

sasse · brew · georgel · hand · huber · van den berghe

the  
european  
parliament:  
towards  
a uniform  
procedure  
for direct  
elections



When in September 1976 the Member States of the European Communities agreed on the arrangements for the first direct elections to the European Parliament, duly held in 1979, they also reaffirmed that the Parliament itself should draw up a proposal for a uniform procedure for future direct elections.

At the European University Institute, Florence, a team of professors and research students from the departments of Law and Politics set to work on the problems and possibilities of a uniform procedure.

Before presenting concise principles for a uniform system many related topics are analyzed: What is meant by 'uniformity' in this context? Within their national life, what electoral systems do the Nine use and how do they relate to the general classification and characteristics of such systems? How did the Member States approach the problems of direct elections in 1979 and how do the procedures they then adopted compare with each other in detail? What sort of systems have been used by Greece, Portugal and Spain? A long appendix explores the comparison with the United States experience.

The final proposals are based on three guiding principles:

- that the Council Act of September 1976 is the essential foundation,
- that uniformity need not be absolute in matters of detail,
- that, within the area represented by each Member State, the system should be proportional in character.

*Professor Christoph Sasse, who originally inspired and directed this project, died in an accident in 1979. His associates have brought it to fruition in this volume.*



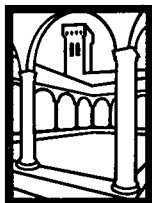






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PUBLICATIONS DE L'INSTITUT UNIVERSITAIRE EUROPÉEN  
PUBLICATIES VAN HET EUROPEES UNIVERSITAIR INSTITUUT  
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**BADIA FIESOLANA - FIRENZE**



EUROPEAN UNIVERSITY INSTITUTE

SASSE · BREW · GEORGEL · HAND · HUBER · VAN DEN BERGHE

**THE EUROPEAN PARLIAMENT:  
TOWARDS A UNIFORM PROCEDURE  
FOR DIRECT ELECTIONS**

With contributions by  
ROLAND BIEBER and HOWARD C. YOUROW

BADIA FIESOLANA — FLORENCE



A list of sales offices can be found at the end of this publication.

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Luxembourg: Office for Official Publications of the European Communities, 1981

ISBN 92-825-2527-9

Catalogue number: OX-32-81-706-EN-C

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Stabilimenti Tipografici «E. Ariani» e «L'Arte della Stampa» – Firenze  
Printed in Italy

## TABLE OF CONTENTS

FOREWORD .....	VII
<i>Hand / van den Berghe / Bieber</i>	
1. INTRODUCTION .....	1
<i>Geoffrey Hand</i>	
1.1. Objectives of the Study .....	3
<i>Guido van den Berghe</i>	
1.2. What is a 'Uniform Procedure'? .....	7
<i>Roland Bieber</i>	
1.3. Conditions and Consequences of a Uniform Electoral Procedure for the European Parliament .....	21
<i>David A. Brew</i>	
2. CHARACTERISTICS OF MAJOR VOTING SYSTEMS AND THE NA- TIONAL VOTING SYSTEMS OF THE NINE .....	29
2.1. Characteristics of Major Voting Systems .....	31
2.2. National Voting Systems of the Nine .....	58
<i>Christian H. Huber</i>	
3. APPROACHES TO EUROPEAN ELECTIONS .....	83
3.1. National Approaches .....	85
3.2. Common Trends and Tendencies. Lessons from the Implemen- tation of the First European Elections .....	167
<i>Guido van den Berghe</i>	
4. ELECTORAL LAW AND DIRECT ELECTIONS .....	181
4.1. Comparison of the National Electoral Procedures in Nine Member States of the European Communities .....	183
4.2. From National Electoral Laws for the First Direct Elections to a Framework for Uniformity .....	221

<i>David A. Brew</i>	
5. OPTIONS FOR A UNIFORM VOTING SYSTEM .....	251
5.1. Possible Results of Different Voting Systems .....	253
5.2. The Choice of a Uniform Voting System .....	275
5.3. Conclusion .....	291
<i>The Members of the Direct Elections Group at the European University Institute, set down by Geoffrey Hand</i>	
6. SPECIFIC PROPOSAL FOR A UNIFORM PROCEDURE .....	293
6.1. The Electoral System and the Method of Voting .....	298
6.2. The Franchise .....	302
6.3. Elections and Parties .....	305
6.4. Annex to Chapter 6 .....	307
APPENDIX I	
<i>Jacques Georgel</i>	
The Electoral Systems of Greece, Portugal and Spain .....	315
APPENDIX II	
Section I	
<i>Howard C. Yourow</i>	
The Electoral System of the United States: a Unified Community Elections Procedure in Comparative Perspective .....	337
APPENDIX II	
Section II	
<i>Howard C. Yourow and Guido van den Berghe</i>	
Synthesis: Comparison between the Electoral Systems of the United States and Canada .....	403
APPENDIX III	
<i>David A. Brew</i>	
Examples of Methods of Counting Used in Different Systems of Proportional Representation .....	412
APPENDIX IV	
<i>David A. Brew</i>	
Additional Simulations Based on the Voting in the First Direct Elec- tions, June 1979 .....	424
APPENDIX V	
Participants in the Work of the Direct Elections Group at the Euro- pean University Institute .....	434
<i>Subject Index</i> .....	437
<i>Name Index</i> .....	447

## FOREWORD

*When the European University Institute opened in 1976, Professor Christoph Sasse, first Head of the Department of Law, proposed that amongst its projects of research should be the investigation of the problem of establishing a uniform electoral procedure for Direct Elections to the European Parliament. His tragic and untimely death in a road accident near Florence on 26 February 1979 means that the project has had to be seen through to completion without his guidance; but it is the hope of all those concerned that the present volume will not be altogether unworthy of the memory of this dedicated scholar and European and deeply liked person.*

*Professor Sasse secured the support of his professorial colleagues, Jacques Georgel (Politics) and Geoffrey Hand (Law), in establishing the project as an interdepartmental one. Closely associated with these three as members of an informal 'steering committee' were three then research students of the Institute, David Brew (Politics), Christian Huber (Politics), and Guido van den Berghe (Law). In successive years European Commission research grants were awarded to two members of the group, Peter Felter (Law: unfortunately Mr. Felter returned to Denmark after a relatively short stay and consequently was unable to participate in the later stages of the work) and Guido van den Berghe. After the death of Professor Sasse, it became possible, through the resources of the Research Fund of the Institute, largely provided by the European Communities, to appoint those two of the research students just named who were still at the Institute (Christian Huber and Guido van den Berghe) as junior research fellows. Geoffrey Hand, in consultation with Jacques Georgel, assumed the main administrative and editorial burdens. It should be added that several other research students of the Institute participated in the seminar work of the group in early years, although they are not individual contributors to the end-*

*product (a list of names will be found in Appendix V). With the aid of a grant from the German Marshall Fund of the United States, Professor Sasse, in his capacity at the Institut für Integrationsforschung der Stiftung Europa-Kolleg at Hamburg, was able to secure the services of Howard C. Yourow for a comparative study of North American experience; the fruits will be found in Appendix II. It is appropriate also to acknowledge at this point the funds made available through the Stiftung Europa-Kolleg from the German Academic Exchange Service – DAAD – to some of the participants in the project. Finally, upon the death of Christoph Sasse, Roland Bieber agreed to take his place as a contributor to the 'introduction', though necessarily as a more detached and independent participant.*

*The project group was greatly assisted by individual visitors who agreed, from time to time, to come to discuss problems with it and in particular by the collective discussions in a two-tier Colloquy held in Florence and in Rome in 1978. (A note of visitors and of the participants at the Colloquy will be found in Appendix V). In addition, chapter 4, below, owes much to the care with which a questionnaire composed by Guido van den Berghe was answered by a respectable number of Community and national experts, whose names cannot be listed here.*

*The thanks of the contributors must also be expressed for the assistance provided by the Commission and the Parliament, for the patience of many individual officials in the Community Institutions, and for the help which contributors received in their individual work from national authorities and scholars in the Member States.*

*All of us owe profound gratitude to Alison Tuck, whose cheerful patience somehow survived bombardment with ever-changing drafts, ceaseless correspondence, and complicated tabulations.*

\* \* \*

*The text of this book was effectively completed by September 1980, but it has been possible in a few instances to incorporate references to more recent events.*

*Hand / van den Berghe / Bieber*

1. INTRODUCTION



*Geoffrey Hand*

## 1.1. OBJECTIVES OF THE STUDY

As they worked at the European University Institute on the project which has resulted in the present volume, the members of the team (whose identity and individual concerns have already been very briefly indicated in the 'Foreword') were of course well aware that all over the European Communities other research teams and individuals had been attracted to the same problem. (Indeed, contact and cooperation were to occur in several instances as, for example, the list of visitors to Florence in connection with the project demonstrates)<sup>1</sup>. The prospective institutional and historical uniqueness of the European Parliament in its directly elected stage of development has been a stimulus, intellectual and even emotional, to many and it is hardly necessary to point out that the insights of a variety of national, political and academic traditions must be needed. Yet the European University Institute appeared to offer peculiar advantages to the study. A foundation of the Nine, it is nevertheless not specially tied to the greater European institutions any more than it is to particular individual Member States or, needless to say, to party groupings. It was easily possible to assemble a group which included academic staff or research students from each of the Nine (although not all that slightly wider group contributed directly to the writing of the present volume)<sup>2</sup>. Immediate political practicalities and problems did not weigh as heavily on an academic body as they might have done on those concerned with the making and execution

<sup>1</sup> Appendix V, below.

