentation (as it is the case with national legislators in this province); while the M13 district has more proportional results (comparing the percentage of votes with the percentage of allocated seats).

[12] The referenced bibliography does not cover this component in great detail. However, it was included for it is relevant to the electoral system of Tierra del Fuego, and the impact it has had throughout time. All the same, I would like to warn the reader that the components of electoral systems dealt with in this work have been introduced to advance the presentation of the concrete case addressed.

by all political parties, or it can present them separately with the specific offer each group submits to the voters[13]. Regardless of the methodology, the different candidate categories can be included in a single slip, which could be divided or not; or be presented in physically separate segments.

d) **List Structure:** Refers to the ability to choose the enumeration and order of candidates just as it was willingly formulated by a certain political party, or also modify these elements. When the voter cannot make any changes to the ballot, we say the list is blocked. On the other side, it is unblocked when the voter can alter the prearranged order of candidates, whether to favor or censor them. The voter will enjoy maximum freedom of action with open lists to which they can add candidates from other or independent parties.

e) **Electoral Formula:** Also referred to as "legal representation barrier"[14], it expresses the pre-established minimum number of votes that a political party must get in order to take part in the seat allocation procedure provided for in the electoral formula[15]. It serves the purpose of excluding small political parties from the legislative body to foster a concentration of the system. Its application affects the proportional results of the formula based on its tabulation.

f) **Blank Vote:** refers to the voter's decision not to support any party proposal. When it reaches significant levels it affects proportionality as it influences the electoral threshold,

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[13] Examples of single-ballot voting are the current elections in the provinces of Cordoba and Santa Fe. The remainder of the Argentinean provinces uses party ballots at the national level, and also, for example, Spain.

[14] Nohlen 1995: 79.

[15] Notwithstanding the aforementioned, note should be taken of the existence of a natural threshold that is dependent on the systemic combination of parties, candidates, and votes in certain election, which could prevail upon legal provisions (Payne, 2006: 96).

The electoral threshold strongly influences seat distribution proportionality; which can be illustrated with one example. Examining the results of the provincial legislative elections in 2007, we can see how seats would have been allocated according to the different formulas if there was, or not, a legal barrier of 5% of valid votes:

| | | | Number of Allocated Seats | | | | | |
| | | | Hare | | Saint Lagüe | | D'Hondt | |
2007	Votes	% of Votes	No Threshold	5% Threshold	No Threshold	5% Threshold	No Threshold	5% Threshold
ARI	11384	18,69%	3	6	3	6	6	6
FPV	7728	12,69%	3	4	3	4	4	4
Mopof	5577	9,16%	2	3	2	3	2	3
UCR	4535	7,45%	2	2	1	2	2	2
Fed Fueg	2976	4,89%	1	0	1	0	1	0
FIF	2572	4,22%	1	0	1	0	0	0
26 Abril	2035	3.34%	1	0	1	0	0	0
FLD	1894	3.11%	1	0	1	0	0	0
Pro	1813	2.98%	1	0	1	0	0	0
Enc Amp	1788	2.94%	0	0	1	0	0	0

This Table was prepared by the author with data from the Electoral Court of First Instance of the Province of Tierra del Fuego, Antarctica and the Atlantic South Islands.

and seat allocation is performed taking into account only party names that have been effectively voted.

The interaction of all these elements will tell whether-in a concrete case and to what extent- the electoral system is permissive or restrictive.

IV.- The Provincial Electoral Regime

With strict adherence to the order included in Article 5 of the National Constitution, the Constituent Convention of Tierra del Fuego held in 1991 established a governmental republican regime and decided that the legislative branch would be exercised by a Unicameral Legislature made up of fifteen members[16] directly chosen by the electoral body, with provision to eventually expand, based on population growth, with a maximum limit of twenty-five legislators[17]. It set forth that the Electoral Acts to be passed provided for obligatory, equal, secret, universal and individual votes; guaranteed **"effectively proportional representation"** in collegiate bodies; and granted voters the ability to cross out candidates from the lists used in the election. It ordered that candidate lists should be included in separate slips in different colors for each category to be chosen. Furthermore, it considered the possibility that the elector could list candidates from other official lists[18].

The initiative of incorporating the "cross-out" system was introduced by Movimiento Popular Fueguino (MOPOF), which laid down its numerical majority in opposition to the other parties engaged in the Constituent Convention and intended to improve candidate selection methods. It voted its proposal on its own, as the remaining parties considered such mechanism attacked party structures and left room for manipulating maneuvers, already noted by the rest[19].

The first election of provincial and municipal authorities was held under the Fourth Temporary Arrangement of the Provincial Supreme Law which established the minimal threshold to enable the crossing out of candidates in three percent (3%) of the votes

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[16] The Province of Tierra del Fuego with the Provinces of San Juan and Santa Cruz make up the group of Legislatures with the smallest district magnitude in contrast with the rest of the country. The Province of San Juan has a similarly elected Legislature, with a proportional system, while Santa Cruz provides a mixed system whose single-district proportional component amounts to only ten legislators. The Constituent Convention chose to preserve the number of fifteen legislators, as it was the current case in the Territorial Legislature at the time, and it provided representation for all political parties engaged in it. In this regard, the convention representative Martinelli said: "… we see that all fifteen legislators provide for a significant representation of majority groups, and even minority groups, and that there have been up to five blocks -if I recall correctly- from different political parties with the fifteen Legislators" (Constituent Convention. Session Log. Volume II, page 835).

[17] Provincial Constitution, Article 89: "Legislative duties will be exercised by a Legislature conformed by fifteen legislators who will be directly elected by the people in the Province. When the population exceeds the number of one hundred and fifty thousand inhabitants, this can be increased by one legislator every ten thousand inhabitants until reaching a maximum of twenty-five legislators.

[18] Provincial Constitution, Art. 201 in fine.

[19] Tula & De Luca 1999: 121.

won by the proposing political party[20] to exclude them from collegiate bodies.

