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MARGINAL REPRESENTATION: PARTY-LIST AND LEGISLATIVE PRODUCTIVITY AT THE HOUSE OF REPRESENTATIVES, 1998–2016

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Abstract

Republic Act (RA) No. 7941 or the Party-List System Act of 1995 seeks to promote the participation of the marginalized and underrepresented sectors of the society in policymaking. However, two decades after its passage, confusion and controversy still hound the Philippines' experiment with proportional representation. Party-list members are being criticized for their lackluster performance as legislators. This policy brief provides an exploratory examination of the party-list system as a policy platform by analyzing legislative output for each representative and comparing the performance of party-list representatives with their district counterparts, for the period beginning from the party-list law's institutional inception in 1998 all the way up to 2016. The results of the analysis show that while party-list representatives are more motivated than the typical legislator in sponsoring legislative proposals, they are less likely to solicit support for these measures in the Lower House, and consequently, less effective in translating bills into laws. As far as peddling policies are concerned, the chief executive's partisan allies in Congress remain to be the most effective. Recommendations for reform of the party-list system to improve the performance of party-list representatives in policy-making are also discussed.

Proportional representation and the party-list system in the Philippines

The proportional representation (PR) system became the dominant electoral system in most continental European countries in the 1920s. It was first adopted by Belgium in 1899, followed by Finland in 1906, and Sweden in 1907. By 2004, 70 out of 199 countries have

adopted the list proportional representation (list PR) system for elections to national legislatures or to the lower house in bicameral legislatures (Reynolds 2005). List PR systems in these countries can be classified into four: Hare, d'Hondt, Hagenbach-Bischoff (Droop), and Sainte-Lague, with each type named after their proponents Thomas Hare, Victor d'Hondt, Eduard Hagenbach-Bischoff, and Andre Sainte-Lague, respectively (Farrel 2011). Although all the list PR systems are intended to ensure that the seats given to the winning parties are proportional to the votes that they had received in the elections, each system has its own formula for translating votes into seats. The key distinction is based on whether the system sets the allocation of seats by the largest remainder system, as in the Hare and Droop systems, or by the highest average system, as in the d'Hondt and Saint-Lague systems (see Farrel 2011). The largest remainder system is used in Austria, Cyprus, South Africa, and Colombia, among many others, while the highest average system is popular in many Scandinavian countries, including Norway, Sweden, and Denmark (Farrel 2011).

Although most proportional representation systems can be classified into these four categories, the Philippine PR system is unique in several ways. For instance, although the Philippine party-list system requires a minimum threshold, as in other countries (e.g., Germany sets the threshold at 5%), it does not follow any particular electoral formula for translating the votes of the party into seats. The three-seat ceiling imposed in the party-list system is also a feature that is not found in other PR systems. Unfortunately, these distinctive features of the Philippine party-list system also create disincentives that dissuade organizations from consolidating, and motivate them to instead create smaller parties that will allow them

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to maximize their representation and circumvent the constraints imposed by the law.

In the Philippines, the party-list system is provided in Article VI, Section 5 (1) and (2) of the 1987 Constitution, which states that 20 percent of seats in the House of Representatives shall be allocated through a party-list system of registered national, regional, and sectoral parties or organizations. Section 5(2) provides that for three consecutive terms after the ratification of the Constitution, one-half of the seats allocated to party-list representatives shall be filled by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector. Thus, from the 8th to the 10th Congresses, the seats were filled by sectoral representation.

Republic Act (RA) No. 7941 or the Party-List System Act, was enacted in March 1995 to finally provide an enabling law to the party-list system. In its own words, the law aimed to “promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives.”

Loopholes in the 1995 Party-list Law

Who are the marginalized? Is the party-list law exclusive to the marginalized? These questions would for a time preoccupy the Commission on Elections and the Supreme Court in their efforts to interpret the law’s obscure provisions.

In *Ang Bagong Bayani v. Comelec* (G.R. No. 147589, June 26, 2001), the high court ruled that while major political parties may join the party list elections, they must represent the marginalized and underrepresented groups identified in Section 5 of RA 7941 (e.g., labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals). *BANAT v. Comelec* (G.R. No. 179271, April 21, 2009), in a highly divided *en banc* decision, declared that major political parties are barred from participating in the party-list elections, directly or indirectly. However, in *Atong Paglaum v. Comelec* (G.R. No. 203766, April 2, 2013), the Supreme Court ruled that only sectoral parties for labor, peasant, fisherfolk, urban poor,

indigenous cultural communities, handicapped, veterans, overseas workers, and other sectors that by their nature are economically at the margins of society must comply with the criterion of representing the marginalized and underrepresented. For national, regional, and sectoral parties of professionals, the elderly, women and the youth, it is enough that they consist of “citizens who advocate the same ideology or platform, or the same governance principles and policies, regardless of their economic status as citizens.” The decision is a categorical clarification that even major political parties are not barred from the party-list system.