<sup>2</sup> These participants are indicated in Appendix V, below; cf. also the volume mentioned in the next note.



of decisions and so it was possible to start work in 1976 towards the second stage of Direct Elections, a uniform procedure, rather than merely to consider the problems then still ahead for the first stage, duly accomplished, as we now know, in 1979. That consideration of timing, as well as the international composition of our group, allowed it first to examine and reflect upon the individual existing national systems with a certain degree of deliberation before proceeding to the ultimate task.

The objective of the study might be seen as an easily defined one – the preparation of proposals towards a uniform procedure for direct elections to the European Parliament – but to reach it implied work in several areas which came to constitute subsidiary objectives. Thus, in this introductory chapter it was felt necessary to trace the history of electoral proposals within the European Communities in order to clarify what is meant by a 'uniform procedure' (section B) and to explore the conditions and consequences of a uniform procedure (section C). It is now proposed to explain the areas of work contained in the rest of the book and their relationship to the main objective.

The historical traditions and present practice of the Member States in matters parliamentary and electoral provide an inescapable ambiance for the European Parliament. In Chapter 2, a study is offered of the characteristics of major voting systems and, more particularly, of the national voting systems of the Nine. (At first, indeed, an historical chapter was contemplated; although the final decision to omit it was partly due to practical circumstances, there had been grave doubts as to its appropriateness in context, since the forces which have formed the national histories in this regard rarely present precise analogies to those in play in Europe as a whole in 1980). A detailed individual presentation of the Nine had been given in a volume which, although not a publication of the Institute, was in many ways the work of the same group<sup>3</sup>; since it appeared as recently as 1979, the work has not been repeated in the same way here. (However, that volume had been strictly confined to the *Nine*; now, looking to the future, one must take into account developments in

<sup>3</sup> English-language edition: Hand, G., Georgel, J. and Sasse, C., *European Electoral Systems Handbook* (London (Butterworth); 1979). German-language edition: Sasse, C., Georgel, J. und Hand, G., *Das Wahlrecht der Neun* (Baden-Baden (Nomos); 1979). French-language edition: Georgel, J., Hand, G. J. et Sasse, Ch., *Les Régimes Electoraux dans la Communauté Européenne* ((Paris (Cujas); 1979).

Greece and indeed in Portugal and Spain – hence Appendix I of this volume).

The European Communities, we are often reminded, form an entity which is historically and legally *sui generis*, provided with its own institutions, its own legal personality and legal capacity, and endowed with a right to international representation. Yet for particular aspects of its institutional life parallels are not necessarily hard to find. The need was felt for some comparative study; and the United States of America was chosen for the purpose in Appendix II. While its individual cultural and institutional homogeneity, even in the earliest days of Federation, was much greater than in these early days of the European institutions, we nevertheless believe that there are analogies to be shown and perhaps even lessons to be learnt.

The subsidiary objectives covered by the matter just passed in review constituted prolegomena to the study. Our next stage had to be to consider very recent history and the first stage in the historical development through which we are living; the first Direct Elections to the European Parliament, in 1979. In the story of how the Member States found their way to that achievement, two themes have intense relevance for the next stage. First of all, there was the process of political and parliamentary discussion and negotiation within each Member State, which is dealt with primarily in Chapter 3. Therein one can learn the sticking-points for national traditions in electoral matters and the sensitivities of particular political parties to what they feel might not be in the interests of themselves or their supporters. Secondly, there is the detail of the separate electoral laws each country made for the first Direct Elections, and this subject dominates Chapter 4. Of particular interest there are the changes made for the purpose in some Member States from the provisions normal in national elections; these may, in the particular instances, suggest points of flexibility and adaptability. Taken together, these chapters will, it is hoped, indicate the practical limits within which the construction of a uniform measure has to be attempted.

Recalling for a moment the diversity of the individual national systems for domestic elections, one is led to think of a corollary – the remarkable ignorance sometimes shown by even the ‘well-informed’ as to how systems operating elsewhere really work. ‘Simulations’ can be dangerous by being viewed merely in terms of possible party advantage or disadvantage. But, although we are not so naive as to imagine that working politicians can put such considerations

out of their minds, our own dominant purpose in providing simulation material in Chapter 5 was to secure broad impressions and to indicate graphically, through its possible operation on familiar ground, what a relatively unfamiliar system means in practice<sup>4</sup>. That done, the same chapter turns to the possible options, thus leading on to the main objective of the volume, the specific proposals.

<sup>4</sup> Since our object was to afford a general impression, it was not considered necessary to replace the figures originally prepared with ones based on supervening national general elections; but tables were prepared on the basis of the 1979 Direct Elections and these will be found in Appendix IV, below.

*Guido van den Berghe*

## 1.2. WHAT IS A 'UNIFORM PROCEDURE'? <sup>5</sup>

The first direct elections to the European Parliament, which took place in the Member States of the European Community between 7 and 10 June 1979, were based on an electoral procedure which was governed in each Member State by its national provisions.

That the European Parliament should be directly elected rather than 'consist of delegates who shall be designated by the respective Parliaments from among their members in accordance with the procedure laid down from each Member State' follows from art. 138 of the EEC Treaty, which provides in paragraph 3 that

«The Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States.

The Council shall, acting unanimously, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements».

However, this third paragraph of art. 138 of the EEC Treaty <sup>6</sup> has not yet been fully implemented. After the completion of the different stages envisaged in this third paragraph, which enabled the direct elections to take place, one provision, i.e., that which states that these elections should be held in accordance with a uniform procedure in all Member States, is missing. The Council Decision on direct elections of 20 September 1976 in art. 7(2) of the annexed Act

<sup>5</sup> See also G. van den Berghe, 'Direct elections in accordance with a uniform procedure', *European Law Review*, vol. 4, no. 5 (October 1979), pp. 331-340.

<sup>6</sup> An identical provision can be found in art. 21(3) of the Treaty establishing the European Coal and Steel Community and art. 108(3) of the Treaty establishing the European Atomic Energy Community.

only states that 'pending the entry into force of a uniform electoral procedure and subject to the other provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions' <sup>7</sup>. Nevertheless, it is said in art. 7(1) of the annexed Act to the Council Decision that 'the Assembly shall draw up a proposal for a uniform electoral procedure' <sup>8</sup>.

When the European Coal and Steel Community was created by the Treaty of Paris, which was signed on 18 April 1951, its institutional framework also included a Common Assembly. Before it was repealed by art. 2 of the Convention on Certain Institutions common to the European Communities, paragraph 1 of art. 21 of the European Coal and Steel Community Treaty originally provided two methods of selecting members of the Common Assembly. Either they were to be designated by and from their national parliaments for a one-year term, or, although this method was never used, they were to be elected by direct universal suffrage on a national basis. It was stated that 'the Assembly shall consist of delegates who shall be designated by the respective Parliaments once a year from among their members, or who shall be elected by direct universal suffrage, in accordance with the procedure laid down by each High Contracting Party' <sup>9</sup>. The possibility of direct elections was thus admitted.

During the negotiations preceding the establishment of the European Economic Community and Euratom Treaties, which were signed in Rome on 25 March 1957, the question of directly electing the members of the Assembly again came to the fore. From the *travaux préparatoires* <sup>10</sup> of these Treaties, one can deduce that the present wording of art. 138 of the EEC Treaty and 108 of the Euratom Treaty stems mainly from a proposal <sup>11</sup> put forward by the Italian delegation to the Intergovernmental Conference of the Member States of the European Coal and Steel Community.