The Provincial Electoral Act, identified with number 201, was passed on December, 15th 1994 and was published on the Official Gazette on January, 9th 1995. It regulated constitutional provisions which set forth:

a) Secret, universal, equal, personal, and obligatory vote (art. 3);

b) Proportional representation in collegiate bodies through the implementation of the electoral D'Hondt method with a threshold of 5% of valid cast votes (art. 34[21]);

c) Ability to cross out candidates included in the party list the voter chose to ballot (art. 35 [22]), with a threshold of ten percent (10%), to redefine the order predetermined by political parties; and

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[20] Provincial Supreme Law, Fourth Temporary Arrangement: "In order to summon provincial elections for the first time, the National Electoral Code will apply as approved by Decree No. 2135/83, and amended by Acts 23.247 and 23.476, as well as the Electoral System as approved by Act 22.838 and amended by Act 22.864, as far as they are compatible with the provisions in this Constitution and the cross-out system. Until the Provincial Electoral Act is passed, the cross-out system laid down in cl. 5) of Art. 201 will be applicable in conjunction with the D'Hondt system, so that the number of votes will determine the number of seats corresponding to each political party in collegiate bodies. Cross-outs included in voting slips will establish the order of appointment of available candidates, thus changing the printed order, which will only be applied in an eventual tie. Cross-outs affecting an individual candidate who does not exceed three percent of total votes in favor of their proposing political party will not be considered. Full candidates who are not elected will be alternate officials in the order resulting from the application of the cross-out system; alternate candidates will be called upon once the list is exhausted. Only for the first election of provincial authorities, vote counting can be divided, which shall be conducted on each table and once electoral activities have concluded to determine the number of seats allocated to each party in collegiate bodies. Cross-out counting can be delayed until the following day and will be conducted by the Electoral Board while granting auditing to political parties. Cross-outs will be deemed as such when the voter's will to cross out is evidently manifest on the slip. The voter shall cross out at least the last name of the candidate they wish to exclude, and one candidate at a time; so if a cross-out covers more than one candidate, only that with the clearest mark will be considered. Cuts in official voting slips shall not be considered as cross-outs for counting purposes, only clearly marked lines or scratches shall be taken into account. Cut slips, as long as they are considered valid votes, will not be counted as cross-outs if they are not marked in the manner set forth above. Ballots with cross-outs in all candidates will be held as valid, although they will not be computed for candidate allocation. Electoral authorities at each table and party-related monitors shall be credited before the Electoral Court no later than five days before the election and they shall be responsible for the correct assembly of ballot boxes to be returned to the Electoral Court, once counting is performed under their supervision. Cross-outs in candidate categories where marks are not allowed will not be considered for any purpose."

[21] Article 34 of the Provincial Act 201 reads as follows: "In compliance with the item 4 of Article 201 of the Provincial Constitution, seats will be allocated to each participating List through the D'Hondt system, with a barrier of five percent (5%) of valid cast votes, according to the following procedure:

a) The total of votes awarded to each List that reaches at least five per cent (5%) of valid cast votes, shall be divided by one (1), two (2), three (3), and so on until reaching all positions to be filled.

b) The resulting quotients, regardless of the List they belong to, will be organized in decreasing order in the same number of positions to be filled;

c) In the event there were two or more identical quotients, these will be arranged in direct proportion with the amount of votes polled by the respective Lists, and if these got the same amount of votes, the final order will result from a toss held by the pertinent Electoral Board to that end;

d) Each List will be awarded as many seats as times its quotients appear in the order described in clause b)."

[22] Article 35 reads, as originally drafted: "Legislators will be elected according to their order in the List and the number of valid votes cast for each, by virtue of the cross-out system.

To that end and in compliance with the requirements in item 5 of Article 201 of the Provincial Constitution, voters will be able to cross out candidates from lists on the ballot, according to the procedure instructed in Article 36 hereof.

Cross-outs included in voting ballots will establish the order of appointment of all available candidates, thus changing the printed order, which will only be applied in an eventual tie.

Cross-outs affecting candidates that do not exceed ten percent (10%) of the total of valid votes cast in favor of the proposing List will not be considered.

d) Implementation of separate slips, in different colors for each category of candidates subject to election (art. 55 cl. a[23]).

It does not regulate the ability to include candidates from lists made official by other political parties. This is why the constitutional provision that set forth an open list, ended up being regulated as an unblocked one, as it only regulated the ability to cross out candidates.

Subsequently, Act No. 406 was passed and raised the candidate cross-out threshold to fifty per cent (50%) and one vote of the total number of valid votes cast in favor of the proposing list[24]. This changed was enforced for the first time in the provincial elections of 1999, making only one list submitted by one political party subject to this specific counting[25]; which proves that since then, no list of candidates for the provincial Legislature won the percentage necessary to enable its application[26].

V.- Case Law Precedents

While there has been a precedent related to an unconstitutionality claim on Act No. 406, which raised the cross-out threshold to fifty percent and one vote of the total number of votes cast in favor of each candidate list, to enable the special counting procedure[27]; it is true that only once the system's proportional effects were caviled, although they were only tangentially addressed.

Two proceedings were instituted before the provincial Court of Appeals questioning the way the Provincial Electoral Board counted valid votes to determine the enabling electoral

[23] The relevant fragment of clause a), Art. 55 de la Ley Provincial 201: "There shall be a slip for each position type subject to election, which according to the requirements in item 7 of Article 201 of the Provincial Constitution, will have different colors and be physically separated. The Electoral Court of First Instance and Registry will be in charge of assigning colors for each position category by means of the relevant legal instruments."

[24] Article 35 of Act 201 -currently in force- in its last paragraph, was finally worded as follows: "Cross-outs affecting candidates who do not exceed fifty per cent (50%) and one (1) vote of the total of valid votes cast in favor of the proposing List, will not be considered."

