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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**REPORT**  
**ON ELECTORAL SYSTEMS**

**OVERVIEW OF AVAILABLE SOLUTIONS**  
**AND SELECTION CRITERIA**

**Adopted by the Venice Commission**  
**at its 57<sup>th</sup> Plenary Session**  
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**on the basis of comments by**

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## INTRODUCTION

1. In any political society whose size necessitates a certain “division of labour” between those who are governed and those who govern, the system of representation lies at the very heart of the democratic system. The electoral system is at the very core because its task is to translate the will of the sovereign people in designating their legitimate representatives who are responsible, on their behalf, for supervising executive and legislative acts and, while not having a binding mandate, make themselves accountable in the next set of elections.

2. Stated in such broad terms, these basic principles of democratic representation enjoy unanimous accord. But that accord will always show cracks or even completely disintegrate once it is attempted to define procedures for implementation. Is there just one “sovereign people” or several? Does the people’s ethno-cultural make-up (national minorities) or at least its variable presence on the territory (division into constituencies) require special consideration? Must representation be purely political in nature (party- or ideology-based) or must it take cultural and social factors (religion, sex, social category etc) into account? Must the need to arrive at a governing majority be catered for prior to the election, by tolerating “distortions” of plurality or majority voting, or afterwards, by allowing free representatives to form coalitions in the light of the challenges and the balance of power? Since parliamentary elections do not have the same scope from one political system to another (parliamentary, presidential or semi-presidential) and are not the sole elections held in most democracies (there being infra-national and sometimes supra-national elections), should they not be regarded as part of a broader “electoral system”, in which several patterns of representation may coexist and, accordingly, several voting methods, with each offsetting the effects of the others? All these issues should be focal points for specialists and politicians.

3. However, somewhat paradoxically, the issue of electoral systems, which should attract the attention of all election analysts, generally interests only a handful of specialists, albeit very intensely, if not obsessively, so that they rapidly become fervent advocates or relentless adversaries of proportional representation, leaving the rest totally indifferent or perhaps somewhat contemptuous.

4. This paradox is doubtless largely due to the necessarily amoral, and for some people immoral, side of electoral systems which smacks of “political jiggery-pokery” and unfortunately detracts from the purity of the immortal principles of the sovereignty of the people, the expression of the general will and the legitimacy of the elective authorities. But politics, even democratic politics, is not just about principles. It is also the arena of combat between all those who dream of conquering legitimate power. Law and philosophy weigh in less heavily here than history and sociology, which prompts us to agree with Mosca that when we say that the electorate elects its representatives, we have got things out of perspective: “the truth is that the elected representatives do all they can to be elected by their electorate”. And the choice of a particular electoral system is clearly part of the armoury of any political undertaking wishing to “have its representatives elected” in order that the elected assembly should correspond most closely to its own expectations and interests.

5. It must be acknowledged that the variety of systems which specialists offer practitioners is such as to satisfy their wildest dreams. The variety of systems on offer is not only so varied as to be bewildering, it enables almost any result to be obtained, as if the electors’ vote was ultimately less important than the sophistication of those responsible for drawing up electoral legislation.

Alain Lancelot has shown this (Commentary, No 73, 1996) using simulations carried out on the basis of the results of a French region and applying 41 differing electoral systems. Depending on the system chosen, with 57 seats to be filled, the moderate right obtained between 18 and 57 seats and the socialists between 4 and 30!

6. The fact that there is such a “predictive” factor for election results means that attention ought to be paid to it. This is the aim of this introductory report. The first part, written by Christophe Broquet, seeks to bring some order into the plethora of electoral systems available, and the second part, drawn up by Alain Lancelot, sets out to identify the main criteria for choosing between the various systems in the light of the few fundamental interests which each system takes into account in its own particular way.

## **PART ONE – ELECTORAL SYSTEMS ON OFFER**

7. There is no predetermined uniform classification of electoral systems. In general, electoral systems are divided into three main types: majority or plurality/first-past-the-post, proportional representation and hybrid. Yet within these major types, there is a virtually unlimited number of voting methods. Just to take plurality and majority systems, Frédéric Bon<sup>1</sup> calculated that there were no fewer than eighty on the basis of general criteria alone (number of rounds, counting methods, types of constituency/electoral district). Consequently in order to give the best possible account of the various different forms which electoral systems may take, this report will concentrate on identifying their main features.

8. The definition of electoral systems as “*the set of procedural rules governing the expression of votes cast in a given election and their conversion into seats*”,<sup>2</sup> enables us in the first place to classify those features in two main categories: the first consists of all those factors relating to the organisation, the conduct and the process of the election; the second consists of the rules relating to the counting of votes and the distribution of seats.

9. The first category covers the rules governing how the elector exercises his or her right to vote. As far as this area is concerned, electoral systems have to provide a response to five questions, and several responses are possible:

- What electors do you want to call to the ballot box and hence what sort of suffrage is to be applied? Direct universal suffrage, indirect universal suffrage or multi-tiered elections?
- What guiding principle should the vote be based upon? Is the intention to give preference to the majority principle, proportional representation or “hybrid” systems?
- How is the electorate to be divided up between constituencies/electoral districts?
- What method of voting is to be available to electors? Here we can distinguish between “categorical” voting methods (electors are asked to make an absolute choice by indicating their preference for one party or one political movement to the exclusion of all others) and “ordinal” ones (under which electors may qualify their choice).
- How many times must electors vote? This is a question of deciding how many rounds the vote should be spread over.

10. The second category of rules deals with how votes are counted and how seats are distributed. In this context, four factors have to be taken into consideration:

- the distribution of seats among constituencies/electoral districts,

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<sup>1</sup>BON, Frédéric, *Les élections en France. Histoire et sociologie*, Paris, Seuil, 1978, pp. 88-90.

<sup>2</sup>GARRONE, Pierre, *L'élection populaire en Suisse. Etude des systèmes électoraux et de leur mise en œuvre sur le plan fédéral et dans les cantons*, Faculté de Droit de Genève, 1991, Basle – Frankfurt am Main, Helbing & Lichtenhahn, Collection genevoise, p. 11.

- the choice of method for allocating seats between the various lists,
- the determination of thresholds for election and of bonuses designed to ensure that assemblies elected by proportional representation obtain government majorities and
- the distribution of seats within lists.

## **1. CATEGORY 1: GUIDING PRINCIPLES AND PROCEDURES GOVERNING THE CASTING OF VOTES**

### 1.1 Direct and indirect universal suffrage, multi-tiered elections

11. Before considering the different features of the various electoral systems, it is necessary to define what type of suffrage it is sought to adopt. Three types of suffrage are available in democratic systems: direct universal suffrage, indirect universal suffrage and multi-tiered elections.

- direct universal suffrage: namely “*where every citizen, except those who are excluded by law, can directly participate in the vote*”<sup>3</sup> and elect his or her representatives without the involvement of intermediaries. This type of vote is employed in practically all democracies for the purposes of electing representatives to lower chambers.
- indirect universal suffrage: elected representatives are chosen by leading citizens, who may themselves be elected representatives. However, unlike electoral colleges, the leading citizens in question are not chosen for that purpose.
- Multi-tiered elections: representatives are chosen by electoral colleges chosen for that purpose. Nowadays this type of suffrage is no longer used to elect representatives to lower chambers, but the President of the United States is elected by a system of electoral colleges.

### 1.2 Plurality/majority, proportional representation and “hybrid” systems

12. Every electoral system works according to a guiding principle. It varies between two extremes: the plurality/majority systems and proportional representation. Hybrid or intermediate electoral systems fall between the two.

#### *a. The plurality and majority systems*

13. In the plurality and majority systems, the candidate or list of candidates that obtained the most votes in the conclusive round of voting is declared elected. This system is the one most consonant with European cultural traditions. It is also the only system possible where there is only one vacant seat per constituency. One of the effects of the first-past-the-post system is that it enables clear government majorities to be formed.

14. The plurality and majority systems may take many forms according to how one defines “the most votes”. There are three possibilities:

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<sup>3</sup>INTERPARLIAMENTARY UNION, *Electoral systems, a world-wide comparative study*. Geneva, 1993, p. 3.

- ◆ Relative (or simple) majority (plurality system/first-past-the-post in English): the candidate obtaining the most votes in the conclusive round (the one on which the election depends) is declared to have been elected.
- ◆ Absolute majority: defined as half plus one of the votes cast.
- ◆ Qualified (or reinforced) majority: this corresponds to a greater majority than half plus one of the votes cast (majority equivalent to, for example, two-thirds or three-fifths of the votes cast). This type of majority is little used in elections based on direct universal suffrage.

15. Systems requiring a relative majority are more likely to result in a two-party race or at least a concentration of seats in the hands of the leading two parties, whereas systems requiring an absolute majority (in the first round) are more open to multi-party coalitions.

*b. Proportional representation*

16. Proportional representation may be defined in terms of its objective, which is to seek to achieve “a proportional transposition of votes into mandates”.<sup>4</sup> To date, three countries have opted for full proportional representation: Israel, the Netherlands and Paraguay.

17. Proportional representation is generally regarded as being the “fairest system” on the grounds that it tends towards a more faithful representation of the various political forces. However, the drawback with this system is that it favours a fragmentation of those seeking to be elected and consequently makes it more difficult to form stable majorities in the assemblies. This was shown by the Polish legislative elections of June 1993: 29 parties were represented in the lower house (460 members in all), but no party obtained more than 12.3% of the seats.

18. Lastly, it should be noted that a proportional representation system is not automatically synonymous with a list system. The proportional system may be effectively used, albeit very rarely, in combination with individual candidatures.

*c. Hybrid systems*

19. Hybrid or combined systems is the term generally used to describe systems presenting a combination of the first-past-the-post/majority and proportional systems (Italy, Japan), and also systems in which proportional representation is applied but the actual distribution of seats does not exactly match the proportions identified (Greece, Portugal, Spain). Their aim is to arrive at governmental majorities, secure optimum representation for the different political tendencies and preserve the link between the electorate and elected representatives, which is not always possible with the rigid application of first-past-the-post/majority or proportional systems. While such electoral systems were long regarded as “institutional anomalies symptomatic of an inferior political civilisation”,<sup>5</sup> they are now being taken on board by more and more countries, particularly those having undergone sweeping political changes.

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<sup>4</sup>NOHLEN, Dieter (dir.), *Die Wahl der Parlamente und anderer Staatsorgane: ein Handbuch. Band I: Europa*, Berlin, 1969, p. 33.

<sup>5</sup>“La règle électorale”, intervention by Thanassis Diamantopoulos at the VII<sup>th</sup> Congress of the « Association française de science politique ».



20. The main combinations proposed are the following:<sup>6</sup>

- ◆ Application of plurality/majority system in some constituencies and proportional representation in the others.
- ◆ Use of the plurality/majority systems for candidates or lists having obtained the absolute (or qualified) majority and the distribution of the remaining seats on the basis of proportional representation.
- ◆ In a given constituency, application of the plurality/majority system for a predetermined number of seats and use of proportional representation for the remainder.
- ◆ Application either of the plurality/majority system or the proportional representation system depending on the size of the constituency.
- ◆ Use of proportional representation in order to offset the effects brought about by plurality/majority voting. Amongst those systems, mention may be made of “personalised representation” in Germany and the 1994 Electoral Act in Italy.

### 1.3 Constituencies/electoral districts

21. A third variable characterising electoral systems is “the units within which voting returns are translated into distributions of parliamentary seats”,<sup>7</sup> namely the constituency or electoral district. The constituency may have a social (“personal circles”)<sup>8</sup> or a territorial (territorial constituencies) basis.

#### *a. Personal circles*

22. Whereas elections organised on the basis of personal circles were frequently encountered in the past, few countries still apply such a breakdown of electors. Several criteria have been employed, such as social class, income, occupation or membership of an ethnic group. Some commentators have also proposed other distinctions: formation of opinion groups or age groups or the possibility for electors themselves to determine the personal circle to which they wish to belong.

#### *b. Territorial constituencies*

23. Territorial constituencies constitute the principal way of dividing up electors. They may be based on pre-existing administrative divisions (member states of federal states, provinces, departments) or have been created *ex nihilo* by the legislature for a given election (legislative and interregional constituencies in France, for example).