The manner by which seats are allocated is also blamed for why party-list representatives hardly make any impact in policymaking. Under the Party-List Law, only parties, organizations, and coalitions garnering a minimum of two percent (2%) of total valid votes cast are qualified to hold a seat in the Lower House. This is supposedly to prevent incumbents from using the party-list system as a fallback, as well as to ensure that only those with more or less substantial following can be represented, among others (Tangkia and Habaradas 2001). While broadening participation over the years, the two percent threshold also creates sectoral division and fragmentation. The rule gives little incentive for sectoral groups to work together as the relatively small voting threshold makes it easy for even relatively small parties to win seats. This would have repercussions in legislative productivity as competition among fragmented issue-based organizations breeds animosity among competing sectoral parties.

Section 11(b) of the Party-List Act also provides a three-seat cap for organizations or coalitions which muster the two percent vote margin. But like the two-percent vote threshold, instead of uniting small parties, it encourages separate petitions for COMELEC accreditations by various sectoral groups. The antagonism would extend to the deliberative chambers as winning party-list organizations would rather work independently than collaborate with competing party-list organizations over similar policy agenda. Since party-list representatives would opt to work with other representatives, particularly those in the same party as the President, the bills that they intend to forward may also be coopted as a result of a compromise with district representatives.

How effective are party-list representatives as legislators?

To determine party-list and legislative productivity, data were mined from the Philippine House of Representatives’ LEGIS portal using Python-based web-scraping scripts. From the dataset, Poisson

regression models provided an estimation testing primarily for the effect of being a party-list representative as a categorical characteristic on a legislator's individual legislative output.

There are 1,548 legislators with records of legislative output in our dataset. Based on Table 1, a major personal preoccupation for the typical representative is authoring bills of national significance, not local bills as common notion suggests. On average,

legislators propose around 22 bills of national significance, in contrast to only 16 constituency-oriented measures. Because bills of national significance require chamber groundwork, they are also the main subjects of collaborative legislative engagements among house members. On average, legislators co-author about 100 bills catering to needs of the larger public, as opposed to an average 16 bills of local significance.

Table 1. Descriptive summary of legislative productivity in the House of Representatives, 1998-2016

Variables	Obs	Mean	Std. Dev.	Min	Max
National bills primarily authored	1,548	22.04	49.89	0	922
National bills co-authored	1,548	100.37	109.55	0	1434
Local bills primarily authored	1,548	16.45	35.31	0	810
Local bills co-authored	1,548	16.69	34.47	0	620
Total bills proposed	Obs	Mean	Std. Dev.	Min	Max
Party list representatives	231	172.89	187.47	5	1543
Co-partisans of the president	529	154.30	129.38	6	1090
District representatives	789	151.24	154.77	5	1652
Male legislators	1,236	158.27	161.82	5	1652
Female legislators	312	144.76	106.00	10	827
First termers	761	151.26	136.58	5	1543
Second termers	463	154.87	157.91	12	1652
Third termers	323	166.79	177.32	5	1210
Proportion of bills passed on third reading	Obs	Mean	Std. Dev.	Min	Max
Party list representatives	231	0.07	0.05	0	0.27
Co-partisans of the president	529	0.13	0.08	0	0.77
District representatives	789	0.12	0.06	0	0.77
Male legislators	1,236	0.11	0.07	0	0.77
Female legislators	312	0.12	0.06	0	0.49
First termers	761	0.11	0.06	0	0.49
Second termers	463	0.12	0.08	0	0.77
Third termers	323	0.12	0.08	0	0.77
Proportion of bills passed into law	Obs	Mean	Std. Dev.	Min	Max
Party list representatives	231	0.06	0.04	0	0.33
Co-partisans of the president	529	0.09	0.05	0	0.45
District representatives	789	0.08	0.05	0	0.35
Male legislators	1,236	0.08	0.05	0	0.45
Female legislators	312	0.09	0.05	0	0.31
First termers	761	0.08	0.04	0	0.35
Second termers	463	0.09	0.05	0	0.45
Third termers	323	0.08	0.05	0	0.31

A total of 39,938 bills were filed by party-list representatives since the Eighth Congress. They propose an average of around 172 bills (both of local and national significance) per party-list representative per Congress, as opposed to district representatives who propose just 152 bills on average. District representatives affiliated with the chief executive's political party propose 154 bills on average, and thus are practically no different from the typical district member. More experienced legislators such as third termers are naturally more proficient at crafting policies, and write 167 bills on average. Male legislators

file an average of 158 bills per Congress, while female legislators file an average of 145 bills per Congress. It must be noted, however, that female legislators in the Lower House consists of only about a quarter of their male counterparts.

When it comes to peddling bills into legislation, the average rate of Lower House approval for party-list members is just seven percent, or just about half of the average for the typical district representative (12 percent). Of these, an average of only six percent of the total bills filed by party-list representatives

becomes law. On the other hand, the average success rate for district representatives and co-partisans of the President is about the same (nine and eight percent, respectively). Of interest is that, while about three in four bills are filed by male legislators, there appears to be no gender difference as far as hurdling Lower House roll calls or passing bills into legislation are concerned.