[25] It belonged to the list of legislators made official by Movimiento Popular Fueguino, and the cross-out counting triggered no change whatsoever to the order suggested to the electorate by said party.

[26] No cross-outs made in the elections of years 2003, 2007, and 2011 complied with the minimum number that enabled the especial counting procedure. It is worth mentioning that the Municipality of Ushuaia disregarded the cross-out system when passing its Charter and implementing the preferential list voting system; while the Municipality of Río Grande, in its fundamental norm, chose to block the list of councilors, denying any chance of cross-out or preference. That is the reason why the ability to cross-out candidates governs only for the categories of provincial legislators and councilors from the city of Tolhuin.

[27] Act 406 was the subject of legal proceedings intended to attain a sentence of unconstitutionality, which the Court of Appeals did not agree to. The proceedings were started on 2006 and registered as "Bassanetti, Carlos Domingo y Carzo, Mario José c/ Legislatura de Tierra del Fuego A. e I.A.S. s/ Sumario" ("Bassanetti, Carlos Domingo, and Carzo, Mario José vs. Legislature of Tierra del Fuego A. and I.A.S. Summary".) The provincial Election Judge admitted the action and declared the unconstitutionality of Act 406, but the Civil and Commercial Chamber of the Court of Appeals, located in Ciudad de Río Grande, accepted the appeal filed by the State Attorney through the delivery of the final judgement no. Said judgement considered that the cross-out threshold was reasonable and admitted the disadvantages raised by the previous cross-out thresholds (3% and 10%) during the last counting.

threshold for seat allocation through the proportional D'Hondt method[28]. Two political groups, which had presented candidates for legislators in the provincial elections of 2007, put into question the criterion of considering blank votes as valid votes to determine the equivalent to five per cent (5%) of votes as a legal barrier that political groups need to overcome in order to participate in the seat allocation process. The challengers had attained figures near said amount, as provided for by Art. 34 of the Provincial Act. No. 201. If only votes in favor of political parties were counted, they would have surpassed that minimum; but they did not reach the necessary amount if blank votes were considered in the estimate[29]. This resulted in the objection of the seats allocated by the Provincial Electoral Board and its submission to the highest Provincial Court.

It understood that the expression "valid votes" included votes cast in blank (as these are not void and reflect an expression of the voter's will) to determine the enabling threshold in order to engage in the D'Hondt method calculations for seat allocation, as it saw that both the limitations resulting from the barrier and the type of electoral formula were a reasonable exercise of the regulating powers that all legal acts have as regards norms in the Provincial Constitution[30].

The Court of Appeals' decision agreed with the cases stated by the parties, which did not affect the foundations of the provincial electoral act[31].

These were mainly juristic cases, focused on static and partial expressions of the electoral system. That is why it is so important to see beyond the juristic aspects and look at the way the electoral system works throughout time, how its variables behave, and the weight of its results. This vision will provide us with information on the so-desired results of proportionality.

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[28] The proceedings were registered as "Frente Integración Fueguina s/ Promueve impugnación contra el Acta N° 18 de la Junta Electoral Provincial – Medida Cautelar" (Expte. 2001/07) (Frente Integración Fueguina pushes objection to Record No. 18 of the Provincial Electoral Board - Precautionary measure [2000/07]) and "Partido Federal Fueguino s/ Promueve impugnación contra el Acta N° 18 de la Junta Electoral Provincial – Medida Cautelar" (2000/07) (Partido Federal Fueguino pushes objection to Record No. 18 of the Provincial Electoral Board - Precautionary measure [2000/07]), which were conducted against the results of the final counting of the 2007 provincial elections and expressed identical arguments.

[29] Frente de Integración Fueguina won 2572 votes and Partido Federal Fueguino, 2976 votes, which represented 4.22% and 4.89% of valid votes, respectively, taking into account blank votes cast for that category. That said, if those 14083 blank votes would have been disregarded and the plaintiffs' claim would have been accepted, when making the calculation with the total of votes cast in favor of the different political parties (46812 votes), their percentages would have been higher (5.49% and 6.36%, respectively), they would have participated in the calculations with the D'Hondt method and they would have been included in its resulting quotients.

[30] In this regard, refer to considerations II, III and IV of the decision concerning the second question by Sagastume in the proceedings labelled "Frente Integración Fueguina pushes objection to Record No. 18 of the Provincial Electoral Board - Precautionary measure" (Docket 2001/07).

[31] It is indeed distressing not being able to find in the Constituent Convention's session logs any intervention by members of Movimiento Popular Fueguino -a political party that imposed by means of its own votes the text included in article 201 of the Provincial Supreme Law-, or by some of the other constituent parties, that could reveal if there was any kind of intention whatsoever when inserting the phrase "effectively proportional representation." The projects by Unión Cívica Radical, Partido Justicialista, and Partido Socialista Auténtico did not include this manner as a guideline in the electoral act (Constituent Convention. Session Log. Volume II, pages 1143, and 1144).

VI.- Features of the provincial Electoral Regime: district magnitude, electoral barrier, voting ballot structure, and candidate list structure

To make our point clear, it is necessary to mention that the provincial electoral regime has the following features:

a) A district magnitude of fifteen (15) legislators.

b) Proportional electoral D'Hondt formula.

c) Party-based ballot structure, with each candidate category being physically separated and in different colors[32].

d) Unblocked list structure, by which voters can cross-out as many candidates as they will from the candidates listed in the chosen ballot[33].

e) Legal electoral threshold of five percent (5%) of the total of valid cast votes.

The regime of the Provincial Constitution implies a tempered Executive Branch, with great Legislature faculties; and carries strong incentives so that no party, whether the governing party or not, has absolute majority of members in it. The separate ballot and the election of Legislators in the first electoral round contribute to this as these features favor inconsistent votes.

Having laid down these elements and considerations, it can be interesting to gain insight into the interaction of said elements in the make-up of electoral results and its impact on the political-party system.