24. Territorial constituencies may be broken down into two types:

- Single-member constituencies (one seat in contention per constituency) are the most widespread today, in particular in the common-law countries. It is possible to make use of

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<sup>6</sup>For the sake of clarity, we have also indicated those combinations which take account of variables connected with the distribution of seats.

<sup>7</sup>RAE, Douglas, *The Political Consequences of Electoral Laws*, New Haven (Conn.), Yale University Press, 1967, p. 19.

<sup>8</sup>GARRONE, Pierre, *L'élection populaire en Suisse. Etude des systèmes électoraux et de leur mise en œuvre sur le plan fédéral et dans les cantons*, p. 124.

such constituencies for elections based on the plurality/majority principle. In contrast, they are inconceivable for elections based on pure proportional representation.

- Multi-member constituencies (several seats in contention per constituency) are compatible both with plurality/majority systems and proportional representation. As far as plurality/majority voting is concerned, they are used in practice in Europe virtually only for local elections. Outside continental Europe, multi-member constituencies are frequently used for the election of national parliaments.

25. Determining the constituency boundaries is an important step in the electoral process, since they can give rise to marked “structural”<sup>9</sup> inequalities in representation. Three factors may be behind such disparities: demographic change, gerrymandering and “natural gerrymandering”.

- The varying demographic trends experienced by different territories make regular redrawing of constituency boundaries necessary. A failure to redraw constituencies has an adverse effect on the most demographically dynamic constituencies (urban areas) as compared with those constituencies with a low population growth (rural areas).
- Gerrymandering consists in skilfully redrawing constituencies on the basis of previous electoral results with a view to boosting the representation of the party in power. In such case, two specific examples may arise: either the minority is voluntarily brought together in a few constituencies where it has a strong majority, whilst the majority has only a slight edge over it in a higher number of constituencies; or the redrawing is carried out in such a way that the minority cannot obtain a majority in any constituency. In order to avoid this, it is absolutely necessary that the redrawing of constituency boundaries be carried out by an independent and politically neutral body.
- Lastly, there is what Maurice Duverger terms “natural gerrymandering”. Unlike gerrymandering proper, it does not result from a deliberately biased redrawing of boundaries. It may be that one category of the population is strongly concentrated in a small number of electoral constituencies, whilst another has a very small majority in a large number of constituencies.<sup>10</sup>

*c. The existence of several levels of constituencies/electoral districts*

26. During an election, there may be several levels of constituencies coexisting alongside one another. The method of casting votes or the guiding principle may therefore vary depending on constituency size. For elections to the US House of Representatives, use has sometimes been made of single-member majority voting in small constituencies and a multi-member majority system in bigger constituencies. When the number of seats allocated to each State increased, these different constituency levels were used to designate additional elected representatives and no fresh divisions of single-member constituencies were made. A number of constituencies may also be superimposed over each other. In hybrid systems, representatives are sometimes elected at two levels of constituencies. In Mexico, for example, of the 500 representatives making up the

<sup>9</sup>DUVERGER, Maurice, “Esquisse d’une théorie générale des inégalités de représentation” in COTTERET, EMERI, LALUMIERE, *Lois électorales et inégalités de représentation en France : 1936-1960*, p. VI.

<sup>10</sup>For further rules on division into constituencies, see the *Code of good practice in electoral matters*, adopted by the Venice Commission at its 52<sup>nd</sup> Session (Venice, 18-19 October 2002) (CDL-AD (2002) 23 rev), I.2.2.

Chamber of Deputies, 300 are elected by a single-member, one-round first-past-the-post system and 200 by means of a system of regional proportional representation using closed lists in multi-member constituencies. In South Korea, half the deputies are appointed by single-member constituencies, with the other half being elected by proportional representation in a national constituency. The joint use of personal circles and territorial constituencies is also possible. It enables specific majorities to be represented, as in the case of the election of the House of Representatives in New Zealand (61 territorial constituencies, 6 constituencies reserved for the Maori minority and 53 seats for list MPs).

#### 1.4 Methods of voting

27. When voting, each elector is called on to make a choice and one of the functions of the electoral system adopted is to govern how that choice is expressed. On the basis of the choice which the elector is asked to make, a distinction can be made between “categorical” voting methods which require the voter to make an absolute choice and “ordinal” voting methods under which the voter may qualify his or her choice. It should be made clear immediately that this analysis variable has no direct impact on the fragmentation of the party system and elected assemblies.<sup>11</sup>

##### *a. “Categorical” voting methods*

28. “Categorical” voting methods oblige the voter to indicate a preference for a party, a list or a candidate to the exception of all others. They are used both in plurality/majority systems and in elections run under proportional representation. The following types exist.

29. Single-member ballot: there is where there is just one seat to be filled per constituency and each elector has only one vote. It is therefore applicable only in plurality/majority or hybrid systems.

30. The single non-transferable vote:<sup>12</sup> irrespective of the number of seats to be filled, each elector has only one vote. Candidates receiving the most votes are elected in proportion to the number of seats to be filled. This system is regarded as being the “fairest” of the non-proportional methods, since it enables a high degree of proportionality to be achieved between the votes cast and the number of seats.

31. The closed list: Under this system the elector has to choose a list in its entirety. It is generally used in proportional representation systems; but it can also be used in plurality/majority and hybrid systems. Under proportional representation, candidates on closed lists are elected in the order in which they appear on the list.

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<sup>11</sup>Cf. RAE, Douglas, *The Political Consequences of Electoral Laws*, New Haven (Conn.), Yale University Press, 1967, p. 126-129.

<sup>12</sup> This system is in fact a particular type of limited vote (see paras 41-43 below). It was proposed for the first time in 1793 by Condorcet for the election of juries.

b. “Ordinal” voting methods

32. “Ordinal” voting methods enable electors to express a more complex choice. For example, they can class parties by order of preference or choose between the lists or candidates presented to them. Whereas they are chiefly used in proportional representation systems, “ordinal” voting methods are sometimes used in plurality/majority systems. In all, there are nine types of “ordinal” voting systems:

33. The preferential vote: this type of vote is possible only for list-based proportional systems. It enables the elector to mark a preference for one or more candidates appearing on the competing lists. However, it is not a question of classifying candidates within lists but only a way of expressing a preference for a specific candidate or candidates.<sup>13</sup> The number of preferential votes which an elector may cast is limited.

34. “Latoisage”<sup>14</sup> or “negative vote”<sup>15</sup>: this is the converse of the preferential vote in that the elector can strike one or more candidates from the list, so as to show which candidate he or she does not wish to vote for. The “negative vote” differs from panachage (or vote-splitting) as the elector does not indicate the name(s) of other candidate(s) to replace the candidate(s) struck out.

35. Cumulative vote: electors may give two or more votes to a given candidate. In practice therefore, each elector has a stock of votes equal to the number of seats to be filled which he or she can use to mark his or her preference. The leading candidates are elected in proportion to the number of seats to be filled. When used in the plurality/majority systems,<sup>16</sup> the cumulative vote tends to accentuate artificially the representation of significant minorities. The drawback with this system is that it may result in a defeat for the majority if there is an excessively large number of votes for one of its candidates. Lastly, it should be noted that the cumulative vote may be combined with the limited vote.

36. Graduated or rank-ordered vote: this allows electors to classify candidates in order of preference. To this end, electors have a number of votes which they distribute between the various candidates for whom they wish to vote. Each position corresponds to a number of votes determined by the legislature. It is in this respect that this method differs from the cumulative vote. It should be added that the number of candidates for whom an elector may express a preference may be limited.

37. The aforementioned ordinal voting methods do not cater for the possibility of voting for candidates from several lists. That is possible, however, with the following variants, which are designed to enable voters to vote simultaneously for candidates from different lists.

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<sup>13</sup>For the counting of preferential votes and their role in attributing seats, see paras. 78 ff. below.

<sup>14</sup>BATTELLI, Maurice, *Les systèmes électoraux, in Les doctrines politiques et le système électoral en Suisse, Geneva, 1950, p. 111.*

<sup>15</sup>SCHEPIS, Giovanni, *I sistemi elettorali. Teoria-tecnica-legislazioni positive, Empoli, 1955, p. 187.*

<sup>16</sup>Use of this voting method under proportional representation, although it occurs less frequently, is authorised in Switzerland and in Luxembourg.

38. Panachage or vote-splitting: the elector can modify a party list and include on it candidates from other lists. Panachage is rarely authorised in proportional representation systems.

39. The blank list: the elector draws up his or her list of candidates that he or she would like to see elected, but the candidates' names must already appear on other lists.

40. The totally open list: electors draw up their lists themselves. They can include persons of their choice, whether or not they are standing for election. The persons obtaining the most votes are declared elected. Multi-member plurality/majority ballots belong in this category. The candidates stand independently and electors indicate the names of those they would like to see elected.

41. The limited vote: the elector has fewer votes than there are seats to be filled and he or she is not allowed to cast more than one vote for a given candidate. The candidates with the most votes are elected in proportion to the number of seats to be filled.

42. The use of the limited vote in a list-based proportional representation system is extremely rare. There is only recorded occurrence: Finland between 1906 and 1935. In contrast it is used somewhat more frequently in plurality/majority systems. For example, it is used to elect the Spanish Senate.

43. This type of ballot has the advantage of securing a measure of representation for minorities in plurality/majority systems. The reason for this is that the party likely to obtain the majority has no interest in putting up a number of candidates equal to the number of seats to be filled because, if it did so, it would no longer be sure of obtaining a majority as a result of the dispersion of votes. Strategically, therefore, it is compelled to present a number of candidates equal to the number of votes available to each elector in order to optimise its chances of obtaining a majority. This therefore enables minority parties to be represented.

44. Contingency vote systems: the elector has only one vote under this voting system. On his ballot paper, he is asked to classify all the candidates standing in his constituency in order of preference. In the count, his vote will initially go to his or her first-preference candidate. Subsequently, that vote may be transferred to the second, third, etc preferred candidate. The aim of this voting method is to enable electors to qualify their choice, while avoiding the wastage of votes granted to candidates who would not be elected or who already have a sufficient number of votes to be declared elected. In practice, this type of voting method has invariably been used where there are individual candidatures. However, it could theoretically be applied to list-based ballots provided that the lists are closed. It should also be noted that contingency vote systems are only used for single-round ballots.

45. In general, a distinction can be made between two types of contingency votes which depend on the guiding principle used for the election. Where the majority system is used, the contingency vote is known as the alternative vote. In the case of proportional representation, it is known as the single transferable vote. The difference between the two systems applies solely to the distribution of seats and has no effect on the manner in which the elector may vote.<sup>17</sup>

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<sup>17</sup>Consequently, the two systems (alternative vote and single transferable vote) will be analysed separately in the second section of this part.

### 1.5 Number of rounds of voting

46. A further variable affecting the make-up of electoral systems is the number of rounds of voting. Most ballots consist of one or two rounds but there are also systems with  $n$  rounds.

a. Single-round ballots: these can be used not only in proportional representation systems but also in first-past-the-post systems. This type of ballot generally leads to a bipolarisation of political life (Duverger's Law) or at least to the conclusion of pre-electoral agreements between large and small parties. Moreover, opting for a single round ballot magnifies, virtually systematically, the dominance of the majority party in terms of votes and under-representation of other parties in the assemblies. This trend is even more marked where there is a multi-member ballot.

Moreover, where there is a single-member first-past-the-post system in which two parties are virtually of equal strength (two-party system), the distribution of seats approximates to a cubic relationship (Law of Cubic Proportions):<sup>18</sup>

$$\frac{S1}{S2} = \left( \frac{V1}{V2} \right)^3$$

in which S1 = number of seats obtained by party 1, S2 = number of seats obtained by party 2  
V1 = number of votes obtained by party 1, and V2 = number of votes obtained by party 2.

It should be noted however that there are numerous exceptions to this rule. Two conditions have to be fulfilled in order for this law to apply: all the constituencies must be substantially equal and the difference between the votes cast for the majority and the minority has to be virtually identical in all constituencies. As a result, the Law of Cubic Proportions can provide only an imperfect indication as to the possible make-up of assemblies.

b. Two-round ballots: a second round of voting is habitually used where the leading candidate or list failed to obtain an absolute majority<sup>19</sup> in the first round and this type of majority is necessary in order to be declared elected in the first round. It is therefore closely linked to the majority system.