When the question of the designation of the members to the Assembly was discussed during the Conference of the Ministers of Foreign Affairs of the Member States of the European Coal and Steel Community which was held in Brussels on 26-28 January and 4

<sup>7</sup> O. J. 1976 L 278/6, 8 October 1976.

<sup>8</sup> *Ibid.*

<sup>9</sup> Robertson, A. H., *European Institutions* (3rd ed.; London, 1973) p. 346.

<sup>10</sup> APE 1558 and APE 1952.

<sup>11</sup> See Annex I, p. 20, *infra*.

February 1957, the Italian representative, Mr. Gaetano Martino, moved a proposal which envisaged that these members would be directly elected. Mr. G. Martino, who later became President of the European Parliament (1962-1964), underlined the necessity, in order to arrive at a political unification of Europe, that the members of the Assembly of all the Member States should be directly elected, so doing away with the element of choice which was embodied in the above mentioned art. 21(1) of the European Coal and Steel Community.

The Italian proposal on this point was twofold. A larger version and a more restricted version were presented to the conference. In the wider drawn version of the proposal, it was stated that the Assembly should consist of delegates elected by direct universal suffrage in accordance with the procedure laid down in each Member State. However, this proposal for immediate direct elections was rejected by the other Ministers of Foreign Affairs on the grounds that such a move was premature. It was therefore the alternative draft which was adopted. This provided that the Assembly should draw up proposals for electing its members by direct universal suffrage with the Council, acting unanimously, laying down the appropriate provisions, which it would recommend to the Member States for adoption.

It can be noted that only this proposal for deferred direct elections contained the words, '... in accordance with a uniform procedure in all Member States...', while in the proposal for immediate direct elections, the procedure to be followed was to be 'laid down by each Member State'.

It becomes clear that the negotiations in this field centered on the opportunity to provide immediately in the treaties for direct elections of the members of the Assembly. The question of the 'uniformity' of the procedure was not given a lot of thought by the Ministers. In fact the motives behind the acceptance of the more restricted Italian proposal as a compromise formula were not related to the question of 'uniformity' at all, but to the fact that the solution as a whole and in contrast to the wider proposal enabled the Member States to gain more time before the introduction of direct elections could become a reality.

It should also be pointed out that the first paragraph of numeral three of the alternative Italian proposal read, «L'Assemblée élaborera des projets en vue de permettre l'élection au suffrage universel

direct selon une procédure uniforme dans tous les pays membres *des délégués de chaque Etat*». The words «of the delegates of each State» have disappeared in the adopted text, probably in order to cut all links with numerals one and two which stated, respectively, 'the Assembly shall consist of delegates...' and '... *these* delegates...'.

### 1.2.1. THE EUROPEAN PARLIAMENTARY ASSEMBLY'S 1960 DRAFT CONVENTION ON DIRECT ELECTIONS

In March 1958, the Committee on Political and Institutional Questions of the European Parliamentary Assembly started discussing the question of direct elections in accordance with their right of initiative embodied in the third paragraph of art. 138 of the EEC Treaty. A special working party under the chairmanship of the late Prof. F. Dehousse (Belgian Senator, Socialist Group) was set up. During the fifteen months of its existence the working party, which consulted with the leading politicians of the different Member States, engaged in an in-depth study of all the problems related to direct elections.

The presence should be noted of Mr. Maurice Faure and Mr. Gaetano Martino, who, respectively, as French Under-Secretary of State for Foreign Affairs, and, as already mentioned, as Italian Minister for Foreign Affairs, had participated in the negotiations of the Rome Treaties, and who had even signed the Treaties as members of this Working Party. The experience of these gentlemen enabled the Group to go beyond the mere wording of the Treaties.

The work accomplished by the so-called '*ad hoc* Assembly' of the Council of Europe, of which Mr. Dehousse was a former President, on a Statute for a European Political Community in the period 1952-1953, served as guideline for the discussions of the Working Party. Nevertheless, the failure of such ambitious schemes, even more so after the rejection of the European Defence Treaty in 1954, called for extreme caution.

Defending the 'Projet de convention sur l'élection de l'Assemblée parlementaire européenne au suffrage universel' on 10 May 1960 during the plenary session of the European Parliamentary Assembly, Mr. Dehousse said, e.g., 'Notre projet à nous est un constat, c'est un commun dénominateur,... de ce qui, après notre enquête, nous a paru susceptible d'être accepté par les gouvernements et par les

parlements des six pays... Nous avons été constamment obligés de choisir entre le possible et le souhaitable... Nous avons voulu simplement faire oeuvre réaliste, nous avons voulu donner à l'Europe politique toutes ses chances'<sup>12</sup>. This moderate approach, which wanted to avoid extreme solutions, was also the one for which the Working Party, in the light of the 'travaux préparatoires', opted when it interpreted the notion of a 'uniform procedure' contained in art. 138(3) of the EEC Treaty. While it was thought that what the expression indicated was an electoral law which was basically the same in the six Member States, agreement was reached within the Working Party on the interpretation that 'uniformity' was not synonymous with identity.

This is the point which Mr. Dehousse made in his General Report of the Working Party. He said, 'L'expression désigne clairement une loi électorale qui soit fondamentalement la même dans les six pays. C'est le sens de la disposition et c'est aussi la solution que le group de travail a considérée la meilleure'<sup>13</sup>. Nevertheless, during an important conference on direct elections to the European Parliament, held on 14-15 April 1960 at the Free University of Brussels, he had underlined that, 'Uniformité ne veut pas dire identité. L'Assemblée peut établir un certain nombre de règles communes sans que, pour autant, il y ait coincidence rigoureuse dans les six pays'<sup>14</sup>. This interpretation meant that the view was taken, firstly by the Working Party and subsequently by the European Parliamentary Assembly itself, that when a certain minimum of common principles were present in the draft proposal on direct elections, one could speak of a 'uniform procedure' in the sense of art. 138(3) of the EEC Treaty.

The Working Party also decided that the objective of art. 138(3) of the EEC Treaty did not have to be reached right away. Faced with the impossibility of immediately organising direct elections in the Member States in accordance with an identical system, it found a way out of this dilemma by proposing that this problem could be tackled by stages<sup>15</sup>.

<sup>12</sup> 'Pour l'élection du Parlement européen au suffrage universel direct', European Parliament, 1969, p. 76.

<sup>13</sup> *Ibid.*, p. 35.

<sup>14</sup> *Les élections au suffrage universel direct* (Editions de l'Institut de Sociologie Solvay, 1960), p. 24.

<sup>15</sup> Mr. F. Dehousse gives credit for finding this solution to Mr. Gaetano Martino. Dehousse, F. 'Vers des élections européennes', *Studia Diplomatica*, Vol. XXIX, 1976, no. 1, p. 73.



The draft convention on direct elections, which was adopted by the Assembly on 17 May 1960<sup>16</sup>, thus completed the first stage of the procedure envisaged in art. 138(3) of the EEC Treaty, provided in art. 9 for two stages. During the initial phase, the electoral procedure would fall within the competence of each Member State, subject to conformity with a certain number of common provisions. Matters settled jointly in the 1960 draft convention included the date of the election, the voting age, eligibility for election, the admissibility of parties and the term of office. At the end of the transitional period, provided for in art. 4 of the draft convention, the first European Assembly elected under the transitional system, would then itself have the task of laying down the provisions governing the election of its representatives. This election, it was stated in the first paragraph of art. 9 of the draft convention, should be held 'in accordance with as uniform a procedure as possible'.

The interpretation given to art. 138(3) of the EEC Treaty was one which left quite a bit of room for interpretation in the light of the evolving political reality. To impose immediately an identical electoral system was conceived as difficult to reconcile with existing traditions and ways of thinking in the different Member States. Hence, the choice of a step by step method which allowed the objective of art. 138(3) to be attained in two or more phases, political conditions permitting.

The feeling of the Working Party on the question was well expressed by Mr. W. J. Schuyt (Member of the *Tweede Kamer*, Christian Democrat Group) in his report to the Parliamentary Assembly on questions related to the electoral system. He said, e.g., 'Le grand danger qui nous menace, c'est celui du perfectionnisme. Nous voulons un système parfait pour une Europe parfaite. Or, il vaut mieux avoir un système qui fonctionne bien dans une Europe moins parfaite car il nous permettra d'aider l'Europe à se mettre en route vers le but final: la société politique la meilleure possible pour les citoyens européens les meilleurs possible'<sup>17</sup>.