From 1991 until 2016, seven general elections have been called for provincial positions. The first one was held with a minimum cross-out threshold of three percent (3%) of votes won by the party which agreed to the pre-set distribution in the electoral proposal. The threshold for the following election of 1995 was raised to ten percent (10%), and from 1999 to fifty percent (50%) and one vote, according to provisions in Act 406. This last modification had the effect of virtually dispensing with the method up to this day[34].

The passing of Act 406 was a reaction to the tremendous results that the application of "erasures" had in the elections held between 1991 and 1995. At the time, part of the political structures promoted maneuvers with a tendency to completely displace the order in candidate lists as a means to solve party infightings, going as far as excluding components in a rival city [35].

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[32] Governor and vice-governor in one ballot, and Legislators in another ballot physically separated from the former, and in different colors. If other municipal categories were also in election (Superintendent and councilors) the same criteria prevails, according to local electoral legislation.

[33] Electoral legislation does not regulate the ability to include candidates from other official lists, or any other subsequently sanctioned acts, as it was previously explained.

[34] As it was mentioned above, at the provincial level, the candidate list of Movimiento Popular Fueguino was the only list enabled to scrutiny in 1995; and we may add that for the municipality of Tolhuin, the same happened in the election of 2011 for Partido Justicialista, without modifying the list of counselors.

[35] Indeed, in 1995 cross-outs mainly displaced candidates based in the city of Ushuaia in benefit of those residing in Río Grande. The convention representative of MOPOF, Martinelli, made rather paradoxical declarations by refusing to envisage such an event in year 1991, by saying: "We have no intention of foreseeing any kind of mal-intent or contemplating any lack of civic or political culture in the residents of Tierra del Fuego, whichever city they come from, or that they might discriminate against other candidates -once again- on the grounds of vicinity..." (Constituent Convention Session Logs, Volume II, page 1151). The analysis carried by Tula and De Luca 1999 can be enlightening to learn about the impact of cross-outs: 97-146. It shows, for instance, how the candidates of Partido Justicialista, which were ranked in the 11th, 10th, 15th, 13th, 1st and 7th position, were elected among the 199 provincial legislators, given that they had the least amount of cross-outs.

The system received so much criticism it had great influence and ended up promoting the passing of the cited act, which required legislative pressure after the current Governor vetoed the bill[36].

With careful observation of the results of the provincial elections between 1991 and 2015, we can arrive at a first conclusion: except now, all provincial governments have been divided[37]. Until 2015, there was not a single Governor who had a majority provided by their own political party or electoral coalition formed before the election, so that they could have numerical superiority to push their draft rules -as seen in Tables 1 and 2- which is why the only way to secure governance was to form external consensus or "government coalitions."

Table 1

Governor and number of legislators from the governing party (based on a total of 15 members in the Unicameral Legislature)

Period	Governor Party [38]	Governor Party's Legislators	Legislative Blocks	Divided Government
1991-1995	MOPOF	7	3	YES
1995-1999	MOPOF	7	3	YES
1999-2003	PJ	6	3	YES
2003-2007	FUP (UCR) [39]	3	4	YES
2007-2011	ARI	6	4	YES
2011-2015	PSP	2	6	YES
2015-2019	FPV – PJ	8	3	NO

This Chart was prepared by the author with data from the Electoral Secretariat of the Federal Court of Ushuaia, and the Electoral Court of First Instance of the Province of Tierra del Fuego, Antarctica and the Atlantic South Islands.

[36] Tula and De Luca (1999) mention journalistic stories of the time: "Los InXtachables" [The UneXceptionable], in El Sureño, December 6th 1991, page 3; "Tacha ..que me hiciste mal" [Cross-out... You Hurt Me Good], in Tiempo Fueguino, December 7th 1991, page 14; "Tachas: el infierno tan temido" [Cross-outs: The Dreaded Hell], in Tiempo Fueguino, December 10th 1991, page 11; and "Las tachas definieron las elecciones" [Cross-outs Defined the Election], in Tiempo Fueguino, December 12th 1991, pages 12-13. As well as the articles "Cómo funcionó el sistema de tachas. Los fueguinos privilegiaron los candidatos sobre los partidos" [The Workings of Cross-outs in the Election: Residents Privilege Candidates Over Parties], in Clarín, December 3rd 1991, page 5; and "En Tierra del Fuego siguen de campaña. Las tachas demoran el escrutinio" [Tierra del Fuego: the Campaigning Continues. Cross-outs Slow Down Counting], in Clarín, December 7th 1991, page 8. For the counselor elected in Río Grande, see "Banca, se vende" [Seat for Sale] in Clarín, July 19th 1992, Section Two, pages 8-9.

[37] Divided government refers to the one in which the executive branch belongs to one political party while lacking majority from the beginning in the legislative branch (whether it derives from the number of legislators from their own party or a previous electoral agreement -alliance or vote aggregation.) When this is the case, articulating government coalitions is the only way left.

[38] Acronyms refer to the party names: Movimiento Popular Fueguino (MOPOF), Partido Justicialista (PJ), Unión Cívica Radical (UCR), Afirmación para una República Igualitaria (ARI), Frente para la Victoria (FPV), Partido Popular (PP) and Partido Social Patagónico (PSP).

[39] Frente de Unidad Popular (FUP) was an electoral alliance based on Unión Cívica Radical.