47. In order to guarantee a measure of representativeness of elected persons, a quorum is often necessary in order to validate an election in the first or, indeed, the second round. The quorum can take two forms: a minimum score in terms of the registered electorate for the leading candidate or the attainment of a certain participation rate. In France, for the election of members of the National Assembly, for example, a candidate cannot be declared elected in the first round unless he or she obtained the votes of at least 25% of the electors on the register. In Lithuania, a 40% participation rate is necessary in order to validate a parliamentary election. On top of this there are frequently conditions designed to restrict the number of candidates standing in the

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<sup>18</sup>DUVERGER, Maurice (*dir.*), *L'influence des systèmes électoraux sur la vie politique*, Cahier de la FNSP, n°16, Paris, 1950 ; M.G. KENDALL, A. STUART, "The law of cubic proportions in election results", in *British Journal of Sociology*, 1, 1950, p. 183-197.

<sup>19</sup>There are, however, a few systems in which a relative majority is sufficient to be elected in the first round provided that a specific quorum has been obtained. This is the case in Canton Geneva for elections to the Council of State or the Council of States, where a candidate can be declared elected on the basis of a relative majority provided that he or she has obtained one third of the votes cast.

second round. Accordingly, thresholds may be introduced so as to authorise only candidates or lists which have obtained a minimum score to participate. In the case of parliamentary and regional elections in France, the respective thresholds are 12.5% of electors on the register and 10% of the votes cast. Participation in the second round may also be restricted to the two candidates or the two lists which came out on top in the first. This restriction to two candidates for the second round is still used in France, Portugal, Austria, Poland, Brazil and Peru for the election of the President of the Republic and in Ukraine for the election of members of parliament. It was formerly used for the election of the Reichstag in Imperial Germany and in Austria and Italy before 1918.

48. In the second round of voting, only a relative majority is needed for a given candidate or list to be declared elected.

49. In single-member ballots, opting for a two-round election has the main effect of encouraging coalitions between parties: “The influence of the two-round, single-member ballot on the strategies of political parties may depend as much on alliances as on the number of votes obtained”.<sup>20</sup> The logic behind this type of ballot is that in the first round, each party should quantify the strength of the other parties. In the second round, these parties support those candidates best placed to win and promote their ideas. More often than not, this support is expressed by withdrawal. In multi-member systems, support may take tangible form in the merging of lists (if authorised and subject to the reaching of certain applicable thresholds). It should be noted that where alliances are possible only in a single camp – owing in particular to the influence of extreme parties or parties excluded from alliances with government parties –, the inequalities in terms of representation may prove to be particularly marked.

50. Ballots consisting of  $n$  rounds: little used nowadays, this type of ballot can be contemplated only where there is a requirement for an absolute majority. The principle underlying this system is simple: since an absolute majority is required in each round, as many rounds of voting are held as are necessary in order to be able to declare one of the candidates or one of the lists elected; on the other hand, in a two-round system, an absolute majority is required only in the first round. Sometimes, the candidates who do the least well are excluded between the various rounds but this does not happen systematically. Votes consisting of  $n$  rounds appear to be largely incompatible with elections by secret ballot. For practical reasons, it is hard to contemplate calling all electors to the ballot box more than two or three times. Consequently, this system is used only for votes carried out by assemblies of limited size.

## **2. COUNTING VOTES AND DISTRIBUTING THE SEATS**

### **2.1 Distributing the seats among constituencies**

51. Before considering the allocation of seats among the various political formations, it is worth dwelling briefly on the distribution of seats among constituencies. The number of seats must be approximately proportional to the population of the constituency, either the number of nationals – including minors –, the number of electors, or the number of actual voters. In the last case, the seats can only be allocated on the evening of the election. There are, however, examples of “non-proportional” distribution. Examples are the US Senate and the Swiss Council of States, where all the states or cantons (except the former half-cantons) have two representatives, irrespective of

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<sup>20</sup>MARTIN, Pierre, *Les systèmes électoraux et les modes de scrutin*, Montchrestien CLEFS Politique, 1997, p. 125.

their population size. In these cases, preference is given to equality between states or cantons over equality between citizens.

52. There are often other rules in addition to this requirement for proportionality. For example, there are five rules governing the election of the House of Representatives in the United States: 1) the number of representatives of a given state cannot decrease where the total number of representatives increases (Alabama paradox), 2) only the quota determines the number of seats to be allocated (rounded up or down to the nearest whole number), 3) all the States are subject to the same method of allocation, 4) the method used must not excessively favour small States over large States, and *vice versa*, 5) each State must receive at least one representative. Similarly when the 1958 electoral map was drawn up in France, the principle of proportionality was supplemented by the obligation to give each *département* at least two deputies.

53. It is for this reason that a number of methods have been drawn up in order to take account of all of these rules. The most frequently used ones are as follows:

- The Jefferson method: it is used today for the purposes of distributing seats under the name of the “highest average method” although it was originally invented for the purposes of allocating seats among constituencies.<sup>21</sup>
- The Webster method: corresponds to the Saint-Laguë method.
- The Hamilton method: this is method of the largest remainders. The snag with this mode of distribution is that it does not preclude the effects of the Alabama paradox.
- The Huntington method: the votes cast for each list are divided by the following series of numbers:  $\sqrt{0 * 1}$ ,  $\sqrt{1 * 2}$ ,  $\sqrt{2 * 3}$ , ...,  $\sqrt{(n - 1) * n}$ . The seats are allocated in the same way as in the divisor method.<sup>22</sup> This system yields arbitrarily at least one seat per constituency, as the first divisor is 0. This system has been adopted in the United States for the House of Representatives. It may be used for the purposes of allocating seats between parties, provided that the first division is not carried out. It is not possible to grant one seat to all the competing lists without exception.

## 2.2 Distributing the seats between political formations

54. Counting votes and distributing seats amongst the various candidates (or amongst political tendencies) depends essentially on the guiding principle adopted. We shall therefore distinguish between the plurality/majority systems and proportional representation.<sup>23</sup>

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<sup>21</sup>The following three distribution methods will be described in more detail in the sequel to this report.

<sup>22</sup>See para. 60-61 below.

<sup>23</sup>Hybrid systems merely take their method for the distribution of seats from those two systems. They will consequently not be considered separately in this part.



a. *Distribution of seats in plurality and majority systems*

55. As mentioned earlier, where the guiding principle is majoritarian, the candidate or list which obtains the requisite majority<sup>24</sup> in the conclusive round of voting obtains all the seats in a constituency. In single-round ballots, a relative majority is generally required. In systems where an absolute or qualified majority is required, there are generally two rounds of voting.

56. However, there is a single-round voting method which enables representatives to be elected by an absolute majority. This is the alternative vote, a system whose method for counting votes warrants our full attention, since it differs significantly from that of the other majority (or plurality) systems. In order to explain this method of counting votes, we shall draw a distinction between its application in single-member constituencies (only one seat to be filled) and multi-member constituencies (several seats to be filled).

- The single-member alternative vote: the number of first preferences obtained by each of the candidates is counted.<sup>25</sup> If one of them obtains an absolute majority, he or she is elected. If this is not the case, the candidate who obtained the fewest first preferences is eliminated. The second preferences recorded on the ballot papers of the candidate who has been eliminated are then considered. Those second preferences then become first preferences. The total number of first preferences is recalculated to see if one of the candidates obtains an absolute majority. If that is not the case, the candidate with the fewest votes is eliminated and his or her votes are carried forward as described above. The operation is repeated as many times as is necessary for one candidate to obtain the absolute majority of the votes cast.

The advantage of this manner of counting votes is that it avoids any candidate being elected by chance owing to the dispersion of his or her competitors. It also affords a higher degree of representativeness of the person elected in his constituency, since votes cast for small candidates will be taken into account by the carry-over system. This method of voting is used in Australia for elections to the House of Representatives and Assemblies of States, with the exception of Tasmania.

- Multi-member alternative vote: the first seat is allocated using the same method as in single-member constituencies. For the purposes of allocating the second seat, the second preferences on the ballot papers of the candidate elected become first preferences. The first preferences are then recalculated. The second elected representative is then appointed using the same procedure as in the case of the single-member alternative vote. All these operations are repeated until all the seats are filled.

57. The votes of electors who gave their first preference to an elected candidate are taken into consideration several times. This has the effect of enabling the majority party to obtain almost all the seats. Thus in 1925 the Labour Party obtained 45% of the votes cast in the election for the Australian Senate<sup>26</sup> yet obtained no seats.

58. With alternative votes, a vacancy in a seat usually results in the holding of a by-election.

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<sup>24</sup>That majority may be relative, absolute or qualified depending on what the legislature has previously decided.

<sup>25</sup>See the manner of voting offered to electors as discussed in para. 44 above.

<sup>26</sup>The multi-member alternative vote was used to elect the Australian Senate between 1919 and 1946.

*b. Distribution of seats in proportional representation systems*

59. The allocation of seats in proportional representation systems generally requires two operations to be carried out. The first allocation is effected using an electoral quota. However, use of such a quota does not enable all the seats to be allocated and all the votes cast to be dealt with. It is therefore necessary to have a second stage designed to convert the remaining votes into seats.

FIRST STAGE OF THE DISTRIBUTION: THE ELECTORAL QUOTA OR QUOTIENT

60. An electoral quota or electoral number is a divisor which helps determine the number of seats to be allocated to each of the lists. During this first stage of the distribution, a list therefore obtains a number of seats (S) equal to the quota – rounded up to the next whole number – of the total number of votes obtained by the list (V) divided by the number of votes needed in order to obtain a seat (the electoral quota, EQ).

$$S = \frac{V}{EQ}$$

61. There are two major classes of electoral quotas: “fixed” electoral quotas and “variable” electoral quotas.

1. The “fixed” electoral quota or uniform number: this is a number of votes predetermined by the legislature and identical for all constituencies. Use of this quota means that the number of seats in the assembly will not be determined until election night. The number of seats will, moreover, depend on the participation rate. Moreover, adoption of a “fixed” electoral quota tends to preclude the representation of a substantial number of votes, particularly those cast for small parties. Consequently, only the choice of a relatively low electoral quota, coupled with its application in large constituencies, is capable of curbing this tendency. This type of electoral quota has only been used in the Weimar Republic in Germany.

2. The “variable” electoral quota is determined on election night. There are various forms:

- The simple or Hare quota: this quota is obtained by dividing, in each constituency, the total number of votes cast (V) by the number of seats to be filled (S).

$$\text{Hare quota} = \frac{V}{S}$$

In practice, the Hare quota corresponds to the maximum number of votes which a candidate requires in order to be elected. The drawback with this system therefore is that it means that only a small number of seats can be allocated during the first distribution. It is, moreover, for this reason that other quotas have been formulated so as to allow the maximum possible number of seats to be allocated during the first stage of distribution.

- The Hagenbach-Bischoff quota: this quota is obtained by dividing, in each constituency, the total number of votes cast (V) by the number of seats (S) plus one.

$$\text{Hagenbach-Bischoff quota} = \frac{V}{(S + 1)}$$

- The Droop quota: this quota is calculated in the same way as the Hagenbach-Bischoff quota, but one is added.

$$\text{Droop Quota} = \frac{V}{(S + 1)} + 1$$

- The Imperiali quota: this quota is calculated in the same way as the Hagenbach-Bischoff quota but two is added to the divisor instead of one.

$$\text{Imperiali Quota} = \frac{V}{(S + 2)}$$

- The double quota: this is, in a manner of speaking, a combination of the “fixed” electoral quota and the Hare quota. In the first instance, an initial electoral quota is fixed corresponding to the minimum number of votes needed to participate in the distribution of seats. A second electoral quota is then calculated which takes account only of the votes obtained by the lists which were successful in the first stage.

The double quota must not be confused with a qualifying threshold for participating in the distribution of seats. First, the quota is expressed as a number of votes. Second, it is identical regardless of the constituency. The double quota is used chiefly in Latin America (Bolivia, Costa Rica, Ecuador).<sup>27</sup>

## SECOND STAGE: DISTRIBUTION OF THE REMAINING SEATS AND VOTES CAST

62. It is rarely possible to distribute all the seats using quota methods. At the end of the first distribution, there very often remain unrepresented votes and seats to be allocated. Accordingly, a second distribution has to be carried out using one of the following methods:

- The largest remainder method: using this system, the list with the highest number of unrepresented votes at the end of the first distribution obtains one seat. The operation is repeated until all the seats unfilled at the end of the first distribution have been allocated.