<sup>16</sup> Résolution portant adoption d'un projet de convention sur l'élection de l'Assemblée parlementaire européenne au suffrage universel direct', J. O. 1960, no. 37, 2 June 1960, pp. 834-860.

<sup>17</sup> 'Pour l'élection du Parlement européen au suffrage universel direct', European Parliament, 1969, p. 90.

### 1.2.2. THE EUROPEAN PARLIAMENT'S 1975 DRAFT CONVENTION ON DIRECT ELECTIONS

Despite repeated requests from the European Parliamentary Assembly, the Council of Ministers, for years, disregarded the 1960 draft convention and failed to make any recommendation concerning its adoption. In the meantime, the Community had gone through the difficult process of establishing a common market, and on 1 January 1973, had witnessed the accession of three new Member States. Subsequent to these developments, the European Parliament began to be convinced that the draft convention prepared in 1960 had become partially obsolete and therefore decided to take a new look at the question of direct elections. Mr. S. Patijn (Member of *Tweede Kamer*, Socialist Group) was, in autumn 1973, appointed rapporteur of the Political Affairs Committee with the special task of revising the 1960 draft convention and of drawing up a report for a new draft convention on direct elections.

After extensive preparatory work by Mr. Patijn, during which he consulted with politicians and competent experts from all the Member States, he was able to present his report entitled, 'Draft convention introducing elections to the European Parliament by direct universal suffrage'<sup>18</sup>, firstly to the Political Affairs Committee and later to the plenary session of the European Parliament, where the new draft convention was adopted on 14 January 1975<sup>19</sup>. Having analysed the obstacles which had prevented the Council from adopting the 1960 draft convention, Mr. Patijn made every effort to submit a realistic proposal, based on what was possible and necessary in the light of the political situation prevailing in the Member States at that time.

He worked from a premise that a speedy decision on direct elections was of major importance. 'Consequently', Mr. Patijn said, when introducing his report in the plenary session of the European Parliament on 14 January 1975, 'I had to exercise considerable re-

<sup>18</sup> 'Elections to the European Parliament by direct universal suffrage', European Parliament, Special Issue based on the Patijn Report, doc. 368/74.

<sup>19</sup> Resolution on the adoption of a draft convention introducing elections to the European Parliament by direct universal suffrage O. J., 1975, no. 32, p. 15.

straint with regard to the evolution of a uniform procedure. Anything which need not absolutely be decided today has been deferred for consideration in the context of the uniform electoral system which the European Parliament itself will have to work out'<sup>20</sup>.

This meant that he thought the stage by stage approach as embodied in the 1960 draft convention remained appropriate, with direct elections initially to be held on the basis of national electoral systems. In accordance with art. 7(2) of the draft convention, each Member State was therefore at first free to draft an electoral law corresponding to its political traditions and structures, subject to a few common principles. These however were more narrowly defined than in the 1960 draft convention. In the explanatory statement to art 7 of the draft convention, Mr. Patijn said that 'at the present stage of the approximation of the procedures for shaping the political will in the Member States, a uniform procedure could already be said to exist when elections in all the Member States are carried out according to the same basic principles. These include in particular, the fundamental principles of democratic election, i.e., elections must be equal, free, universal, direct and secret'<sup>21</sup>.

Common provisions, it was felt, should only be introduced in the draft convention when it was absolutely essential and possible. Therefore, the rapporteur did not feel that the time was ripe to propose standardization for elements of the electoral law, such as the date of the election, the voting age, eligibility, etc., as the 1960 draft convention had done. Mr. Patijn was convinced that all other solutions which would have contained more common elements would have led to a prolonged postponement of the direct elections, something he desperately wanted to avoid.

In the second stage, art. 7(1) of the draft convention said that the European Parliament itself would draw up a proposal for a uniform electoral system 'by 1980 at the latest'. This was a less prudent approach than the one contained in the 1960 draft convention. Mr. Patijn has since pointed out that the only thing which was envisaged in art. 7(1) was that the European Parliament should, before the end of 1980, suggest a uniform electoral procedure, but that nothing was

<sup>20</sup> 'Elections to the European Parliament by direct universal suffrage', European Parliament, 1977, p. 69.

<sup>21</sup> 'Elections to the European Parliament by direct universal suffrage', *op. cit.*, p. 13, n. 18, *supra*, at p. 23. These principles were taken from the constitution of the Federal Republic.

said about its introduction, for which no fixed time was mentioned<sup>22</sup>.

The overall modest and flexible approach on the interpretation of art. 138(3) of the EEC Treaty which Mr. Patijn and subsequently the Political Affairs Committee of the European Parliament had given to it, was shared by the Legal Affairs Committee of the European Parliament. In an opinion on the draft convention, the Committee pointed out that 'the concept of "uniformity" will acquire a different value when further parallels had developed between the election procedures of the individual Member States. This approach therefore requires the development of a more standardized European election system at a later date. The draft convention makes provision in art. 7(1) for Parliament to undertake this task'<sup>23</sup>.

The Legal Affairs Committee considered this to be a suitable way of taking advantage of the common features which already existed between the electoral procedures of the Member States for the first direct elections. In fact only a few provisions, i.e. the ones concerning scrutiny, the date of the election, and the duration of the mandate were standardized in the 1975 draft convention on direct elections. This method, the Legal Affairs Committee said, 'is also admissible, since according to the case law of the European Court of Justice, it is now acceptable in Community law for a legal act – i.e., a uniform election procedure – to be introduced in stages'<sup>24</sup>.

### 1.2.3. THE COUNCIL DECISION ON DIRECT ELECTIONS OF 20 SEPTEMBER 1976

In 1975, the Council of Ministers set up a working group to start dealing with the question of direct elections. The group used the 1975 draft convention of the European Parliament as the basis for its discussions. In the same way as the European Parliament, the working group decided that the attempt should not be made to establish a system of direct elections according to a completely uniform procedure in all Member States right from the outset.

<sup>22</sup> Patijn, S., 'Verkiezingen voor het Europees Parlement', *Internationale Spectator* (January 1976), p. 51.

<sup>23</sup> 'Elections to the European Parliament by direct universal suffrage', *op. cit.*, p. 13, n. 18, *supra*, at p. 52.

<sup>24</sup> *Ibid.*

Rather it was accepted that at an initial stage only the minimum number of provisions should be laid down at Community level, it being left to the Member States to organise the direct elections according to their domestic arrangements<sup>25</sup>. This fundamental point is reflected in art. 7 of the annexed Act to the Council Decision on direct elections<sup>26</sup>, which was adopted in Brussels on 20 September 1976. This agreement completed the second stage of the procedure envisaged in art. 138(3) of the EEC Treaty. Therefore, it was decided in art. 7(2) of the Council Act that 'pending the entry into force of a uniform electoral procedure and subject to the other provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions'. The Act contains only a small number of provisions which are standardized. They mainly deal with the term of office, the question of scrutiny and double voting, the period within which the elections are to be held and the question of incompatibilities with the office of member of Parliament.

Art. 7(1) of the Council Act states that 'the Assembly shall draw up a proposal for a uniform electoral procedure'. This means that there is no time limit set for the European Parliament to draw up a proposal for direct elections in accordance with a uniform procedure in all Member States, as was the case in the European Parliament's 1975 draft convention on direct elections. Hence, no time limit has been laid down for the Council to act upon such a proposal.

#### 1.2.4. REFLECTIONS

According to the wording of art. 138(3) of the EEC Treaty, direct elections to the European Parliament should be held in accordance with a 'uniform procedure' in all Member States. By 'procedure' it can be said that one understands the entirety of the measures which need to be taken to arrive at a certain goal, i.e. direct elections to the European Parliament. These measures concern the electoral system to be chosen for these elections as such, but the notion 'procedure' is more englobing. All the other elements of the electoral law, such as voting rights, eligibility, date of the election,

<sup>25</sup> Forman, J., 'Direct Elections to the European Parliament', *European Law Review*, vol. 2, no. 1 (February, 1977), p. 37.

<sup>26</sup> O. J. 1976, L 278/1, 8 October 1976.

proclamation and validation of the elections, voting operations, drawing up of constituencies, vacancies, etc., are also included.

This procedure, it is said in the Rome Treaties, has to be 'uniform'. This implies that not only the electoral system, but also all the other elements of the electoral law have to be 'uniform' in all Member States. In accordance with a strict interpretation of the notion 'uniform', one could say that what is meant here is that the procedure should be unvarying, in other words, that it should be the same.