Table 2
Composition Percentages of Provincial Legislatures

Year	Political Party	Percentage of Votes	Legislators	Percentage of Seats
1991	MOPOF	36.21%	7	46.66%
	PJ	29.60%	6	40%
	UCR	11.59%	2	13.33%
1995	MOPOF	35.70%	7	46.66%
	PJ	28.70%	5	33.33%
	UCR	17.70%	3	20.00%
1999	PJ	27.30%	6	40%
	MOPOF	27%	5	33.33%
	FCS (UCR)	21.60%	4	26.66%
2003	PJ	20.10%	5	33.33%
	MOPOF	15.90%	4	26.66%
	FUP (UCR)	13.20%	3	20.00%
	ARI	12.30%	3	20.00%
2007	UCR	7.45%	2	13.33%
	MOPOF	9.16%	3	20.00%
	FPV	12.69%	4	26.66%
	ARI	18.69%	6	40.00%
2011	PSP	6.32%	2	13.33%
	PP	5.88%	2	13.33%
	FPV	9.75%	3	20.00%
	MOPOF	8.45%	3	20.00%
	UCR	9.62%	3	20.00%
	PJ	6.26%	2	13.33%
2015	FPV – PJ	16.14%	8	53.33%
	MOPOF	7.6%	4	26.66%
	UCR	5.91%	3	20.00%

This Chart was prepared by the author with data from the Electoral Secretariat of the Federal Court of Ushuaia, and the Electoral Court of First Instance of the Province of Tierra del Fuego, Antarctica and the Atlantic South Islands.
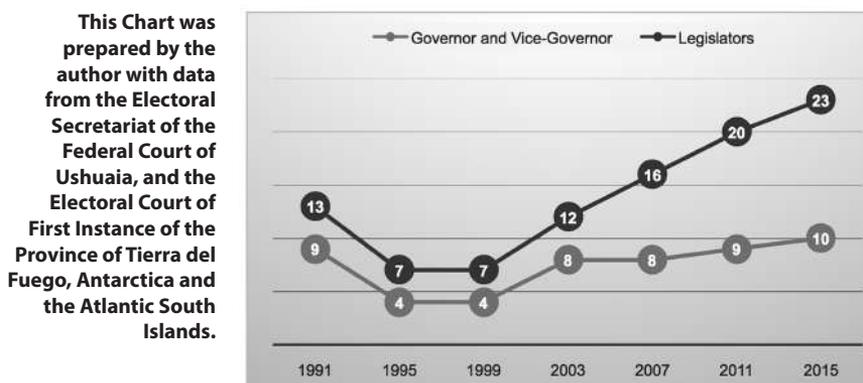
Given that ballots were physically separated in the darkroom, and the category of Legislators is elected in the first round together with all candidates contesting the executive branch, voters have an incentive to vote inconsistently in both segments. This particular circumstance goes hand in hand with Duverger's thoughts (1957: 265) who argued that "the tendency in the second round to engender a multi-party regime seems rather feasible."

This illustrates the sustained effect over time of the constitutional intention of a political party that, at the time of its drafting, could not foresee optimistic outlooks on its electoral growth; moreover, it was concerned with its survival and could not care about parameters to ensure governability[40].

The period under observation shows a strong difference between the number of political parties presenting candidates for Governor and Vice-Governor, together with provincial Legislators, and the number of parties only presenting candidates only for the latter category, as illustrated in Chart 1.

Chart 1
Number of political parties presenting candidate lists for provincial elective positions.

This Chart was prepared by the author with data from the Electoral Secretariat of the Federal Court of Ushuaia, and the Electoral Court of First Instance of the Province of Tierra del Fuego, Antarctica and the Atlantic South Islands.

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[40] In effect, at the time the Provincial Constitution was sanctioned and excluding the integration of the Constituent Convention, Movimiento Popular Fueguino was in retraction and putting a fight for its electoral survival. The table below (taken from Tula and De Luca 1999: 142) provides detailed information on the election results for the renewal of members of the Territorial Legislature:

Party	% of Votes 1983	Seats	% of Votes 1985	Seats	% of Votes 1987	Seats	% of Votes 1989	Seats
Mopof	20.87	3	21.9	4	15.93	2	10.55	1
PJ	34.72	6	32.7	6	42.22	7	39.68	7
UCR	35.22	6	31.03	5	28.23	5	29.27	5
PSA	1.48	--	5.03	--	5.77	1	5.97	1
A. Centro	--	--	--	--	--	--	6.29	1

Note that in the election of 1983 ballots were separated and had different colors according to candidate categories. Agrupación Vecinal Unión Popular Fueguina, in effect in 1983, represents the genesis of this political force. From 1985 till 1989, ballots were combined by candidate categories which required that if voters cut the slip if they wished to vote inconsistently.

The number of parties that presented candidates for governor is higher than electoral proposals, as some are often included more than once given the execution of vote aggregation agreements. If we apply this last criterion, the number of parties would be even lesser (e.g., for the 2011 election, there would be only 6 candidate proposals for governor and vice-governor, and for 2015, only 4.)

A ballot structure separated by parties; the reality of a divided government; the rising cross-out barrier; the lack of legal requirements to form new parties; and the difficulties found by political elites when trying to coordinate alliances stimulated this situation[41].

Multiple parties focused their strategy on presenting segmented nominations as they evaluated that the system offered better chances of conquering a legislative seat, given the proportional system, and did not go for the executive category.

Notice the sustained growth of political parties that submitted lists of candidates for legislators, in opposition to the executive category. The legislative offer augmentation process coincides with the application of the raising cross-out barrier by virtue of Act 406, which became effective for the first time in the election of 1999 and affected only one political party whose candidate list had to undergo the special scrutiny, although the results did not cause any displacements in the proposed candidate order.

The cross-out method, despite its flaws and distortions, offered a chance to dissolve -in an informal manner and aside from party structures- power struggles within a particular political group. The three- and later ten-percent (3%;10%) barriers proved to be easily overcome by these internal lines and produced the aforementioned candidate displacements. The substantial rise of the cross-out barrier imposed significant efforts to all groups willing to use them, which lacked thereafter the effective mobilization or logistics to do so, as demonstrated by the results of the first election in which it was applied (year 1999). Consequently, the number of political parties in pursuit of conquering exclusively legislative positions increased gradually and steadily, and if they got successful outcomes, they could make up coalitions *ex post facto* or provide -and why not, remove- their electoral support to candidates for governor facing a second electoral round.