Table 2 summarizes the results of three Poisson models estimating legislative productivity in the House

of Representatives. Model 1 measures legislative productivity in terms of the total number of bills (authored and co-authored) per Congress. Model 2 sums the number of bills approved on third reading out of the total number of bills proposed. Model 3 tallies the number of bills passed into law out of the total number of measures proposed. The unit of exposure for Models 1 and 2 is the total number of bills (authored and co-authored) proposed (see Cameron and Trivedi 1998; Hilbe 2007). Model 1

Table 2. Summary of Poisson models showing the effectiveness of party-list representatives in proposing and legislating measures into policies

	(1) Bills proposed	(2) Bills passed on third reading	(3) Bills passed into law
Main			
Party list representative ^a	0.342*** (0.0990)	-0.847*** (0.0853)	-0.555*** (0.0758)
Controls			
Co-partisan of the president ^b	0.0286 (0.0504)	0.171** (0.0654)	0.111* (0.0456)
Male representative ^c	0.0195 (0.0501)	-0.0816 (0.0417)	-0.0716 (0.0384)
Proportion of local bills	-0.103 (0.0591)	0.398*** (0.0759)	0.0185 (0.0458)
Proportion of national bills	-0.550*** (0.111)	0.0127 (0.0880)	0.267*** (0.0716)
Term (first term as base) ^d			
Second term	0.0250 (0.0564)	0.129* (0.0595)	0.0341 (0.0483)
Third term	0.0909 (0.0675)	0.114 (0.0688)	0.0194 (0.0572)
Congress (11th Congress as base) ^e			
12th Congress	-0.0769 (0.0914)	0.254*** (0.0732)	0.405*** (0.0703)
13th Congress	-0.163 (0.0839)	0.170 (0.108)	-0.142 (0.0728)
14th Congress	-0.336*** (0.0926)	0.0940 (0.0737)	0.454*** (0.0723)
15th Congress	-0.454*** (0.0921)	0.181** (0.0648)	0.619*** (0.0755)
16th Congress	-0.609*** (0.0844)	0.120* (0.0610)	0.472*** (0.0655)
Constant	5.604*** (0.110)	-2.312*** (0.0862)	-3.084*** (0.0872)
Exposure [ln(bills proposed)] ^f		YES	YES
N	1526	1526	1526
AIC	139148.8	15972.9	11079.9
BIC	139218.1	16042.2	11149.2

Standard errors in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

^a Party-list representative is a categorical variable indicating whether a legislator belongs to the party-list system.

^b Co-partisans of the presidents are district members who are affiliated with the political party of the incumbent chief executive.

^c The base category is female.

^d Members of the House may be elected to three consecutive three-year terms.

^e The variable controls for Congress-specific fixed effects

^f We include exposure in Models 2 and 3 to give a rate interpretation on bills passed over bills proposed.

suggests that if a legislator is a party-list representative, the rate ratio of bill proposal increases by $[\exp(0.342)-1]$ or 41 percent of the typical district representative, all else constant. Be that as it may, Model 2 suggests that being a party-list representative decreases the rate ratio of intra-cameral bill approval by 57 percent. The rate ratio of passing bills into law among party-list legislators, on the other hand, drops by 43 percent. Meanwhile, co-partisans of the president enjoy a 19 percent increase in the ratio of getting their measures approved in the Lower House. The rate ratio of legislative enactment is also 12 percent higher for allies of the President.

Conclusion and recommendations

How effective are party-list representatives as legislators? Results of the estimates suggest that while party-list representatives are more prolific than their district counterparts in proposing legislative measures, they have more difficulty peddling these measures into legislation. If effectiveness is measured by the proportion of bill approval over those proposed, then partisan allies of the president are the most efficient. The results confirm prior observations about how the current party-list system fails to give voice to the marginalized, albeit only in the legislative policy process (Kimura 2013; Panao 2016).

Despite the noble intent of widening political participation, voter reception of the party-list system has generally been lukewarm. The fact that the Supreme Court is occasionally constrained to interpret and reinterpret vague provisions only adds doubt to the party-list system's efficacy as a mechanism for electoral reform (Torres-Pilapil 2015). Prior high court pronouncements regarding the three-seat cap and the two-percent vote threshold, among others, are believed to have hindered coalitional alliances and induced further fragmentation among the politically-underrepresented (Panao 2016).

The Philippines' system of proportional representation may be flawed in its current form, but its reform may not necessarily be through a constitutional overhaul. For one, RA 7941 should be amended in a manner that minimizes judicial interpretation by clearly defining who can participate under the system, the extent of representation under the setup, and the accountability of participating organizations and their nominees. An amendment of the Party-List System Act must also include the abolition of the

three-seat ceiling to achieve genuine proportionality in translating the votes into seats, and allow for increasing the two-percent threshold to encourage cooperation among parties which advocate common policy agenda. It is also recommended to craft and pass a law that will strengthen political parties and discourage 'turncoatism.' There is also a need to pass a law that implements the Local Government Code's provisions on sectoral representation at the local level.

These reforms would minimize animosity between parties and pave for a healthy collaboration among winning party-list organizations.

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