However, this article of the Rome Treaties cannot only be interpreted in accordance with its original wording. It has also to be seen as part of a dynamic treaty in a changing world. Here, one can refer to the accession of Greece to the European Communities in 1981. It is also not at all excluded that Portugal and even Spain might be Member States by 1984.

The problem of direct elections in accordance with a uniform procedure cannot be settled in the abstract, Mr. F. Dehousse pointed out. A solution, he said, will have to be based on the experience gathered by the first directly elected Parliament. All too often it was forgotten, he continued, that one element of major importance of the 1960 draft convention which, subsequently, was retained in the 1975 draft convention as well as in the 1976 Council Act, is that it gives the right of initiative for drawing up a proposal for direct elections in accordance with a uniform procedure to the European Parliament itself and thus no longer to the Member States<sup>27</sup>.

In this respect, it can be said that the approach taken in art. 9(1) of the 1960 draft convention, namely that the European Parliament shall lay down the provisions governing the election of representatives, in accordance with 'as uniform a procedure as possible' retains all its relevance.

It is interesting to note that, whereas art. 138(3) of the EEC Treaty states that 'the Assembly shall draw up *proposals* for elections', the Council Act of 20 September 1976 in art. 7(1), as with the 1975 draft convention on direct elections in art. 7(1), states that '... the Assembly shall draw up *a proposal* for a uniform electoral procedure'. According to the findings of the Working Party of the European

<sup>27</sup> Dehousse, F., 'Les élections européennes au suffrage universel direct', *Les Nouvelles, Droit des Communautés européennes*, 1969, pp. 287-288.

Parliamentary Assembly, the use of the plural (proposals) was a deliberate choice. It indicates, it was said, that the European Parliamentary Assembly had not exhausted its right of initiative after drawing up one project for direct elections. If this project were to fail, it was argued, the Assembly has the right to draw up a second, third, etc.<sup>28</sup> Strictly interpreted, the wording of the singular (a proposal) in art. 7(1) of the Council Act could be seen as a serious restriction. This would mean that only one proposal concerning direct elections in accordance with a uniform procedure could be put forward by the European Parliament.

Certainly, it can be argued that arriving at a uniform procedure in one step would have the advantage of dealing with the problem in one move. National parliaments would only once be faced with this question and there would no longer be any confusion as to the electoral procedure to be applied. However, this approach ignores the inherent difficulties which have to be overcome in order to arrive at such a 'uniform procedure'.

The use of the singular in art. 7(1) of the Council Act does not necessarily have to be seen as a restriction. Here one can refer to the opinion, which the Legal Affairs Committee of the European Parliament expressed on the 1975 draft convention. It was pointed out that 'the general sense of art. 138(3) is that it is incumbent on the Council and Parliament to cooperate in meeting the obligation laid down therein. Even though the two institutions have different tasks to carry out, these tasks each serve the common goal which both institutions must endeavour to attain jointly'<sup>29</sup>. By deduction, one can argue that the same way of reasoning therefore also has to apply to art. 7(1) of the Council Act on direct elections. This interpretation would enable the European Parliament to make more than one recommendation in order to establish direct elections in accordance with a uniform procedure. It would also make a stage by stage approach, in order to arrive at this goal, possible. One fails to see why this approach could not work. Naturally, it could be underlined that if for certain elements of the electoral law a common solution could already be arrived at in time for the 1984 direct elections, while

<sup>28</sup> 'Pour l'élection du Parlement européen au suffrage universel direct', European Parliament, 1969, p. 73.

<sup>29</sup> 'Elections to the European Parliament by direct universal suffrage', *op. cit.*, p. 13, n. 18, *supra*, p. 56.

other elements of the electoral law would remain within the competence of the Member States until 1989 or even later, this would introduce an element of confusion for the electors in the different Member States. They would be required to adapt themselves constantly to a continuously changing electoral law concerning direct elections. Furthermore, this approach would mean that each time an international agreement with ratification by national parliaments would be needed. This might be an inevitable drawback.

However, the question of drawing up a proposal for direct elections in accordance with a uniform procedure is not a technical problem. Indeed, it is one which has to take into account existing political realities, and their possible development, in the different Member States<sup>30</sup>. Therefore, one can agree with Mr. F. Dehousse when he said, 'si on doit un jour parvenir à l'uniformité, ce ne pourra être qu'au terme d'une évolution plus ou moins longue'<sup>31</sup>.

A final remark concerns the European Court of Justice. If one accepts the step by step approach in the implementation of a 'uniform procedure', recourse to the European Court of Justice becomes inevitable in order to resolve possible conflict of interpretation between, on the one hand, elements of the electoral law which will still be governed at the national level, and, on the other hand,

<sup>30</sup> In its Decision of 30 December 1976, concerning the question of whether the Council Decision of 20 September 1976 on direct elections to the European Parliament contained a clause which was contrary to the French Constitution, the French Constitutional Council said, e.g., '... l'indivisibilité de la République, dont le principe est réaffirmé à l'article 2 de la Constitution; que les termes de "procédure électorale uniforme" dont il est fait mention à l'article 7 de l'acte soumis au Conseil Constitutionnel ne sauraient être interprétés comme pouvant permettre qu'il soit porté atteinte à ce principe; que, de façon générale, les textes d'application de cet acte devront respecter les principes énoncés ci-dessus ainsi que tous autres principes de valeur constitutionnelle;...', *Journal Officiel de la République Française*, 31 December 1976, p. 7651.

This interpretation by the French Constitutional Council seems to exclude, as far as France is concerned, from a proposal for direct elections in accordance with a uniform procedure any reference which might be made in this proposal for elections to be held in a regional framework, as well as any attempt at setting up transnational constituencies. See, e.g., Duverger, M., 'Une victoire à la Pyrrhus', *Le Monde*, 4 January 1977; Kovar, R. and Simon, D., 'Some reflections on the decision of the French Constitutional Council of 30 December, 1976', *Common Market Law Review*, vol. 14, 1977, p. 540; Favoreu, L. and Philip, L., 'Election au suffrage universel direct des membres de l'Assemblée Européenne', *Revue du Droit Public et de la Science Politique*, vol. 1, January-February 1977, p. 152 and pp. 154-5. But see also, Bieber, R., *Europarecht*, vol. 1, 1977, pp. 57-8 and Burban, J. L., *Le Parlement Européen et son Election* (Brussels (Bruylant); 1979), p. 119.

<sup>31</sup> Dehousse, F., 'Vers des élections européennes', art. cit., p. 11, n. 15, *supra*, p. 74.



those for which a common solution will already have been achieved. Mr. S. Patijn <sup>32</sup> already hinted at such a role for the European Court of Justice in his explanatory statement on the 1975 draft convention.

## ANNEX I <sup>33</sup>

### DISPOSITIONS INSTITUTIONNELLES du Traité de l'Euratom et du Marché Commun rédaction alternative de l'article 2 proposée par la délégation italienne

#### Article 2

1. L'Assemblée est formée des délégués élus au suffrage universel direct selon la procédure fixée par chaque Etat membre.

2. Le nombre de ces délégués est fixé ainsi qu'il suit:

Allemagne .....
Belgique .....
France .....
Italie .....
Luxembourg .....
Pays-Bas .....

1. L'Assemblée est formée des délégués que les Parlements sont appelés à désigner en leur sein à la majorité des suffrages exprimés.

2. Le nombre de ces délégués est fixé ainsi qu'il suit:

Allemagne .....
Belgique .....
France .....
Italie .....
Luxembourg .....
Pays-Bas .....

3. L'Assemblée élaborera des projets en vue de permettre l'élection au suffrage universel direct, selon une procédure uniforme dans tous les pays membres des délégués de chaque Etat.

Le Conseil, statuant à l'unanimité, pourra arrêter les dispositions, dont il recommandera l'adoption par les Etats membres, conformément à leurs règles constitutionnelles respectives.

<sup>32</sup> 'Elections to the European Parliament by direct universal suffrage', *op. cit.*, p. 13, n. 18, *supra*, p. 23.

<sup>33</sup> APE 1558, Annex II.

*Roland Bieber*

### 1.3. CONDITIONS AND CONSEQUENCES OF A UNIFORM ELECTORAL PROCEDURE FOR THE EUROPEAN PARLIAMENT

The development of the European Community is not something which proceeds according to a predetermined plan, in obedience to rational or objective considerations. Rather it is the result, sometimes quite fortuitous, of a merger of the widely divergent interests and motives of different governments and individuals which may use the existing Community treaties as a means of political action either in justification of their actions or to set goals for the future. Growing uncertainty about the future in the minds of the people means that politicians are less ready to level out the serious differences in economic development among the Member States by appealing to Community solidarity. As a consequence, the COMMUNITY'S growth potential is currently limited to measures which provide an external safeguard for internal national structures. Thus only decisions or groups of decisions capable of being presented to the governments in this light have any chance of being realized.