Blank votes in the Legislator category were always higher than those related to the governor and vice-governor category. This kind of vote increased steadily through the years (Chart 2) and ended in the highest amount of lost votes regarding the Provincial Legislative branch, given the downturn of votes with legislative representation (Chart 3).

The same has not however occurred for blank votes in the provincial executive category. It repeatedly suffered a strong fall in the second round with respect to the first, which may be due to the psychological effects that majority systems with double rounds have on voters; besides the expectations and polarization that said event triggers in the electorate before the resolution of a candidacy with higher institutional value.

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[41] Every electoral system has mechanical and psychological effects on voters and political elites. In this regard, it is interesting that no partnerships emerged among minority political parties, which are underrepresented in the legislative branch or cannot access to it at all as a result of the D'Hondt method, the electoral threshold and number of blank votes.

Chart 2
Percentage of Blank Votes[42]

This Chart was prepared by the author with data from the Electoral Secretariat of the Federal Court of Ushuaia, and the Electoral Court of First Instance of the Province of Tierra del Fuego, Antarctica and the Atlantic South Islands. Year 1995 registers 0% of blank votes as no second electoral round took place.
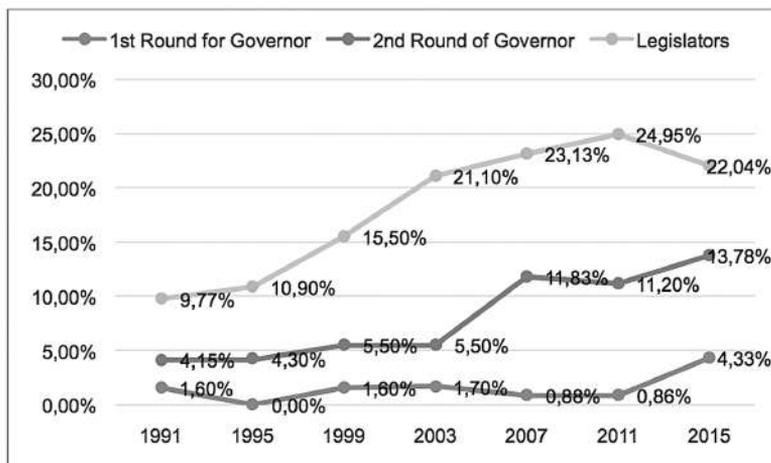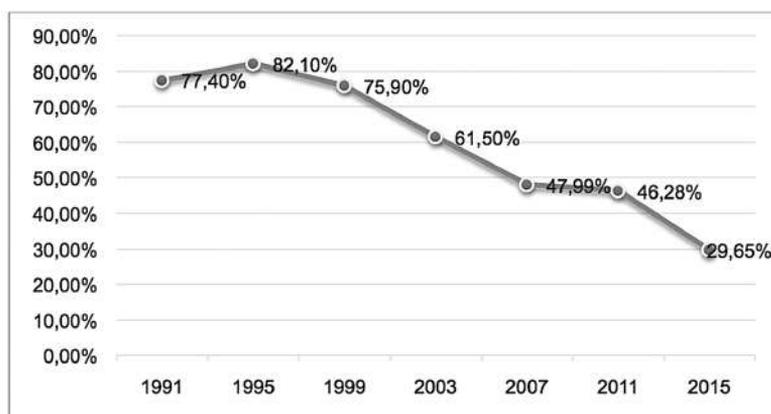

Chart 3
Votes with Legislative Representation[43]

This Chart was prepared by the author with data from the Electoral Secretariat of the Federal Court of Ushuaia, and the Electoral Court of First Instance of the Province of Tierra del Fuego, Antarctica and the Atlantic South Islands.

The chart above indicates which percentage was necessary for political parties to exceed the electoral threshold limit and enter the allocation process to get hold of all contested seats; with an initial point of 77.40% in 1991, falling alarmingly to 29.65%, as verified in the last election of 2015.

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[42] In 1995 there was not a second electoral round for the governor category, as the official candidate reached absolute majority in the first election.

[43] The estimate of the total of votes with legislative representation is based on the total number of votes that produced seat allocations, excluding the blank vote estimate and votes received by diverse political groups which did not reach the minimum threshold determined by the electoral act, to participate in seat allocation by the D'Hondt method.

This is the reason why, besides the constant loss of support by parties that had traditionally obtained legislative positions, we observe a rising disproportion of legislature integration in the shape of a notable increment of the number of parties which had a chance to get hold of a seat and those that effectively achieved their goal.

The considerations cited above suggest that the increase in political parties presenting legislative candidacies, the increment of blank votes in that category, together with the presence of a legal threshold and the D'Hondt system's tendency to overrepresent the most voted parties aggravate the disproportionality generated by the electoral system. Table 2 includes percentages that provide some orientation in this regard and offer information to establish the differences between the number of votes and the number of seats.

Charts No. 4, 5, 6, and 7 illustrate more graphically the difference between votes and seats for the main provincial political parties over the period considered.