This method is by far one of the most favourable for small lists, thereby tending to encourage a proliferation of small parties. Moreover, the lower the number of available seats, the more this system favours small political groupings. The largest remainder method also suffers from the disadvantage that it does not take account of the relative strengths of the parties, that is to say the number of seats obtained during the first distribution. On top of this, a number of paradoxes, such as the “Alabama paradox”,<sup>28</sup> are associated with this method.

- The strongest lists method: this system provides for those seats which remained unfilled at the end of the first distribution to be allocated to the lists or list obtaining the greatest number of votes cast. This system markedly favours the large parties. This method, which was only infrequently used in the past, is not used any more today.

<sup>27</sup>INTERPARLIAMENTARY UNION, *Electoral systems, a world-wide comparative study*. Geneva, 1993, p. 9.

<sup>28</sup>For an explanation of this paradox, see para. 52 above.

- The highest average method: this is the system in most widespread use internationally. Under this method, the number of votes cast for each of the lists ( $V1$ ) is divided by the number of seats which the list in question obtained during the first distribution ( $S1$ ), to which a fictitious seat is added. The list which has the highest average per seat is then allocated the seat at stake. This operation is repeated as many times as necessary until all the vacant seats have been allocated. During the first distribution of seats, either the simple quota or the Hagenbach-Bischoff quota may be used.

$$\text{Average votes per seat} = \frac{V1}{(S1+1 \text{ fictitious seat})}$$

This system tends to put large parties at an advantage and to exclude small parties from the distribution of seats. It also guarantees that coalitions will obtain at least as many seats as they would have obtained if the parties belonging to them had stood as single parties.

Lastly, mention should be made of a variant of the highest average method, the Balinski-Young method. First, an initial distribution of seats is carried out using the Hare quota. Next the highest average method is used as described above with one variant. The division is carried out once only and the seats go to the lists with the highest average. Consequently, no party obtains more than one of the remaining seats; this has the effect of reducing the over-representation of large parties.

63. Lastly, it should be noted that the distribution of seats remaining vacant may be carried out at the level of the basic constituency, at the level of groups of constituencies or even at the national level. The choice of a second level of constituencies for the purposes of allocating the remaining seats makes for greater proportionality between seats and votes cast, since as D.W. Rae<sup>29</sup> has observed, that factor depends on constituency size.

#### ALLOCATING THE SEATS IN ONE OPERATION: THE DIVISOR METHODS

64. Some allocation methods have, however, been introduced so as to enable all the seats to be allocated in a single operation. These methods are all based on the following general principle: the number of votes cast in favour of each of the lists is divided by sequential numbers. The seats are allocated to the lists which obtain the highest quotas during this operation. We have set out below the main divisor methods which have been applied in practice.

- The D'Hondt method: the votes obtained by each list are divided by a sequence of whole numbers: 1, 2, 3, 4, 5... The seats are allocated to the lists obtaining the highest quotas. This method tends to favour the majority party.
- The Sainte-Laguë method: the votes obtained by each list are divided by a sequence of odd numbers: 1, 3, 5, 7... The seats are distributed among the lists which obtain the highest averages. The Sainte-Laguë method is distinctly more favourable to small parties than the D'Hondt method.
- The modified Sainte-Laguë method: it differs from the Saint-Laguë method only in that the first divisor is replaced by 1.4. This method is more favourable to small parties than the D'Hondt method, but does not overly advantage them. It also affords fairer representation for

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<sup>29</sup>RAE, Douglas, *The political consequences of electoral laws*, pp. 114 ss.

medium-sized parties. It is used today in Sweden, in Norway and also in Denmark for small constituencies.

- The so-called “Danish” method: the number of votes obtained by each list is divided by the following numbers: 1, 4, 7, 10... This system is extremely favourable for small parties. In Denmark, this method is used to distribute, among small constituencies, seats attributed to a party at the level of a group of constituencies.

*c. Some specific methods for counting votes and distributing seats*

65. In the following section, we propose to examining two specific methods for accounting for votes (the single transferable vote and the “apparentement” – or alliance – system) before discussing the distribution of seats in “personalised proportional representation systems”.

The single transferable vote

66. The contingency vote applied in the context of a proportional representation ballot is known as the single transferable vote. It is used principally in Ireland and in Australia for elections to the upper House. As in the case of the alternative vote, vote counting is a relatively complex operation. This is how it works. First, a count is made of the number of first preferences obtained by the competing candidates. Any candidate obtaining the electoral quota<sup>30</sup> is declared elected. If no candidate satisfies this condition, the one who obtained the fewest first preferences is eliminated. The second preferences on the ballot papers are then taken into consideration. A new total is worked out to see whether one or more candidates has obtained the electoral quota. Once a candidate has been elected, his or her name is deleted from all the ballot papers.

67. The question which then arises is how to carry forward votes which have not been used directly to elect a candidate. There are two possible solutions. The first is to transfer the votes appearing on the ballot papers which were sorted after the electoral quota was reached. The final outcome of the election will therefore depend on the order in which the ballot papers were sorted. The second solution, adopted in Ireland, eliminates this random factor. All the preferences marked on the ballot papers on which the elected candidate received first preference are counted. These are then weighted by a quota equal to the surplus votes of the elected candidate divided by the number of transferable votes. Unlike the alternative vote in multi-member constituencies, the votes are therefore taken into account only once. The preferences weighted as described above are added to the first preferences of the respective candidates. If one of the candidates attains the electoral quota, he or she is elected. If not, the least well-placed candidate is eliminated and the preferences indicated on the ballot papers where that candidate had a first preference vote go up one place in the hierarchy. A candidate is elected when he or she attains the electoral quota. When at least one of the competing candidates is declared elected, the operation is repeated from the beginning by striking out the name of the candidate elected and then taking account of all the preferences on the ballot papers on which the elected candidate had a first preference vote and so on.

68. Should a seat fall vacant, the procedure for designating a new elected representative varies according to the country or assembly concerned. In the Irish House of Representatives for example, a by-election is held, as in the Indian Council of States and the Maltese House of Representatives. In the Australian Senate, on the other hand, the incumbent is replaced by a

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<sup>30</sup>In both Ireland and Australia, the Droop electoral quota is used. It is possible however to opt for another quota.

member of the same party elected by the Chambers of the State or territory concerned. For vacant seats in the Irish Senate, the Prime Minister may appoint a replacement in some cases.

#### The “apparentement” or alliance system

69. The “apparentement” or “alliance” system can be summarised as follows: “Several lists of different parties which are entirely separate, each having its own programmes may declare by mutual agreement that they intend to link up, in other words this means that when the seats are allocated, the votes which they have obtained separately must be added together”.<sup>31</sup> It is used today in Finland, the Netherlands, Spain and above all Switzerland.

70. “Apparentement” declarations generally have to be made before the election, but it is possible to conceive of a system in which such declarations are not disclosed until after the election. In systems involving two rounds of voting, “apparentements” may be authorised only for the second round so as to allow electors to express their choices. “Apparentement” is often subject to conditions. For example, in France, under the 1951 Electoral Act for the election of the National Assembly “apparentement” was permitted only between lists of national parties or groupings, that is to say parties or groupings putting forward candidates in at least thirty *départements*. It should be added that “apparentements” are sometimes operative only for the allocation of remainders in the basic constituency or in groups of constituencies.

71. In comparison with union lists, the “apparentement” system enables a more proportional distribution to be achieved between the various linked parties. It is more favourable than the higher average system to small parties. This system benefits only parties which are able to form alliances.

#### “Personalised proportional representation”

72. The idea behind “personalised proportional representation” is to offset the effects of first-past-the-post (or majority) voting during the distribution of seats. Its best-known application is that of the election of the Bundestag in Germany, which we shall use as a guide in explaining this system. It has however been used in Estonia since 1992 and in New Zealand since the 1993 referendum.

73. Under this system, each elector has two votes. The first vote is designed to elect half the representatives of the Bundestag in single-member constituencies. The second enables the total number of mandates attributed to the various parties to be determined on a proportional basis at national level. Those mandates are then distributed between the various Länder in proportion to the votes obtained by the lists in those Länder. The number of seats attributed as a result of the first votes is subtracted from the total number of seats allocated to each party in the Länder. If a party obtains more seats with the first votes than it obtains in the proportional vote, the seats gained in this way are kept. As can be seen, such a system may resemble a preferential vote within a party. The advantage of this method of distribution is that it enables members to be designated directly while ensuring proportional representation in the assemblies. However, there are risks of manipulation as Pierre Martin points out: *“in this two-vote system, there is nothing to prevent a party from not putting forward official candidates in the single member ballot and allowing them to stand as independents (...) In that case, it could, in practice, obtain a*

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<sup>31</sup>COTTERET, EMERI, LALUMIERE, *Lois électorales et inégalités de représentation en France : 1936-1960*, p. 298.

*substantially higher number of direct seats while benefiting to the maximum from the offsetting mechanism”.*<sup>32</sup>

*d. Thresholds and bonuses*

74. In order to ensure that there are stable majorities in assemblies elected by proportional representation, the legislature very often has recourse to thresholds entitling access to the distribution of seats and to bonuses for the most successful list.

75. Thresholds are “fixed or variable limits, established using the election result, which determine whether a given list or a given candidate takes part in the distribution of seats”.<sup>33</sup> They are in some way the equivalent of the thresholds used in the first round election in the majority system. This restriction on access to distribution generally applies to the award of seats in basic constituencies, but it may also be applied solely to groups of constituencies or to the distribution of remainders. For example, in Austria, only those lists obtaining the simple quota in the basic constituencies are admitted to the distribution of seats at the level of groups of constituencies. In Greece, there are three rounds of distribution of seats. During the first two rounds the seats are distributed between all parties according to the votes they have acquired, excluding those parties, which have not reached the threshold of the 3% of the votes. In the third round the remaining seats are usually allocated to the party having acquired the majority of the votes. In any case it has to be made certain that the representation of all parties is equal to at least 70% of their proportional share of votes.

76. The thresholds, which are generally expressed as a percentage of registered electors or of voters, are a matter for the discretion of the legislature. However, the role played by the thresholds differs depending on how high they have been set and on the party system existing in each country. The choice of a low threshold eliminates only very small parties, which makes it more difficult to build stable majorities in assemblies. Where there is strong fragmentation of the party system, a high threshold results in the exclusion from representation of a substantial proportion of votes.

**Examples of thresholds adopted for the election of lower houses**

- Netherlands: obtaining 0.67% of the votes cast at national level.
- Israel: obtaining 1% of the votes cast at national level.
- Bulgaria: obtaining 4% of the votes cast at national level.
- Liechtenstein: obtaining 8% of the votes cast at national level.
- Denmark: obtaining 2% of the votes cast at national level or obtaining a specific number of votes in two of the three geographical areas of the country.
- Germany: obtaining 5% of the votes cast at national level or obtaining three direct mandates.
- Sweden: obtaining 4% of the votes cast at national level or 12% of the votes cast in the basic constituency in which the seat is awarded.

<sup>32</sup>MARTIN, Pierre, *Les systèmes électoraux et les modes de scrutins*, Montchrestien CLEFS Politique, 1997, p. 87.

<sup>33</sup>POLEDNA, Tomas, *Wahlrechtsgrundsätze und kantonale Parlamentswahlen*, Zürcher Studien zum öffentlichen Recht 79, Thesis Zurich, p.110, quoted in GARRONE, Pierre, *L'élection populaire en Suisse. Etude des systèmes électoraux et de leur mise en œuvre sur le plan fédéral et dans les cantons*, p. 231.

77. Bonuses are mandates granted to the most successful list before the distribution of seats strictly speaking is carried out. They are principally used for local elections. In the French regional elections, a bonus equivalent to one quarter of the seats is given to the list which ends up in the lead in the conclusive round. For elections to the Corsican Assembly, three bonus seats are granted. Likewise, half the seats are granted directly to the leading list in the case of municipal elections in municipalities of more than 3,500 inhabitants. Bonuses can sometimes exist in other forms. For instance, the 1953 Italian Act provided that linked lists obtaining more than 50% of the votes were to receive 64.5% of the seats. Consequently, these bonuses enable government majorities to be conferred on assemblies and hence avoid the necessity of bargaining with extremely minority parties.