The *chances of introducing* a uniform electoral system into the Community and the *probable substance* of such a system have to be considered against this background. Although some firm assertions can be made on the basis of the premises set out above, the *effects of an electoral system* are rather a matter for speculation. But there are a few signposts, such as the changes in the European Parliament following its first direct elections and the political consequences of the electoral system used in the first direct elections for the various national systems and the Community's political system as a whole.

### 1.3.1. A REALISTIC UNIFORM ELECTORAL SYSTEM

One of the fundamental achievements of the nineteenth and early twentieth centuries was the establishment of the concept of an electoral system guaranteeing universal, direct, equal, free and secret elections (cf. art. 38 of the German Basic Law). Any electoral system based on European democratic traditions must now satisfy these criteria. They also form the core of the system for elections to the European Parliament. There is therefore no need to dogmatize about them too much. However, the concept of 'equal' elections raises one problem concerning the composition of the European Parliament. It is sometimes supposed that equality in election terms requires that each voter should have equal 'voting power' in relation to the Parliament for which he is voting. Since this is not true of elections to the European Parliament, the argument goes, equality of votes is not one of the basic principles of European elections. This argument fails to take account of the special composition of Parliament, which it owes to its function. The European Parliament is composed of members elected according to a fixed formula independently of the electoral systems used in the individual Member States. It is true that this fixed formula creates glaring inequalities as regards the influence of an elector's vote. But this is connected with the Parliament's task of being simultaneously a representation of the Member States and of the peoples. In the context of European elections, equality therefore means no more and no less than that comparable things should be treated equally. Thus comparisons should be made only among the nationals of one Member State in which a specified number of members are to be elected.

The principles enunciated above already form the common basis of direct elections and accordingly must also form the basis of a future uniform electoral system. Further essential elements of a uniform electoral system include:

- the method of electing candidates (electoral system in the narrower sense);
- the right to vote and to stand for election;
- the election date;
- rules governing election campaigns;
- verification of elections;
- incompatibilities.

The scope and content of a uniform electoral system which can realistically be achieved in the near future, i.e. for the elections to the European Parliament in 1984, should be substantially determined in the light of these principles.

First of all because the necessary political conditions do not exist it is wholly unrealistic to expect a European electoral system to contain detailed rules on matters such as the use of voting machines, the form of the register of electors or the staffing of polling stations in each country. On the other hand, the political significance of certain basic questions extends far beyond electoral law and cannot be solved in that context. This is especially true of any attempt to alter the number of members to be returned by the individual Member States. A move towards greater proportionality to the number of inhabitants in each country is conceivable but, given the present state of integration, this would require Parliament to be divided into two chambers (one representing the States and one representing the people) as was envisaged in the draft constitution of the *ad hoc* assembly of 1953. The European Parliament's function of representing both people and States is neither mandatory nor unalterable. But in the Community's present circumstances none of the institutions can disregard its relationship to the Member States. Doing so would mean running the risk of losing legitimation. The European Parliament is, however, particularly dependent on this legitimation, if it is to be able to apply its relatively slightly developed powers. Even a genuine and equal division of functions between Council and Parliament would still not release Parliament from its function, distinct from the function of representing the citizens directly, of representing the major political forces in the individual *Member States*.

So long as the European Parliament has to carry out this dual function of Chamber of States and Chamber of Peoples, the electoral system must reflect that reality. Moreover, any attempt to change the hard-won compromise over the distribution of seats would appear unrealistic, all the more so in that it would raise two politically delicate questions, namely the separate representation of Luxembourg in the European Parliament and increasing the number of members from the Federal Republic of Germany, in relation to the other big States.

Further limitations are imposed on a uniform electoral system by the specific circumstances of each Member State's political system. This is illustrated by the German conception that democracy must

be safeguarded by using party bans and threshold clauses. A further example is provided by the notion widespread in the United Kingdom of the need for a majority system. There are also certain traditions (elections always/never on a public holiday) which a European electoral system cannot ignore unless it has sufficient authority. But Europe's integration has not yet progressed to the point where it has sufficient persuasive power to effect a permanent change in the minds and habits of its citizens.

### 1.3.2. THE CHANCE OF ACHIEVING A UNIFORM ELECTORAL SYSTEM

As will already be clear from what has been said above, this question is not directed at the time periods over which a comprehensive complete system of elections to the European Parliament will be created. It is in the electoral system that one of the established features of Community law manifests itself, namely the extent to which it is penetrated and supplemented by national law. The art and indeed the only practical means of creating new Community law is to strengthen the autonomy of the Community in such a way as to exploit and consolidate its connections with the law and political tradition of the Member States.

This produces a paradoxical situation for the system of elections to the European Parliament. The autonomy of the system would be strengthened by the emergence *inter alia* of a tradition of a specific Community electoral law, so that elections would become a matter of course and a proper European political class would emerge. This presupposes the system's repeated use for several elections without substantial alteration. On the other hand, there can be no doubt that some of the properties of the present system give it the appearance more of a linking-up of national systems than a creation specifically of Community law.

These factors will have to be considered from the Community's point of view when determining what amendments should be proposed. A further essential factor is the political configuration forming the background to the integration of the electoral law of the European Parliament. Now that we know how the system used in the first elections influenced the representation of the various political forces in the European Parliament, we shall have to consider when assessing the feasibility of innovations whether they will seem useful to the

political power groups in the Member States or at any rate not obviously to damage their interests in the European Parliament.

On account of the great variations between the political structures of the Member States, it is difficult to make any assertion about any single feature of the electoral system to be harmonized that will hold good for all Member States. Consequently, the more rigid the new system and the more changes it requires, the less likely its realization in the short-term.

There is a much better chance of implementing a system (electoral procedure in the narrower sense, right to stand for and vote in elections etc.) which sets a certain minimum standard to be observed by all Member States. If this minimum standard for the election procedure were, say, the election of at least a quarter of the members to be elected in a Member State on proportional principles, such an arrangement would seem capable of implementation as from the next election.

The time factor must also be borne in mind for the chances of achievement. In addition to the European Parliament, the Council and all the parliaments of the Member States will have a say in the final version of an amended electoral procedure. This means that the text of the procedure for the next elections in 1984 must be adopted by the European Parliament by 1982 at the latest.

### 1.3.3. EFFECTS ON THE EUROPEAN PARLIAMENT OF AN ELECTION BY A UNIFORM SYSTEM

Direct elections changed the very basis of existence of the European Parliament. The transfer of powers to participate in decisions on legislation would be just as important. By comparison, a change in the electoral system towards a uniform Community procedure is of limited importance. It forms part of the never finally settled relationship between the European Parliament and the Member States, which has by the direct elections been set on a new footing. The more comprehensively and independently the system of elections to the European Parliament is regulated at Community level, the more Parliament will be able on this new basis to take up a position independent of the specific political conditions of the Member States. But this cannot be achieved by the uniform electoral system alone; other factors must come into play. Furthermore, a development of

this kind is not without risks. Neglect by Parliament of its connections with national structures would amount to an abandonment of its claims for a transfer of powers. This horizontal link with policy in the Member States forms a necessary corollary to the internal transfer of resources which, now more than ever, the Community should be pursuing. Although Parliament needs to be elected on a Community basis, if it is to acquire the necessary degree of independence, that independence can, precisely through the electoral system, reach a point where it has a limiting effect on Parliament's freedom of action.

It can safely be assumed that any further harmonization of electoral law will consolidate the Act on Direct Elections and thus strengthen the legitimation, the workings, and hence the Community character of Parliament. The composition of Parliament will also change. Thus it can be expected that the British Liberals will be represented which, assuming equal proportions from the other Member States, would strengthen the Liberal group in the European Parliament at the expense of the Conservative group. If a uniform electoral system were to abolish threshold clauses the probable result would be a strengthening of regional groups and especially also 'alternative' movements. Given the present broad spectrum of opinion in the European Parliament, its role as a forum for the expression and formation of opinion would expand while it would find it more difficult to use its legislative powers, since majorities would be found only on an *ad hoc* basis.

The effect of Members being closer to the voters and of the possibility for all Community citizens to take part in the elections has been to strengthen the legitimation of the European Parliament. However, if powers remain the same, it will be hard to make full use of this. Parliament could express this extra legitimacy in restless activity and contradictory statements, or alternatively show a greater sense of purpose in guiding Community policies, because the different interests which the members represent would be more sharply delineated and could therefore be more easily brought to a compromise.