Chart 4
Number of Votes and Number of Seats for Movimiento Popular Fueguino

This Chart was prepared by the author with data from the Electoral Secretariat of the Federal Court of Ushuaia, and the Electoral Court of First Instance of the Province of Tierra del Fuego, Antarctica and the Atlantic South Islands.
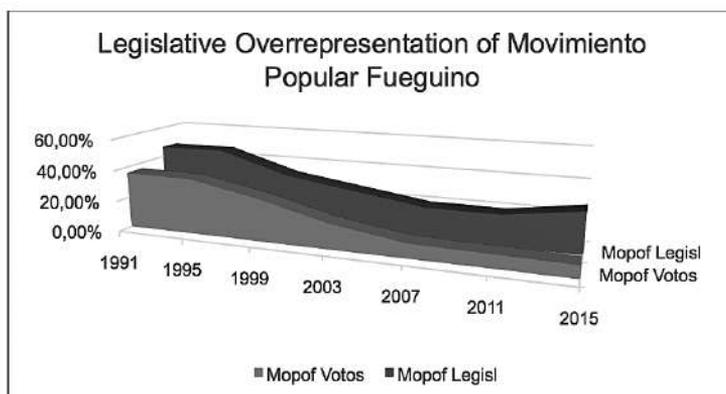

Chart 5
Number of Votes and Number of Seats for Partido Justicialista – Frente para la Victoria

This Chart was prepared by the author with data from the Electoral Secretariat of the Federal Court of Ushuaia, and the Electoral Court of First Instance of the Province of Tierra del Fuego, Antarctica and the Atlantic South Islands.
For the election of year 2011, we consider the combination of two candidate lists (PJ-FPV) as they represent aspects of the same political movement and also came together in a list in 2007.
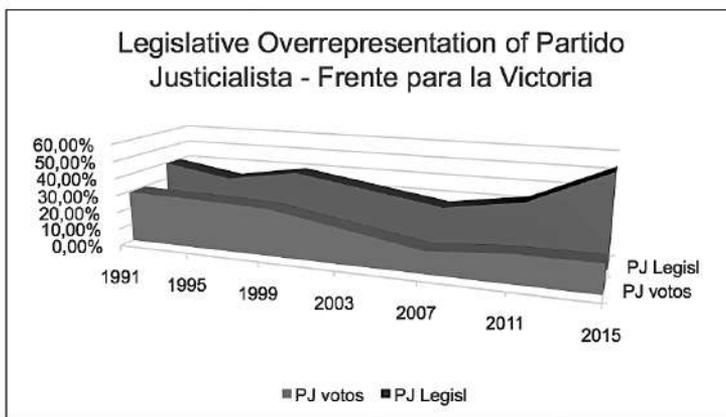
Chart 6
Number of Votes and Number of Seats for Unión Cívica Radical

This Chart was prepared by the author with data from the Electoral Secretariat of the Federal Court of Ushuaia, and the Electoral Court of First Instance of the Province of Tierra del Fuego, Antarctica and the Atlantic South Islands.
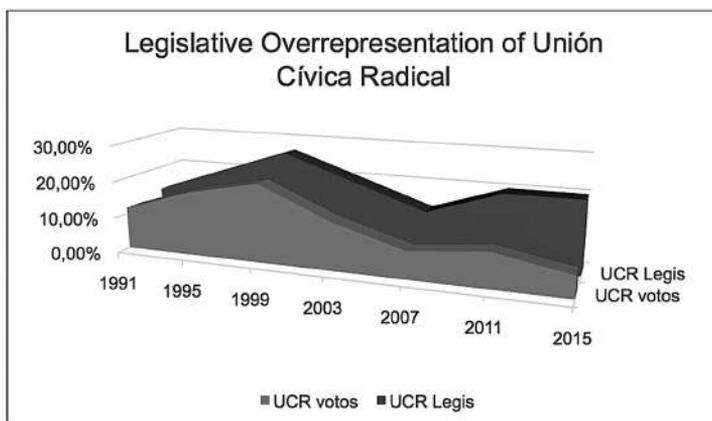

Legislative Overrepresentation of Unión Cívica Radical

Chart 7
Number of Votes and Number of Seats for Partido ARI - PSP

This Chart was prepared by the author with data from the Electoral Secretariat of the Federal Court of Ushuaia, and the Electoral Court of First Instance of the Province of Tierra del Fuego, Antarctica and the Atlantic South Islands.

Legislative Overrepresentation of ARI - Partido Social Patagónico
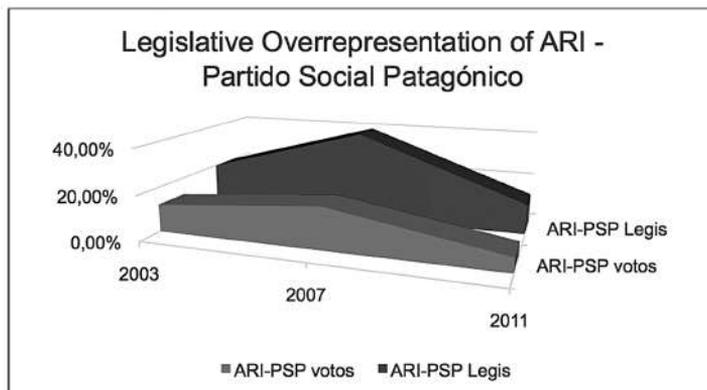
The difference between percentages of votes and percentages of allocated seats, as anticipated, is known as "disproportionality"[44] . The charts above show the existence of disproportionality, as there are differences between those two variables. However, we are more interested in knowing the level of disproportionality the electoral system is producing as a whole.

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[44] If there is disproportionality, this means some parties turn out to be underrepresented (that is, they have less seats or no seat at all) as a result of the overrepresentation the system provides to others. On the contrary; the more proportional the system, the greater the correspondence between votes and seats.

To measure the disproportion between votes and allocated seats, Political Sciences use different methods as a guide. I will apply the most commonly used ones: the method proposed by Douglas Rae[45] (average deviation), the method developed by Michael Gallagher[46] (least squares), and the method formulated by Loseemore and Hamby[47] , all of which are represented in Table 3[48].

The estimation is based on all percentages of votes and percentages of seats effectively earned by political parties involved in the elections for the period between 1991 and 2015, which are processed according to the features of each formula. The closer the result is to a zero (0) value, the greater the proportionality of the electoral system. Conversely, as the electoral system moves away from the zero value, it produces greater disproportionality.