### 2.3 Allocation of seats within lists

78. Once the seats have been distributed among the political parties, the question arises as to how to distribute them within the lists in the case of elections under a system of proportional representation. That distribution can be done in many ways, but we will confine ourselves here essentially to presenting procedures which have already been used.

#### *a. Modes of expression and distribution*

79. In the simplest case, that of closed lists, candidates are elected in the order in which they appear on the lists. In this case, the political parties have very substantial power, since they determine the order in which candidates appear. In the case of preferential, cumulated and rank-ordered voting on the other side, the electors determine the position of each candidate on the list which they compose.

80. In practice, preferential votes do not always influence the distribution of mandates within lists. Although the electors can indicate their preferences, a number of conditions have to be fulfilled almost systematically before they can be taken into account. In Belgium, for example, in the case of both Chambers, the votes of electors who have not cast a preferential vote are automatically considered to be preferential votes in favour of the candidates at the top of the lists. Once a sufficient number of votes has been obtained in order to declare the candidate at the head of the list elected, non-preferential votes are counted as being votes in favour of the candidate in second place and so on. For the election of the Austrian National Council, there is a threshold for taking preferential votes into account. The threshold is fixed at a level equivalent to the number of voters in the basic constituency divided by the number of seats to be filled. This generally results in a *de facto* closed list situation.

81. Lastly, the single transferable vote, panachage and open or blank lists, when applied to the letter, inherently incorporate a system for allocating seats within lists.

#### *b. Subdivided constituencies*

82. Some electoral systems provide for subdivided constituencies. These are subdivisions of the constituencies used as the basis for the election and in which the candidates stand. When the seats are distributed, the mandates are attributed between the various lists at the level of the basic constituencies.<sup>34</sup> Once this operation has been carried out, the seats obtained by each list are then distributed among the various subdivided constituencies, generally in proportion to the votes

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<sup>34</sup>In this case, they are sometimes called "attribution constituencies".



obtained in each of those constituencies. Within those constituencies themselves, candidates are then elected in the order in which they appear on the lists.

83. The total number of representatives in subdivided constituencies is not known in advance. It depends on the level of participation. The higher the turnout in a subdivided constituency, the higher its number of seats will be. In addition, the most populated subdivided constituencies are placed at an advantage. They generally obtain more seats than less populated constituencies simply as a result of the pro rata distribution of the votes obtained.

84. Today, the Netherlands and Denmark apply this distribution system for elections to the lower chamber. In Germany, the Länder act as subdivided constituencies for the election of the Bundestag. Recently, subdivided constituencies have been introduced for French regional elections (departmental sections).

2.4 Examples of past or present electoral systems**ESTONIA** (Electoral Act of 7 June 1994, last amended: December 1994)<sup>35</sup>

Chamber (monocameral system):	Riigikogu
Number of seats:	101 seats
Constituencies:	11 multi-member constituencies (8 to 11 deputies per constituency)
Guiding Principle:	Proportional and proportional by compensation
Distribution of seats:	Triple proportional allocation of seats using the Hare quota in each of the 11 multi-member constituencies. The seats remaining to be allocated (“compensatory” seats) are distributed at national level between the parties and coalitions which obtained over 5% of the votes cast.

**FRANCE** (1951 Electoral Act, in force for the 1951 and 1956 elections)

Lower Chamber:	Assemblée nationale Deputies of metropolitan France
Constituencies:	Each <i>département</i> constitutes a constituency with the exception of the <i>départements</i> of Bouches-du-Rhône, Pas-de-Calais, Rhône, Seine, Seine-et-Oise, Seine Inférieure and Gironde, which are divided into several constituencies
Guiding Principle:	Hybrid: use of the majority system for candidates or lists that have attained a majority and distribution of the remaining seats on the basis of proportional representation
Manner of voting:	Single-round list-based ballot with “apparentement” of lists, panachage and preferential votes
Counting of votes and distribution of seats:	<ul style="list-style-type: none"> <li>- “apparentements” authorised at constituency level between lists of national parties and groupings or between lists composed solely of candidates belonging to national parties or groupings provided this “apparentement” is accepted by all candidates subject thereto.</li> <li>- The list or the group of linked lists which obtains the absolute majority obtains all the seats. Seats are distributed between linked lists according to the rule of the highest average, account being taken of preferential votes and panachage. If no list satisfies these conditions, the seats are distributed on the basis of proportional representation in accordance with the rule of the highest average (largest remainders in Seine and Seine-et-Oise). Distribution within lists is carried out on the basis of the highest average. No seat is awarded to lists obtaining less than 5% of the votes cast.</li> </ul>

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<sup>35</sup>Unless stated otherwise, the electoral act cited is still in force today.

**FRANCE (1985 Electoral Act)**

Election:	Municipal elections
Constituencies:	Municipalities with more than 3,500 inhabitants (except Paris, Lyon, Marseille)
Guiding principle:	Hybrid, the ultimate aim being to achieve a majority
Manner of voting:	Two-round ballot. Closed lists. Only lists which obtained 10% of the votes cast may go through to the second round. Lists obtaining 5% may merge and can go through to the second round.
Distribution of seats:	Bonus equivalent to half the seats for the leading list in the conclusive round. The remaining seats are distributed on the basis of proportional representation between lists which obtained 5% of the votes cast including the leading list.

**GERMANY (1993 Electoral Act)**

Lower Chamber:	Bundestag
Number of seats:	656 members (500 as from 2002)
Constituency:	328 constituencies + 1 subdivided national constituency (the Länder)
Manner of voting:	Each elector has two votes <ul style="list-style-type: none"><li>- one vote for the single-member one-round ballot</li><li>- one vote for a list under a proportional representation system</li></ul>
Distribution of seats	<ul style="list-style-type: none"><li>- 328 members designated by the single-member one-round ballot by the first vote</li><li>- 328 seats allocated by proportional representation at national level. In order to participate in the distribution of seats, a list must obtain 5% of the votes cast or have obtained 3 seats in the single-member ballot. This threshold does not apply to parties representing national minorities. The seats are then distributed between the Länder in proportion to the votes obtained in the Länder themselves. The number of seats obtained on the basis of the first vote is subtracted from the total number of those seats. If a party obtains more seats in the single-member ballot than it is allowed according to the proportional representation vote, it keeps those seats.</li></ul>

**IRELAND (Electoral Act of 5 November 1992, last amendment: March 1998)**

Lower Chamber:	Dáil Eireann - House of Representatives
Number of seats:	166 seats
Constituencies:	42 multi-member constituencies (3 to 5 seats).
Guiding principle:	Proportional representation
Manner of voting:	Single transferable vote
Distribution of seats:	Included in the single transferable vote

**ITALY (Electoral Act of 6 February 1948, last amendment: August 1993)**

Upper Chamber:	Senato della Repubblica
Number of seats:	315 seats
Constituencies:	- 232 single-member constituencies - 20 multi-member constituencies
Guiding principle:	Hybrid combining a single-member ballot and proportional representation by a system of offsetting
Method of voting:	- plurality vote in the 232 single-member constituencies - distribution of the 83 remaining seats by proportional representation on the basis of regional results and in accordance with the d'Hondt method. These are "compensatory" seats and accordingly, before a distribution on the basis of proportional representation is carried out, the votes given to the candidates elected are subtracted from the total votes for the list to which they belong.

**ITALY (Electoral Act of 6 February 1948, last amendment: 4 August 1993)**

Lower Chamber:	Camera dei deputati
Number of seats:	630 seats
Constituencies:	475 single-member constituencies 155 seats elected by proportional representation in 26 constituencies
Guiding principle:	Hybrid combining a single-member ballot and proportional representation by a system of offsetting
Method of voting:	Each elector has two votes
Distribution of seats:	- First-past-the-post in the single-member constituencies, with candidates belonging to lists - The lists have to pay a "levy" (scorporo) for each candidate in the quota elected under the first-past-the-post system. Distribution takes place at national level on the basis of the total obtained in the constituency. Initially, only lists which which obtained 4% of the votes cast take part in this stage. The 155 seats are allocated among the lists by means of the method of whole quotas and largest remainders. Distribution at the level of the lists must fulfil two conditions. Firstly, each list is allocated seats in the constituencies where, proportionally, it gained the highest number of votes. Then, the total number of deputies elected in a constituency (the sum for all lists) may not exceed the number of seats allocated to that constituency for the proportional part of the vote.

**JAPAN (Electoral Act of 1 January 1900, last amendment: May 1998)**

- Upper Chamber: Sangiin  
Constituencies: - 47 multi-member constituencies, metropolitan or prefectural  
- One national constituency for the remainder of the seats  
Guiding principle: Hybrid: first-past-the-post for a predetermined number of seats and proportional representation for the remainder.  
Method of voting: - 146 representatives elected by first-past-the post in geographical constituencies. Candidates obtaining a number of votes equal to or greater than one-sixth of the electoral quota (total number of votes divided by the number of seats to be filled in the constituency) are declared elected in an order reflecting the amount of valid votes received.  
- 96 representatives elected at national level by a proportional list system in accordance with the d'Hondt method.

**LITHUANIA (Electoral Act of 9 July 1992, last amendment: April 2003)**

- Chamber (monocameral system): Seimas  
Number of seats: 141 seats  
Constituencies: - 71 single-member constituencies  
- 1 multi-member constituency (70 seats)  
Guiding Principle: Hybrid: parallel application of first-past-the-post (in single-member constituencies) and proportional (in one multi-member constituency) systems.  
Distribution of seats: - first-past-the-post system in 71 single-member constituencies. A candidate shall be considered elected when that candidate receives the majority of the votes cast. A turn-out of 40% is required for the election to be valid.  
- proportional voting for one nation-wide multi-member constituency. The list of candidates of the party may receive mandates only if not less than 5% of the voters participating in the elections voted for it. The threshold for joint lists of candidates is 7%. If less than 60% of the voters have voted for the lists that have received more than 5% of the votes cast, the lists that have not taken part in the distribution up till then may acquire the right to take part in the distribution of mandates. The lists that have not taken part in the distribution are added one at a time, starting with the one that received the highest percentage of votes cast until the lists taking part in the distribution of mandates make up a total of at least 60% of the votes cast. The distribution of mandates is done on the basis of Hare's quota. The mandates still to be distributed after the first distribution are distributed according to the highest remainders. A 25% turn-out is required for the election to be valid.

**LUXEMBOURG (Electoral Act of 31 July 1924, last amendment: February 2003)**

Chamber (monocameral system):	Chambre des Députés
Number of seats:	60 seats
Constituencies:	4 electoral constituencies: South (23 deputies), Centre (21 deputies), North (9 deputies) and East (7 deputies)
Guiding principle:	Proportional representation
Method of voting:	Preferential vote or panachage
Distribution of seats:	Hagenbach-Bischoff method Remaining seats distributed in accordance with the highest average

**MALTA (Electoral Act of 27 September 1991, last amended 2002)**

Chamber (monocameral system):	Il-Kamra Tad-Deputati
Number of seats:	65 seats
Constituencies:	13 multi-member constituencies (5 seats per constituency)
Distribution of seats:	Application of the single transferable vote, the quotient used is the Hagenbach-Bischoff quotient. If a party obtains the majority of first preferences, it is granted a “bonus” supplement of seats if needed, to ensure that it has a majority in the Chamber.

**NETHERLANDS (Electoral Act of 28 September 1989)**

Lower Chamber:	Tweede Kamer der Staten-Generaal
Number of seats:	150 seats
Constituencies:	18 subdivided constituencies
Guiding principle:	Full proportional representation
Method of voting:	Preferential vote
Distribution of seats:	The seats are distributed at national level in accordance with the d'Hondt method. A threshold of 0.67% of the votes cast at national level is required in order to take part in the distribution.