The expectations that can be made of a Parliament elected by a further unified procedure can largely be deduced from the changes that Parliament underwent after the first direct elections. The uniform procedure is unlikely to bring about any new changes but it will probably confirm existing trends and in some cases bestow on them a new quality. This new quality may in particular develop on

the basis of a higher degree of self-consciousness brought about by a further advance in legitimation. Parliament might then be ready to accept its dual role, outlined earlier, as representative of both people and States and in so doing turn its attention without fear of self-betrayal to the safeguarding of State interests. This could be a way of strengthening its authority in the Member States and indirectly influencing the repercussions of the uniform electoral procedure on conditions within the Member States.

In its relationship with the Council, Parliament would be in a position to act, both more decisively and in a more relaxed way, and so assume the role of equal partnership with the other institutions which although adumbrated by the Treaty has not yet been unequivocally conceded by the Council.

#### 1.3.4. SUMMARY

The harmonization of the system of elections to the European Parliament is a process which will strengthen the autonomy of Parliament and thus add to its ability to enter into partnership with the institutions of the Member States in translating Member States' interests into Community policy. Its capacity for partnership with the Council in carrying out Community tasks will also be strengthened.

If this process is initiated too abruptly, apart from the danger of changes being impossible to implement, there is the risk that advantage cannot be taken of the gain that has been made in autonomy and legitimation.

A harmonized electoral system would probably increase the representative character of the European Parliament still further. Apart from the gain in legitimation that would accrue to Parliament, this would particularly enhance Parliament's function as a forum for competing interests within the Community. But if its methods of work remained the same this could restrict the building up or the use of legislative participatory rights.

The number of the Members of the European Parliament is one of the constants which would need to be changed not by refining the electoral system but through fundamental institutional reforms.

The practicability of changing the present electoral system depends not only on the system for the representation of political forces in the European Parliament but also on the potential effects within each Member State.





*David A. Brew*

2. CHARACTERISTICS OF MAJOR VOTING SYSTEMS  
AND THE NATIONAL VOTING SYSTEMS  
OF THE NINE



## 2.1. CHARACTERISTICS OF MAJOR VOTING SYSTEMS

The choice of a uniform electoral system is not one which can be made in ignorance of the effects of "electoral engineering". While the form of that engineering will not be decisive in the development of the elected parliament, it must nonetheless be considered as one of the factors which will influence that development. Before proceeding to any definition of options for a uniform system, therefore, it is wise to examine the major aspects of voting systems, to draw those general conclusions which can be drawn as to their effects and thus to open the way for consideration of their consequences at the European level.

Literature on electoral systems has tended to be concentrated on the pro's and con's of plurality versus proportional representation systems, with a limited number of single country analyses. As Rae points out in one of the few books which attempt to treat the question on a systematic, comparative basis, "present knowledge about the politics of electoral law is neither very general in scope, nor entirely reliable in content"<sup>1</sup>. In addition, since recent studies have been concerned with national systems, they have focussed in the main on the effects of the electoral law on political parties, both in terms of representation and in terms of their structure and the fractionalisation of the party system. While these questions will not be neglected in the ensuing discussion, we shall also devote particular attention to the means of determining which candidate (as opposed to which party's candidate) is elected under any given system. In spite of the fact that certain systems do not lend them-

<sup>1</sup> Rae, D. W., *The Political Consequences of Electoral Laws* (New Haven & London (Yale University Press); rev. ed., 1971), p. 5.

selves easily to strict classification, it will be convenient to examine first of all the question of translating votes into seats and deal separately with the question of translating seats into Members.

### 2.1.1. PARTY REPRESENTATION

Different voting systems may be evaluated according to a number of criteria which will change in the light of the demands set by the overall political system. Such demands, for example, may involve facilitating the formation of parliamentary majorities or isolating anti-system parties. It is not the purpose of the present discussion, however, to make value-judgments in this respect. Rather we shall attempt at this point to describe the main aspects of different systems, leaving such judgments as are to be made until a later stage.

Nevertheless, we do require some yardstick with which to measure and compare the different systems from a mechanical point of view. It is unavoidable that this yardstick should be absolute proportionality, that is, the exact mirroring in the number of seats allocated of the parties' support as expressed in the votes cast. It goes without saying that in the absence of differential voting weights for Members – excluded in the usual parliamentary situation – such proportionality can never be achieved. Nevertheless, systems will be classified by the extent to which they depart from proportionality. In doing this, we may talk of the distortion of voter preferences, again without wishing to state or even imply that proportionality is good and distortion is bad.

Voting systems are traditionally grouped in three main families, of which the first two are related, and we do not propose to depart from this practice. We shall first deal with plurality and majority systems, which typically, though by no means always, use single member constituencies for vote aggregation. Then we shall turn to the technically more complex systems of proportional representation which operate, of necessity, where more than one seat is to be allocated per unit of vote aggregation.

#### *Plurality*

The most common form of plurality or *first-past-the-post* system operates in single member constituencies where the voter indicates a

preference for one candidate. The candidate who is "first past the post", i.e. gains more votes than any other single candidate, is elected. As a general rule, this system produces large distortions in the number of seats allocated to different parties. Calculations carried out in the case of the United Kingdom have shown that a cube law can be applied to the relationship between seats and votes such that the ratio between the seats of two given parties is roughly equal to the cube of the ratio between their votes<sup>2</sup>. Theoretically, of course, given widespread geographic homogeneity of voting behaviour, it would be possible for one party to sweep the board with a share of the votes equal to the reciprocal of the number of parties. In general, however, the system awards a bonus to large parties, and an even greater bonus to the party which comes at the top of the poll.

Provided the parties present the exact number of candidates required to take all the seats, plurality can also operate with the same results in multimember constituencies where the voter is entitled to as many votes as there are seats – sometimes referred to as the *block vote*. Only one vote may be given to each candidate, however, and the consequences of variation in the number of candidates offered by each party can be extreme, as well as unpredictable<sup>3</sup>.

Certain modifications may be made to the manner of voting in multi-member constituencies which may mitigate the distorting effects without altering the basic rule of plurality. These can, for example, involve the voter's casting a single, non-transferable vote, his being entitled to a lesser number of votes than there are seats to be filled (commonly one less – known as the *limited vote*), or else the possibility of allocating more than one of his multiple votes to a single candidate (known as the *cumulative vote*). Such systems, however, require the political parties to "play the system" and introduce a degree of chance into the operation of the system which is generally considered unacceptable.

<sup>2</sup> See Kendall, M. G. & Stuart, A., 'Cubic Proportion in Electoral Results', *British Journal of Sociology*, 1, 1950, pp. 183 ff; and March, J. G., 'Party Legislative Representation as a Function of Election Results', *Public Opinion Quarterly*, 21 (Winter, 1957-58), pp. 521-42.

<sup>3</sup> To give one example, a party commanding the support of more than 50% of the electorate could go completely unrepresented if it presented fewer candidates than there were seats to be filled and if its supporters cast their remaining votes for their most preferred opposition candidate.

### *Majority*

Voting systems which require the successful candidate in a constituency to gain an absolute majority of the votes cast fall into two categories. Voters may be asked to indicate their preference for a single candidate in an election of two or more rounds, or else to list the candidates in order of preference in a single round.

In the case of elections of more than one round, rules may vary relating to the elimination of candidates from earlier rounds and to the entry of new candidates. They may additionally involve election by plurality in the final round, where more than two candidates remain. The most common variant involves two rounds; candidates in the second round either have to have achieved a certain percentage of the votes cast (or of the electorate) in the first round or else only the two leading candidates are allowed to proceed to *ballotage*. The *exhaustive ballot* is not used in direct, popular elections.

The *Alternative vote* can be likened, in purely mechanical terms, to an exhaustive ballot in which the bottom candidate is eliminated in successive rounds and his votes transferred to continuing candidates unless the voter decides to abstain. It differs from a multi-round majority election both by preventing the voter from altering his sequence of preferences in successive rounds and by excluding the possibility of intermediate and localised inter-party bargaining and alliances. The vote is cast by placing the figure '1' against the name of one's preferred candidate and continuing to number until one is indifferent.

It is difficult to specify any hard and fast rules as regards the proportionality of majority systems. Experience of their use indicates that they tend to distort seat distribution somewhat less than plurality systems, but it should be noted that their potential for distortion remains quite high. The outcome of the election depends to a significant extent on the scope and nature of electoral alliances between the competing parties – easier to achieve and more necessary than under plurality systems. Smaller parties with homogeneous geographical support do as badly out of majority systems as they do under plurality systems.