Table 3
Disproportion in the Provincial Legislature

Year	Rae	Gallagher	L & H
1991	3,1327	15,6525	17,2300
1995	3,5557	12,7197	12,4450
1999	4,6271	15,9119	16,1950
2003	4,6575	25,2960	27,9450
2007	5,7764	29,9259	40,4350
2011	4,0950	23,9367	40,9500
2015	5,1065	32,3037	58,725

This Table was prepared with electoral information from the Electoral Secretariat of the Federal Court of Ushuaia, and the Electoral Court of First Instance of the Province of Tierra del Fuego, Antarctica and the Atlantic South Islands.

All three indexes show that the electoral system produces a Legislature with disproportionality levels that are increasing with time. This phenomenon deepens starting from 2003 –the second election where the cross-out threshold imposed by Act 406 was applied, and in which political agents could put into practice learnings from the 1999 electoral results. It was only with the Legislature election of 2011 that this growing disproportionality paused.

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[45] It results from the sum of the remainders between percentage of seats and percentage of votes for the parties winning at least 0.5% of votes. The partial result is divided by the number of parties considered.

[46] It results from the sum of the square values derived from the difference between percentage of seats and percentage of votes for each party. The partial result is divided by two and then, by calculating its square root.

[47] It results from the sum of the remainders between percentage of seats and percentage of votes for the parties winning at least 0.5% of votes. The partial result is divided by two.

[48] Explanation and examples of these indexes in-use are available in Urdánoz Ganuza 2006, among others: 257-296.

The data presented can be illustrated in a measles chart from which emerges a trend line. But first, so as to better understand the provincial electoral system results, we will refer to the following chart (Chart 8), where there is total and correlative proportionality between votes and seats.

Chart 8
Exact Proportionality Model between Votes and Seats
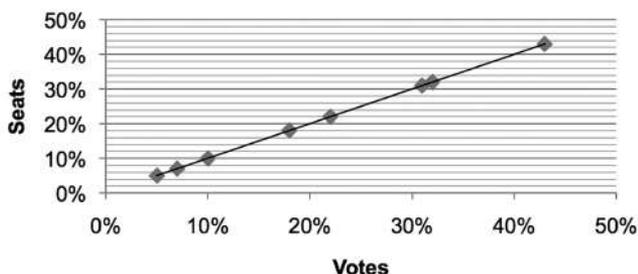
As noted here, a trend line is mapped in the chart and divides the area in identical parts, which represents an exact proportionality. However, the data analyzed from provincial elections extracted from Table 2 suggests how close local results are to that proportionality ideal.

Chart 9
Relation between Percentage of Votes and Percentage of Seats (1991-2015)
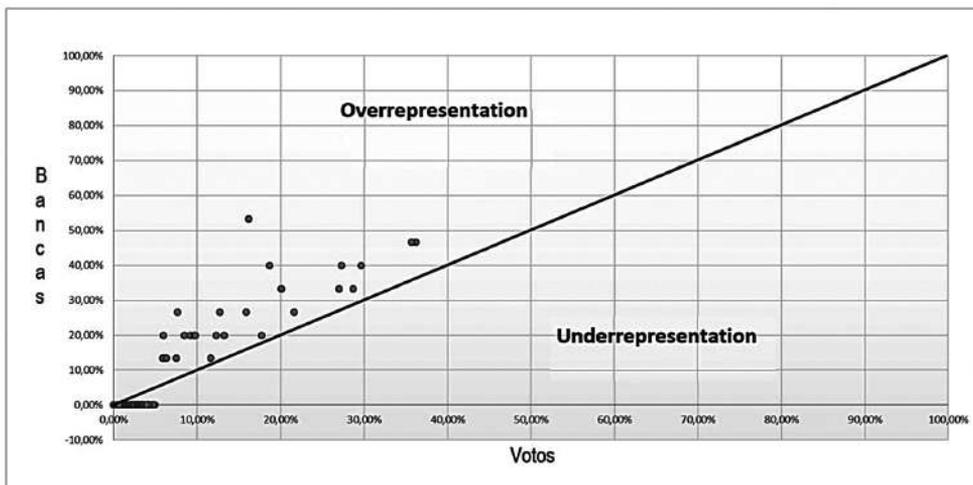
This Chart was prepared with electoral information from the Electoral Secretariat of the Federal Court of Ushuaia, and the Electoral Court of First Instance of the Province of Tierra del Fuego, Antarctica and the Atlantic South Islands.

The chart shows, with the real dots above the imaginary diagonal that emerges from the intersection of the axis (which bears 0% of votes together with 50% of seats, representing absolute proportionality), the overrepresentation produced by the system as a whole over the period under study, thus proving the arguments in this article.

VII.- Conclusions

The results shown indicate that, after being in force for twenty-five years, the provincial electoral system has produced only one Governor who kept matching absolute majority in the Provincial Legislature whether achieved by themselves or through electoral partnerships. All consensus achieved are owe to the creation of political, and eventual, government coalitions.

Today, the Provincial Government has a Legislative absolute majority from its own electoral coalition for the first time, although this results from a notable lack of balance in the electoral system.

Indeed, it is confirmed that there is a distinct disproportion, sustained over time, in the ratio of votes in support of political parties and seats allocated in the Legislature to some of them. Up to and including year 1999, there is a concentration of vote percentages in favor of a particular group of political parties (Partido Justicialista, Movimiento Popular Fueguino and Unión Cívica Radical.) Thereafter, a steady fractioning of the party system has started and is still continuing.

Since 2003, the traditional set of political parties with legislative presence is falling in number of votes towards the limits of the electoral threshold.

This threshold came into being to restrict the incorporation of new political parties in interaction with the electoral formula, the increasing number of political groups presenting candidates, and the number of blank votes, which is constantly climbing and affects how seats are distributed. This combination has brought an overrepresentation of these three political parties and proves to be restrictive for incorporating new forces –except for the Legislature elected in 2011– and requires further studies that consider sociological variables– specially, to analyze the rise in blank votes and determine its root causes.

What we can certainly assert is that two of the forces reached by the effects of this systemic disproportionality are inextricably falling towards the dangerous limit that could soon deprive them of securing representation.

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