**NORWAY (Electoral Act of 7 September 1984)**

Chamber (monocameral system):	Stortinget
Constituencies:	19 multi-member electoral constituencies (from 4 to 15 deputies) corresponding to the 19 provinces
Guiding principle:	Proportional representation
Method of voting:	Lists
Distribution of seats:	Modified Saint-Laguë method

**POLAND (Electoral Act of 12 April 2001)**

Lower Chamber:	Sejm
Number of seats:	460 seats
Constituencies:	41 provincial multi-member constituencies (between 7 and 19 seats per constituency)
Guiding Principle:	Proportional
Distribution of seats:	<ul style="list-style-type: none"><li>- 391 deputies are elected from local lists in multiple-seat constituencies. Seats are divided between the parties using the d'Hondt method and then allocated to the candidates who individually obtained the highest number of votes. In order to be eligible for seat allocation, a party must obtain 5% of votes cast at national level and a coalition 8% of votes. These thresholds do not apply to the national minority lists.</li><li>- 69 deputies are elected from national lists. Seats are divided between the lists using the d'Hondt method and then allocated in the order in which the candidates appear on those lists. Seats are allocated only to those parties and coalitions which obtained 7% of votes cast at national level.</li></ul>

**SPAIN (1985 Electoral Act, last amendment: March 1995)**

Lower Chamber:	Congreso de los Diputados
Constituencies:	<ul style="list-style-type: none"><li>- 50 multi-member constituencies (2 seats at least per province, the remainder being distributed on the basis of population size) corresponding to the provinces</li><li>- 2 single-member constituencies (the North African enclaves of Ceuta and Melilla)</li></ul>
Guiding principle:	Proportional, except for the constituencies of Ceuta and Melilla where the first-past-the-post principle is applied. However, the small number of seats per constituency does not allow the guiding principle to come fully into play. The voting method is closer <i>de facto</i> to the first-past-the-post method.
Manner of voting:	Closed lists or single candidate depending on the constituency
Distribution of seats:	<ul style="list-style-type: none"><li>- multi-member constituencies: closed lists with seats being distributed proportionately in accordance with the d'Hondt method; each elector chooses a list from among those made available in the constituency (province)</li><li>- single-member constituencies: plurality system.</li></ul>

**SWEDEN (Electoral Act of 1 June 1997)**

- Chamber (monocameral system): Riksdagen
- Constituencies: - 29 multi-member constituencies (2 to 34 seats) for 310 members  
- 1 other multi-member constituency for 39 compensatory seats
- Guiding principle: Hybrid: offsetting system
- Method of voting: List system with preferential votes
- Distribution of seats: - proportional distribution in accordance with the modified Sainte-Laguë method in the 29 multi-member constituencies. In order to obtain a seat, a party has to obtain either at least 4% of the votes cast at national level or 12% of the votes cast in a basic constituency.  
- the 39 remaining (“compensatory”) seats are awarded by full proportional representation on the basis of the votes obtained at national level. Nevertheless, the seats are distributed between the constituencies. Parties which obtain seats only by virtue of the rule of 12% of the votes cast in a basic constituency are disqualified from taking part in this distribution. The minimum required to be elected on the basis of the preferential vote is 8% of the total votes cast for the candidate’s party in the constituency concerned.

**UKRAINE (Electoral Act of 22 October 1997)**

- Chamber (monocameral system): Verkhovna Rada
- Number of seats: 450 seats
- Constituencies: - 225 multi-member constituencies  
- 1 national constituency governed by the proportional system (225 seats)
- Guiding Principle: Hybrid: parallel application of first-past-the-post and proportional systems
- Method of voting: closed lists for election by proportional representation
- Distribution of seats: - single-round first-past-the-post ballot in the 225 multi-member constituencies  
- proportional ballot of lists for the other 225 seats. Seats are allocated only to those parties and coalitions exceeding the threshold of 4% of votes cast.



### 3. RECALL

85. Recall is a semi-direct democratic procedure whereby a public office holder who no longer gives satisfaction to the electorate may be dismissed.<sup>36</sup> This procedure is similar, therefore, to the instigation of a binding mandate. Recall may apply to a single elected representative or an entire assembly, since in certain Swiss cantons the cantonal assembly may be dismissed in this manner (*Abberufungsrecht*).

86. There are generally two grounds for recall. The first is to control the functioning of institutions. In order to limit the use of the presidential right of dissolution, the Lithuanian Constitution of 1991 authorises the Seimas to decide on the holding of early presidential elections, for example. However, that decision must be adopted by a three-fifths majority within thirty days following the first sitting of Parliament. The second reason is to give the electorate a means of controlling its elected representatives. In some American States recall has been introduced for that purpose. It takes the form of a petition which, if signed by a sufficient number of voters, enables them to decide on whether the elected representatives should remain in office or a new candidate should be elected.<sup>37</sup> If the number of signatures falls short, the office holder remains in place.<sup>38</sup> It should be noted that the procedure is a rarity in this day and age, since the regular holding of elections ensures greater effective control over elected representatives.

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<sup>36</sup>BIDÉGARAY, Christian, article entitled "Recall" for P. Perrineau, D. Reynié, *Dictionnaire du vote*, PUF, 2001, pp. 787-788.

<sup>37</sup>The most recent example was the election of A. Schwarzenegger to the post of governor of California, following the recall procedure initiated against Governor Gray Davis (2002). The signatures of 12% of the previous election's voters are required for the holding of a new ballot.

<sup>38</sup>A recall procedure was also initiated against Senator McCarthy, but did not succeed since some of the signatures were declared invalid (2003).

**PART TWO**  
**CRITERIA FOR SELECTING A PARTICULAR ELECTORAL SYSTEM AND THE**  
**IMPLICATIONS OF THAT CHOICE**

87. Given the account set out in the first part of this paper of the incredible diversity of electoral systems available, it is difficult not to succumb to a degree of scepticism or at least admit to the fact that relativism is inevitable. The only obvious thing emerging from this survey is that there is no evidence leading one to make an absolute choice in favour of any particular electoral system. Or, more precisely, no electoral system can be the best or the worst, or perhaps even intrinsically good or bad. In order to assess its quality, it is necessary to know precisely what is expected of it – what is first expected of it – by assessing the way in which it fulfils its different, sometimes conflicting functions, namely those of the electoral system in the context of the democratic political system. We have used this functional approach in order to illuminate the criteria in choosing an electoral system and the implications of that choice. We will then examine in succession the three major functions of an electoral system, the three major models which have been successively applied in order to fulfil those functions in Western democracies, the advantages and drawbacks of hybrid systems and a number of problems specific to the emerging democracies.

**1. THE THREE MAJOR FUNCTIONS OF AN ELECTORAL SYSTEM**

88. Reducing matters to their most essential, there are three main functions of an electoral system: representation, selection and investiture.

1.1 Representation

89. Representation is the most obvious function. Did it not give its name to the representative system? But it is as complex as it is vital because it covers the various fundamental and conflicting issues at stake.

a. The most traditional and doubtless the most investigated contradiction is that between representation as mandate, which confines the role of the person represented to designating his or her agent, and representation as a reflection which further requires that the agent is as similar as possible to the person represented in order to prevent the latter's sovereignty from being excessively altered, not to say betrayed or substantially alienated, by the machinery of representation. Adherents of the theory – encouraged by law and philosophy – that the electorate determines the office uphold or upheld the first hypothesis, whereas those more sensitive to sociology – considering that the electorate confers the right – uphold the second.

But this contradiction does not say everything about the complexity of the function of representation. What in fact does it mean to serve the function of representation in an election? At least three answers can be given to this question.

b. The first relates to the representation of political opinions and hence of the movements and forces giving form to them. It is axiomatic that representation itself raises numerous problems. Is it necessary to represent all tendencies, including the most minority ones? Should existing tendencies be favoured to the detriment of emerging parties or should emerging

tendencies be encouraged in order to make it easier to adapt what is on offer politically to suit new issues? Should the spirit of compromise be fostered by making the formation of coalitions possible through mechanisms such as the second round or “*apparentement*”? Most of the answers given to each of these questions dictate the choice of the electoral system or of one or more of its refinements.

c. The second meaning attached to representation relates to the representation of territories. Here too the range of options available is to a large degree open. The first choice concerns the very existence of such representation: should the emphasis be given to the overall representation of the electoral population – as is the case in certain democracies with a relatively small population but also in larger states in the case of certain elections (the European elections in France up until a recent reform) – or should representation be broken down to the level of smaller entities? The second choice has to do with the nature of those entities: should a territory be divided into *ad hoc* electoral constituencies or should administrative divisions simply be adopted? The third choice relates to the demographic and perhaps spatial dimension of the entities decided upon: should the constituencies be large enough to guarantee a measure of heterogeneity of the electorate or smaller in order to guarantee that the electorate is homogenous?

d. This consideration cuts across the third meaning of representation, which relates to the representation of specific categories of the electorate. Some of those categories may be represented through geographical representation if where they are to be found coincides with one or more electoral constituencies. This may be the case with ethnic and cultural categories, which are often referred to as national minorities in multi-cultural states. But, because of their nature or the fact that they are more widely dispersed, other categories do not coincide with particular areas. Is it necessary to provide in the electoral system for specific representation and, if so, what form should that representation take? Some systems make use of quotas, occasionally coupled with financial penalties in the event of non-compliance, as in the case of France and the application of equality between men and women in elections. This example is very interesting since it marks a conclusive break with the traditionally abstract and formally egalitarian conception of citizenship under the French model. According to that tradition, the citizen (and hence the elector) is a reasonable being who allows the public interest to transcend the specific interests of his or her gender, age, occupation, ethnic and cultural origin and religious belief. Insofar as it introduces positive discrimination in favour of classes which are equal under the law but *de facto* disadvantaged *vis-à-vis* the dominant classes, the electoral system fulfils a new function. It does not merely distribute seats in accordance with votes, but seeks to influence a change in social relationships and becomes an overt instrument for redistributing political power between categories of the electorate.

## 1.2 Selection

90. Something which is less obvious when considering electoral systems is that selection of the people in the governing class is as important a function as representation. Moreover, the two functions merge when it comes to the representation of specific categories, one of the potential forms taken by the “pre-selection” of representatives.

91. Essentially, what is at stake in the democratic selection of persons to govern through elections can be assessed in three respects: that of the independence of candidates – and hence of future elected representatives – *vis-à-vis* the political machine, social fairness in recruitment and the renewal of the elite in power.

a. The extent to which candidates and elected representatives are dependent on the party machine relates directly to the electoral system. The latter can influence matters in this area in two ways. The first is whether candidatures are for single member or multi-member constituencies. A ballot for a single member, which brings personalities into play, naturally favours the candidate with the greatest “personal assets”. The qualities of the candidates, which have to do with their character, talents, training, or experience are as important as – or perhaps more important than – their membership of a party when it comes to determining whether they are to be candidates and whether they are elected. They owe the fact of their election first and foremost to themselves. This is not the case in a multi-member constituency where the most important thing is first of all to get a place on the list of candidates. Indeed whether one appears on the list depends almost invariably on the wishes of the local and/or national party authorities. Moreover, the more a candidate wishes to be on an electable position on the list, the more closely he or she is dependent on those authorities.

The second influence concerns whether the electoral system is plurality/majority or proportional. This is because the dependence of elected representatives on parties is greatest in a proportional representation system. In most cases, the head of the list or the two or three candidates heading the list of the large parties have every chance of being elected in a large constituency, since it is only from the third or fourth seat to be filled that the real competition begins. In such a case, the fact that the party places a candidate in an electable position is tantamount to guaranteeing his or her election. It is the party and not the elector which selects the elected representative. How can the elected representative not be indebted to the kingmaker?

b. The problem as to the degree of social fairness in the selection of elective elites is less directly dependent on the choice of electoral system, even though it can reasonably be argued that a single-member ballot favours those who already have certain cultural and social assets whereas a list ballot enables less privileged persons to stand. This is naturally facilitated still further by the introduction of “positive discrimination” procedures as shown above (see paragraph 1.1). It tends to be through the related systems of the electoral system and the representative system that social fairness in the recruitment of candidates can be best assured. As regards the former, particular mention may be made of public funding for electoral campaigns and as regards the latter, of remuneration for elected office and provisions fostering the re-employment of elected representatives at the end of their term of office. As far as the latter aspect is concerned, public office holders, who are often guaranteed to return to their job at the end of their term of office, are markedly more advantaged than their opposite numbers from the private sector.

c. The extent to which elective elites are replaced by new blood is another major feature of selection. It depends first and foremost on the constitutional provisions relating to assemblies (duration of terms of office, whether or not there is a limit to the number of successive mandates allowed, whether local and national mandates may be combined etc.). But it also depends on provisions concerning who may be elected: the minimum age required to stand as a candidate, whether foreign residents may stand (citizens of other member states of the European Union for example) or the provisions on equality between men and women referred to above. The latter provisions, adopted when the French constitution was revised in 1999, are potentially the most important for the renewal of elective elites. Their effect has so far been more potential than actual because the parties – or rather the men leading them – have taken advantage of the difficulties entailed by the single-member ballot so as to delay their application even if it means paying the penalties provided for by the law.

### 1.3 Investiture

92. Elections are not merely the time when electors are given the chance to express their party preferences officially and secretly; they are also the means of putting into office, more or less directly, the party or coalition of parties which will govern the country until the next election (or the first crisis). This function is crucial under the parliamentary system or the semi-presidential system of the French type, as experiences with “cohabitation” have shown, and it remains very important under the presidential system where, by definition, the presidential election fulfils this function, but where the essential role played by the legislature in the political process invariably results in the parliamentary elections having a clear impact in terms of investiture or censure, especially when they take place between two presidential elections, as in the case of the US mid-term elections.

a. This function is naturally particularly significant and the most strongly felt in countries relying on the plurality and majority systems for their elections, especially all its most extreme form of the single-round plurality ballot, which is notorious for fostering the development of a functional two-party system involving two potentially majority organisations which assume in turn, with swings in one or the other direction, the functions of government and counter-government (which means the official opposition whose aim is to become the governing party). In democracies of this type, electors in voting have the direct, clear potential to put their government into office. It is therefore possible to speak in this connection of a “governing democracy”.

b. This is not necessarily the case with democracies whose electoral culture is that of proportional representation, unless there are sociological (exceptionally clear social divisions reflecting religious and cultural splits, for example) or historical (memories of a trauma associated with the absence of a government majority) factors which come into play. This is because the logic of proportional representation is naturally to give preference to the function of representation over the function of investiture. The more this logic is adhered to (constituencies having numerous seats, rule of the highest average, no threshold and no second round or majority correcting factor), the more the election becomes a mere poll of all the existing political tendencies. Pure proportional representation favours a multi-party system and the jealously guarded independence of parties. It deprives the elector of the possibility to have a direct influence in the formation of the government, which is invariably the outcome of bargaining between the parties represented in parliament, more often than not after rather than before the elections. Hence the expression “governed democracy” that is used for these types of systems in which the conclusive choice of the government majority is monopolised by the political class, thereby depriving the sovereign people of the full exercise of their sovereignty: “democracy without the people”, to borrow the title of a work by Maurice Duverger on the French tradition of the Parliamentary Republic before 1958.

c. The example of France also shows that proportional representation is not the only system being questioned. Doubtless this form of electoral system may be introduced to respond to exacerbated criticism to the effect that in the long run a majority system causes small and medium-sized parties to be excluded from the distribution of seats and that the smallest parties even find it difficult to survive as independent parties in their own right. But it can also “record” a fundamental political split that the majority system – especially in a less effective form than the first-past-the-post – cannot eradicate owing to cultural factors or historical events resulting in irreconcilable differences (war, revolution, economic crisis, etc). This was the case in France

between the two world wars when the continuance of a revolutionary movement in a working class awakened by the Soviet revolution had created an irreconcilable cleft between the communists and the socialists and the continuing cleft between conservative Catholicism and anti-clerical radicalism had prevented the right from regrouping even before the extreme fascist right burst on to the scene. In such a socio-political setting, two-round majority voting was considered above all from the point of view of the results of the first round – which enabled each political family to count its electors – rather than the second, which, admittedly, eradicated “in functional terms” the divisions within the two major tendencies by presenting a façade of a right/left split, but the latter did not take long to shatter in the Assembly when major problems facing the country had to be dealt with. The lack of interest in the second round is so manifest and seems so natural that second-round results were virtually never quoted before the 1970s in the historical and political-science literature dealing with the period. So much so that a man with a mind as keen as Maurice Duverger claimed to study the “inequalities of representation” under the Third Republic by relating the distribution of seats following the second round to the distribution of votes in the first, without paying the slightest attention to the transfers of votes between the first and second rounds and without this legerdemain seeming to pose any problem to him.

93. The latter considerations show how complex it is to undertake a functional interpretation of electoral systems. The truth is that for every major stage in the development of democracy there is a corresponding “ideal/typical” electoral system which carries out in a particular way the three functions described above. This specific combination may be appraised in the three successive forms which they took in the course of the last one hundred and fifty years.

## **2. THE THREE HISTORICAL MODELS FOR THE FUNCTIONALITY OF ELECTORAL SYSTEMS**

94. If we consider the development of elective democracy in very broad terms, we can see three major stages, corresponding to three socio-political models for the electoral system: the elitist model, the mass organisations model and the consumerist individuation model.

### **2.1 The elitist model**

95. a. This model corresponds to the running-in period of universal suffrage. The three major functions of the electoral system are fulfilled in such a way that it could almost be categorised as being pre-democratic. Whether regarding representation, selection or investiture, each is stamped by the moral, cultural and political power of the elites vis-à-vis the great mass of the electorate granted voting rights.

Accordingly, the logic of representation is geared to obtaining votes. Prominent persons of all opinions canvassing for electors’ votes appeal to their immediate clientele, namely the section of the population that knows them directly and naturally has confidence in them in order to defend their material and spiritual interests much better than they could do themselves. The population divides according to each individual’s relationship with the immediate clientele of given prominent persons.

b. The logic of selection is a reverse selection. It is not so much the elector who chooses the elected representative than the would-be elected person who gathers together his potential electors. The personalities are pre-selected in one camp or another and are candidates only

because they have all the tangible or intangible attributes of distinguished figures. This goes without saying in the conservative camp because they defend the “natural right” of the traditional governing classes to govern, although this may also be found in the liberal camp in the form of what Maurice Agulhon described as “democratic patronage”, that is to say, the political commitment of the new governing strata who feel that they have been invested with a duty to speak in the name of the people in order to defend their interests of which they may be unaware.

c. The logic of investiture is carte blanche. Each of the clients mobilised by the competing notables delegates to them all of his powers – without having any idea of how it will affect him or her personally – in order that they should pursue in parliament or, perhaps, in government the policy which seems to them to be the best and, which therefore cannot but be the best.

d. The most functional electoral system for such a model is the single-member, one-round ballot. First-past-the-post with one round of voting because this is the simplest system to understand and agree upon in an inegalitarian, uneducated society. The single-member system is adopted because it is most commensurate with the logic of the model, based as it is on notables.

## 2.2 Mass democracy model

96. This model corresponds to the exploitation of the political potential of universal suffrage through mass organisations having the aim of mobilising electors. It was established during the stage of the emergence and development of employees’ trade unions and of mass parties associated with them which gradually become generalised by a process of emulation to the whole of the political field, as shaped by the major socio-economic divisions of industrial society. Three conditions have to be satisfied in order to move from the first to the second model. The first is that the electors should be in some way masters of their own votes and capable of joining a party while moving on from the logic of clan-like affiliation of clients: it may then be considered that the electorate has attained the threshold of individualisation. The former model was vertical, whereas this one is horizontal. Individuals come together because they resemble each other, not because they depend on the same boss. The second condition is that the electors back their party because they share a similar ideology, not because of their personal short-term interest. It is possible to speak in this connection of a threshold of politicisation. The third condition is that electors of all constituencies vote more or less in accordance with the same socio-political logic and not for reasons differing radically from one region to another. It is then possible to speak of the threshold of nationalisation.

a. Under this system, the logic of representation is socio-cultural. Parties form in line with the major social divisions (mainly the split between the self-employed and employees) and the major cultural divisions, which are generally based on religious affiliation (catholic/secular or between various Christian churches). They appeal to social groups – often consolidated by associations or trade unions – wanting these groups to be represented as such in the assemblies.

b. The logic of the selection is party-political. It is essentially the outcome of militancy. Candidature as such, and then the candidate’s position in the list, are stages in the militant’s progress. The electors ratify this choice in so far as they put in place those whom they regard as most representative of their background and therefore, from this point of view, the best of them.

c. The logic of investiture is not directly present in electors’ minds, whether in the form of the great myths, such as preparation for proletarian revolution, on the one hand, or restoration of

the natural order of society, on the other. In the shorter term, the important thing is to do whatever one can to prevent trouble-makers or reactionary forces from unilaterally calling into question the implied socio-political pact. As a result, the logic of “two opposing fronts” often put forward by both sides in the 1930s is redolent rather of trench warfare than warfare on a moving front. It is a question of prevention rather than of investiture.

d. The most functional electoral system for this model is clearly the list system with proportional representation. But it may be able to cope with a plurality or majority list system if each camp exhibits the potential to gather electors together and it is therefore possible to give some strength to a coalition government outside the usual compromises of the “blocked society”.

### 2.3 The consumerist individuation model

97. This model, which is tending to replace the preceding one in the advanced democracies, is less perfected and less wide-spread to date. But its most significant features are beginning to emerge in most western countries which have shared the same experience of prosperity, peace, openness to the world and liberalisation of morals over recent decades. Those transformations of living conditions have fostered the emergence of a culture described by Ron Inglehart as post-materialist, a culture whose features he has described and whose consequences on electors’ attitudes and political behaviour he has assessed.

a. The logic of representation has clearly abandoned the principles of loyalty under the system of faithful patronage and affiliation to a particular socio-cultural category. It has come closer to the logic of the market. From the supply constituted by the available parties and candidates, the elector makes a choice which best – or least badly – matches his or her present demands. Those demands are ranked by each person in the light of the priorities which he or she gives to the issues at stake (security, employment, environment protection, moral liberation, taxation, globalisation, etc). As a result, the system no longer represents social groups but the aggregation of individual priorities assigned to the various public policies.

b. The logic of the selection is therefore eminently political: the electors choose the people who seem to them to be the most capable of understanding their dominant demands and of supplying them with answers or, if you like, the “political enterprises” best satisfying the “call for tenders” that elections now represent for the electorate.

c. The logic of the investiture is very much present: what is involved is a contract concluded between the “consumer” of public policies and the “entrepreneur” whom the consumer instructs to resolve his or her problems. But the contract is a precarious one. It clearly constitutes a fixed-term contract for the achievement of a priority objective. So much so that the vote is as much concerned with sanctions as it is with investiture. The consumer may try out a new product, but he or she may reject it with a clear conscience if he or she does not find it entirely satisfactory. Electoral behaviour was so stable in the past that people did not shrink from likening it to geology. It is so volatile nowadays that it may be more appropriate to liken it to the dramatic changes more familiar to the field of meteorology.

d. The most functional voting method in a model of this kind is certainly first-past-the-post or majority, which clearly invests and sanctions and favours alternating between political parties in power. But such a system may suffer from the drawback that it does not leave enough room for emerging movements susceptible of capturing new demands. As a result, in this new culture



there is a blossoming of proposals for, or attempts at, implementing hybrid systems, predominantly first-past-the-post (or majoritarian) for the purpose of having alternating parties in power, but embodying a corrective feature of proportional representation in order to allow for innovation.

98. The table, at the end of this report, recapitulates the chief characteristics of the three models described above. It must not be forgotten that what we are dealing with here are “ideal/typical” models. Instances of them in history are often more complex and the developments less clear-cut. This is because the models described as being successive are still in part concurrent and sometimes intermeshed. The elitist model of top-down democracy based on patronage has not completely disappeared and here and there residual pockets may still be observed and there may even be episodic reversions in the behaviour of present-day electors. This is still more often the case for the great dominant model of the twentieth century – mass democracy. A social movement inspired by active minorities and orchestrated in street demonstrations is enough to make the public – which had voted for an enterprise dedicated to resolving a major problem – realign itself behind the spokesman of the categories to which it belongs. What was formerly called the gross variables of electoral behaviour (objective social class, subjective social class and religious affiliation, in particular) are doubtless no longer as healthy as they used to be, but strong traces of them linger on and re-emerge to interrupt the regular decline in their explanatory power. The fact is that voting has never been and doubtless will never be one-dimensional, a feature which it shares with all human behaviour. Moreover, it is this which adds to the interest taken by many players and observers in hybrid systems.

### **3. ADVANTAGES AND DRAWBACKS OF HYBRID SYSTEMS**

99. Reformers are increasingly tending to regard hybrid systems as a panacea. This is partly because they have internalised the multi-functionality of electoral systems, which may lead to conflicting provisions.

#### **3.1 The search for the happy medium**

100. a. Hybrid systems have the main advantage of combining logics which would be incompatible if an attempt were made to implement them without placing them in a ranking order. This is true mainly of the majority principle – which is essential for the investiture function – and of the proportional representation system – which is the most favourable for the representation function. This may also be true of single-member or multi-member constituencies – which favour personal selection – and the closed list – which favours discipline and hence the cohesion of parliamentary groups and parties – or the territorial approach – which favours geographical representation – and the national approach – which favours political/ideological representation. A concrete example of seeking the happy medium by means of combining and prioritising may be found in a proposal made by Alain Lancelot in 1993 to the Association Nationale des Elus Régionaux at the request of its chair, Valéry Giscard d’Estaing, for a possible reform of the method of electing French Regional Councils. The proposal, drawn up by Jean-Claude Casanova and Alain Lancelot, was summarised in our report as follows: “So as not to be exposed to accusations of manipulation, the choice of voting method should be based on a number of strong principles, which should be stated and classified by order of importance, since they each have the effect of limiting the others.

1. The regional government must be founded, within the Council, on a stable and clear majority.

2. The identity of the regions must be affirmed through the choice of a regional constituency.
3. Representation of minorities must be ensured.
4. Representation of the various *départements* likewise.

The third principle corrects the first and the last corrects the second. If these objectives are accepted, one is led to propose a reform of the electoral system along the lines of a majority system and adoption of the region as the electoral constituency in place of the *départements*, whilst limiting the effects of the majority system through the representation of minorities and ensuring that the *départements* are fairly represented.”

b. Hybrid systems also have the advantage of evening out changes in representation, selection and the capacity for investiture or sanction. These changes tend, in the long run, to be virtually paralysed by the application of the systems which most favour representation, such as pure proportional representation, and conversely run the risk of becoming somewhat chaotic when first-past-the-post (or majority) systems are implemented in their most radical form, owing to repeatedly alternating victors. Between “sehr langsam” and “allegro vivace”, if not “furioso”, the happy-medium tempo “bien tempéré” attracts those who believe that controlled change lies at the heart of good democratic governance.

### 3.2 Drawbacks and difficulties

101. a. Notwithstanding this analysis, the main drawback of hybrid systems lies in their complexity. Doubtless, some “simple” systems, such as proportional representation, are in themselves very complicated when it comes to the way in which seats are distributed, especially in the use of remainders, for an elector who is not arithmetically minded. But at least their underlying principle is unambiguous and everybody can grasp it straight away. That is not the case with hybrid systems, which often involve procedures that distort the results of the ballot boxes so as either to exclude certain votes from representation (through the operation of thresholds) or, on the contrary, to increase the weight of other votes (the majority bonus, for example, for the leading party). The elector who has difficulty in understanding the complexity of the arithmetic will find it even more difficult to accept the resulting discrepancy compared to the votes cast. This may lead sometimes, or even often, to a feeling of alienation vis-à-vis the operation of the electoral system, which is “manipulated by politicians”.

b. To this difficulty can be added that of the nature of the “mix” itself. A hybrid system would be paralysed or simply random if the various logics it combined did not involve an appropriate ranking. But only experience can help in choosing the correct mix. If the secondary logic is instilled too weakly, it will scarcely have any corrective effect on the result of the election. If, conversely, it is too strong, the main logic system will be diluted to an excessive extent. The problem is particularly acute when a quantitative correction factor has to be introduced in order, for example, to set the level of a majority bonus or the threshold required to be surpassed in order to be represented.

c. In order to overcome these kinds of difficulties, the Committee for the Reform of the Voting Method, set up in France in 1992 by Prime Minister Pierre Bérégovoy, on which Alain Lancelot sat under the presidency of Professor Vedel, proposed maintaining the majority system

with two rounds of voting for most of the seats in the Assemblée nationale and adding, “for a non-negligible part” of those seats, the election by proportional representation of national lists. The representatives of the left-wing majority and the right-wing opposition sitting alongside the experts on that committee finally agreed that 10% of the total number should constitute the “non-negligible part” of national seats to be filled by proportional representation, but only after bitterly debating the very principle of a hybrid system, since they were concerned that it would look like a return to “rule by political parties”. The argument that finally won them over was our proposal that each elector should be given two votes: the first to elect one of the candidates in the single-member majority ballot, and the second so as to choose one of the lists of candidates by proportional representation at the national level. The originality of this hybrid system lay in its transparency, since having a double vote would definitively preclude any accusation of inequality and any suspicion of distorting the will of the electorate. But the idea ultimately ran aground owing to the practical difficulty in finding fifty seats to be filled by proportional representation, either by increasing the total number of seats, which, in the eyes of the parliamentarians on our committee, ran the risk of worsening anti-parliamentary feeling, or else by reducing by the same amount the number of constituency seats, which would be very unpopular in the *départements* whose representation would be reduced. And the reform was not taken on board by the Government. In France, we like to say that “the devil is to be found hiding in the details” and hybrid systems, alas, do not lack detail.

#### **4. SOME CONSIDERATIONS ON THE SPECIFIC SITUATION OF THE EMERGING DEMOCRACIES**

102. The emerging democracies tend legitimately to skip stages of political, economic and social development in order to take short cuts to catch up with the developed states which took decades and sometimes centuries to mature. It would be pointless and unjust to preach patience to them. That said, it is wise to help them to make at the start of their democratisation process the fundamental choices that are going to shape how they develop, in full knowledge of the facts. From the point of view of electoral systems which is our subject here, this preliminary phase, should, at the “constitutive moment” cover three aspects: initial identification of the nature and degree of segmentation, the choice of a model of citizenship and finally, the choice of giving electoral democracy greater or lesser influence over governance.

##### **4.1 Initial identification of the nature and degree of segmentation**

103. Identifying the nature and degree of political stratification and its socio-cultural foundation is a necessary first step. It is on this segmentation that the choice of models to be created will depend for the purposes of defining citizenship and for the investiture of those who are to govern.

104. In order to carry out this identification, it seems to us that there needs to be a first general election - for a constituent assembly for example – under proportional representation. This is the formula best suited to measuring the initial degree of fragmentation of the political forces and to pinpointing the nature of the allegiances (political, religious, ethnic/cultural, etc.) which bind each of them together.

105. Some might fear that such an overt initial phase would not merely make an initial finding, but would firmly establish the differences by making them visible; this would, consequently, have a heavy influence on subsequent choices. That objection is not a negligible one. But experience shows that this is not necessarily the case. Setting forth the divisions may well trigger

a desire to reduce them and, in any event, all the effects – particularly the harmful ones – of an electoral system are not really experienced until it is applied for a second time, that is to say after two consecutive elections.

#### 4.2 Choice of a model of citizenship

106. By using the results of an initial consultation under proportional representation, it is possible to distinguish the main fault lines in the electorate, to assess their independence or any possible overlap and to evaluate their respective importance. If fragmentation is marked and based essentially on qualitative factors (ethnic/cultural or religious for example), the crucial choice lies between (i) a universalist conception of citizenship which transcends de facto differences and boosts de jure equality so as to define a general higher interest, and (ii) a pluralist conception, that of a mosaic that recognises, protects and promotes the specific rights of the various communities. These two conceptions are equally valid, whatever followers of Jean-Jacques Rousseau may think. And to impose an abstractly egalitarian conception of citizenship on a very heterogeneous society constitutes a very weak protection against the risks of actual discrimination or even genocide. If the divisions run deep, it is better to recognise them officially and to try to compel the communities to recognise their respective rights as constituting reciprocal duties.

107. The choice of one or other of these models entails consequences for the lasting choice of electoral system after the initial stage of proportional representation. The universalist model calls for constituencies to be drawn up along politico-administrative lines and a first-past-the-post or majority voting system. The pluralist model calls for constituencies that follow the spatial distribution of communities as much as possible and a hybrid electoral system or proportional representation, depending on how deep the divisions go and whether the intention is to limit their effects or to accept that they will become more rigid.

#### 4.3 Choice of a system of democratic governance

108. The choice extends and reinforces that of the model of citizenship. It includes the choice between a unitary system and a federal system and the choice between a parliamentary system, a presidential system and, possibly, a semi-presidential system.

109. From the point of view of electoral systems, the choice of the unitary or federal form of state organisation is not very important. It may be noted, however, that the federal form could permit different electoral systems to be used for elections at federal level and for elections at the level of the federated states. One could readily imagine, for example, a first-past-the-post or even a hybrid system with first past the post dominating at the level of the federal parliament, whose attributions relate more to supra-community (or “universal”) issues such as defence, foreign affairs, human rights or economic and social bargaining for the whole of the federation, and a system using proportional representation to a greater or lesser extent for all or some of the parliaments of the federated states.

110. As regards “governing democracy” as discussed above which is a characteristic feature of societies whose citizens have a real power to elect their government, the type of political regime and electoral system which may be associated with it introduces a very significant difference. It is clear that the presidential system, which is intrinsically a majority system, is the most capable of simplifying the political choice of the nation and forcing the nation to come together. And this is all the more so if it is supported by a first-past-the-post (majority) ballot in parliamentary

elections. Especially if parliamentary elections occur in the immediate wake of a presidential election. The French elections of 2002 clearly showed the beneficial effect of this, from the point of view of the investiture of a majority, of inverting the electoral calendar that had initially scheduled the presidential election to take place after the parliamentary elections.

111. The presidential regime may, however, impose too harsh a choice on a pluralist society and may run the risk of turning into a movement towards personal power in a society whose democratic culture is too recent. If so, it may then be appropriate to introduce a hybrid system which gives a proportionalist outlet to minority forces and guarantees them a role as a democratic counter-power.

112. The same arguments apply to the parliamentary system, which, since it is intrinsically a majority system, must rely on the electoral system to identify a governing majority on the basis of the ballot box, whilst respecting the rights of minorities and the possibility of alternating the parties in government. Even if they are difficult to understand – although we have seen above that this difficulty may be reduced – hybrid systems with plurality/majority dominating seem to be the most functional for an emerging democracy, both from the point of view of governing democracy and that of respecting community pluralism.

113. Be that as it may, it seems dangerous to state, in the name of some sort of theory of legal evolution, that proportional representation is the supreme stage or as far as one can go in democratic elections. This is obviously not true of the old advanced democracies and it is not at all certain that it has to be true of all emerging democracies.

## **CONCLUSION**

114. The closing remark in the last section enables us to turn full circle from where we began in the general introduction to this report: despite the preference for proportional representation, often expressed by supporters of a “politically correct” view of the “democratic kit” or the equally peremptory assertion that outside a pure first-past-the-post system there can be no “governing democracy”, there is no electoral system which is good from every angle. Each has its advantages and its drawbacks, which vary in magnitude depending on what function fulfilled by the electoral system is considered.

115. The stakes are high since it is a question of identifying and implementing in practice the legitimacy of democratic power and ensuring that it is effective. Doubtless, this should bring forth some modesty on our part. It is not so much a question of choosing between ideal types as identifying – from minute examination of the socio-cultural realities, local legal traditions and the prevailing circumstances – what constitutes the best possible mix of conflicting solutions. There must be no hesitation in rectifying a system that is starting to produce perverse effects, since it is as easy to get into bad habits as good, and bad habits become difficult to eradicate when they turn into a cultural tradition. This is a sadly relativist conclusion for a lawyer who believes in the strength of principles. But, under cover of legal principles and mathematics, the question of electoral systems has to do with the art of politics, which, in order to reconcile conflicting interests peaceably, requires everyone to compromise without compromising themselves.

**TABLE SUMMARISING THE THREE HISTORICAL MODELS****ELITIST MODEL**

Period of dominance:	beginnings of universal suffrage to the start of the 20th century
Logic of representation:	patronage
Logic of selection:	notability and democratic patronage
Logic of investiture:	carte-blanche for the representative
Ideal/typical system:	one-round, one-member first-past-the-post/majority

**MASS DEMOCRACY MODEL**

Period of dominance:	first three-quarters of the 20th century
Logic of representation:	identification with a socio-cultural category
Logic of selection:	militancy
Logic of investiture:	indirect <i>ex post</i>
Ideal/typical system:	proportional representation

**CONSUMERIST INDIVIDUATION MODEL**

Period of dominance:	last decades of the 20th century
Logic of representation:	demand for priority public policies
Logic of selection:	most credible offer
Logic of investiture:	contract with a limited objective and for a specified duration
Ideal/typical system:	hybrid system predominantly based on the first-past-the-post or majority system