In this respect it is worth noting that a number of theoretical objections may be advanced against the elimination of the bottom candidate or candidates if they are preferred to any of the con-

tinuing candidates by more than half of the voters<sup>4</sup>. The same line of argument has led to proposals for a positive and negative vote to ensure the triumph of the centre, but the lack of practical experience of such systems prevents us from making further comment.

### *Proportional Representation*

All systems of proportional representation distort the representation of parties to a certain extent. They rarely operate in comparable conditions in different countries, but it is possible to draw certain conclusions regarding their representativity using a phrase well known to economists – *other things being equal*. Fisichella, in his book *Sviluppo Democratico e Sistemi Elettorali*<sup>5</sup>, finds that “the four main formulae for proportional representation can be placed in the following order of decreasing proportionality: single transferable vote, highest remainder method, d’Hondt highest average method, Lagüe highest average method”. The authors, however, have found that the St. Lagüe method falls in practice between the highest remainder method and the d’Hondt method.

Apart from the formulae used to calculate the allocation of seats, PR systems may be distinguished according to whether they allow the voter to cast votes for more than one party. Let us first of all examine the formulae operating without that added complexity.

By far the most widespread PR method in current use is the d’Hondt method and those allied to it. This method seeks to allocate the seats in turn to the party which would show the highest average of votes per seat if it received the seat. Appendix III demonstrates with a numerical example the various means by which this result can be achieved. The strict d’Hondt method involves dividing the total vote achieved by each party by the numerical series 1, 2, 3 etc. and allocating the seats to the highest figures in the resulting matrix. Alternative methods involve dividing each party’s vote by a fixed electoral quota, by the natural (Hare) quota ( $\frac{\text{votes}}{\text{seats}}$  increased to next

<sup>4</sup> See Van Den Bergh, G., *Unity in Diversity: a Systematic Critical Analysis of All Electoral Systems* (London (Batsford) & Alphen aan den Rijn (Samson); 1955), p. 54.

<sup>5</sup> Fisichella, D., *Sviluppo Democratico e Sistemi Elettorali*, (Firenze (Sansoni); 1970), p. 125.



integer) or by the Droop quota ( $\frac{\text{votes}}{\text{seats} + 1}$  increased to next integer) <sup>6</sup>. The remainders are then disposed of using the highest average principle. It is important to understand that since the distribution of seats using the remainders takes account of the seats already distributed by fixed quota, there is absolutely *no difference* in the final result achieved.

The d'Hondt system departs from strict proportionality in as much as it systematically advantages larger parties at the expense of smaller ones. This is because parties which fail to gain representation or which win few seats tend to have a far higher percentage of "wasted" votes or remainders which were not required in order to gain the seats won. In this respect it should be noted that it is quite possible for the highest average method to allocate more than one seat to a party's initial "remainder" by continuing the d'Hondt division. This premium for the larger parties may be attenuated by modifying the Hagenbach-Bischoff method to allow for only one second stage division of each party's total vote, a possibility which can be carried still further in conjunction with the natural, rather than Droop, quota. Thus, although highest averages would continue to serve as the basis for allocating remaining seats, each party would be limited to receiving no more than one such seat.

An alternative means of distributing the seats is to use the remainders themselves. The votes are divided by a quota such as those referred to above and the remaining seats are then allocated to the parties which have the highest remainders. The importance of this highest remainder method is that it takes no account of the number of seats allocated at the first stage of the calculation and consequently tends not to disadvantage small parties while making it impossible for a large party to win more than one seat from its remainder. The most satisfactory quota is probably the Droop quota, since it is the smallest number which can never allocate more than the number of seats available for distribution. The use of the Imperiali quota <sup>7</sup> with this highest remainder method will usually produce distortion in favour of the largest parties, while the natural quota will tend to advantage the smallest parties.

<sup>6</sup> This is known as the Hagenbach-Bischoff method.

<sup>7</sup> Imperiali quota =  $\frac{\text{votes}}{\text{seats}+2} + \dots$

More neutral in its operation is the St. Lagüe Method of seat allocation. Working along similar lines to the d'Hondt system, St. Lagüe uses only odd numbers as divisors. The essence of the system lies in the fact that the distance between zero and one is half the distance between the remaining divisors. Thus, with increasing size, parties must have a higher average number of votes per seat, even though the seats after the first require the same net increase in voting strength. The system thus tends initially to disadvantage the larger parties, though this tails off rapidly as the overall number of seats increases.

The St. Lagüe method is also known as the least squares method because it seeks to minimise the sum of the squares of the error terms, i.e. the difference between the actual seat entitlement and the pure proportional entitlement (including fractions of seats). It is thus the method which, above the minimum level required for representation, would be considered to be the most mathematically proportional. In its practical application, the first divisor may be raised, generally to 1.4, in order to reduce the ease with which small parties otherwise acquire representation.

Finally we turn to the *Single Transferable Vote*. All systems discussed so far involve what Rae refers to as a "categorical ballot structure"<sup>8</sup>, that is to say where the voter is required to give his vote to a single party, whether it be by voting directly for that party and its list or by voting for one of that party's candidates. The single transferable voting method allows the voter to place candidates in order of preference, a subject which will be further examined when we turn to the election of candidates, but it also allows the voter to cast his vote for more than one party; the ballot structure is "ordinal".

For the purposes of initial comparison, we must assume highly disciplined party voting under STV.

In other words, we must discount, for the moment, the possibility of a voter's not voting initially for all his party's candidates. This is effectively the same as a system where the voter is asked to place each party – as opposed to candidate – in order of preference. Using the Droop quota, a number of seats is assigned to each party in what amounts to the same procedure as used in the Hagenbach-Bischoff or highest remainder formulae. The importance of an ordinal voting method lies in the treatment of the remainders –

<sup>8</sup> Rae, D. W., *op. cit.*, pp. 16 ff.

what, in the standard STV system, are known as "terminal transfers"<sup>9</sup> Rather than use an arithmetical method of allocating seats to remainders, the placing of parties in order of preference allows non-utilised votes to be transferred to the next available preference. The party with the lowest remainder is eliminated and the value of its surplus (remainder) is transferred to the other parties, and so on, such that seats continue to be allocated to full quotas. Only the last seat may be allocated to the party with the largest remainder when all but two parties have had their surpluses eliminated and there are insufficient transferable votes. Even this can be avoided by the introduction of a diminishing quota<sup>10</sup>.

Thus, the number of wasted votes contained in the remainders to which additional seats have not been allocated is reduced to a minimum by using the expressed preferences of the voter rather than a more or less biased arithmetical formula.

Exactly the same result may be achieved by a system of *apparentements* between parties, where the transfer of a party's surplus is decided by the party itself. While *apparentements* have tended to be looked at as a means of unfairly influencing electoral results, it should be noted that, provided such decisions are made public before voting takes place, it can easily be argued that this method of dealing with the remainders is more just than one of the arithmetical varieties.

Before passing on to the question of determining the candidates to be deemed elected, we must say something about the possibilities of the elector's vote being split between parties. While this question is of equal, if not greater, importance at the candidate level, it cannot be neglected when considering party competition.

It is clear that ordinal voting allows the voter to cast his vote for more than one party. From a theoretical point of view, however, we must separate the question of terminal transfers, which we have already discussed, from the question of interim transfers. The former only become of interest where the party has won all of its original "quota seats". The latter are important in as much as they allow support to be transferred to another party *before* all the quota seats have been allocated. Interim transfers only become arithmetically

<sup>9</sup> For an insight into the operation of STV in a highly polarised electorate, see Laver, M., 'On Introducing STV and Interpreting the Results: the Case of Northern Ireland, 1973-75', *Parliamentary Affairs*, XXIX, no. 2, Spring 1976.

<sup>10</sup> See Van Den Bergh, G., *op. cit.*, Appendix V.

operative, however, when all of the party candidates higher up in the voter's preference schedule have either been elected or eliminated. Consequently, it is impossible for us, or indeed the voter, to predict when such transfers might become operative. It is therefore natural, while noting the possible effect on overall seat distribution in cases of large scale defection, to take this aspect as involving personal rather than party considerations.

The same does not hold in the case of cross-party voting under categorical systems. Cross-party voting is usually only combined with a form of preferential voting for the candidates, where the elector has a number of votes equal to the number of seats to be allocated. The possibility of *panachage* makes it easy for the voter to distribute his support between two or more parties. Unlike the position under STV, however, *panachage* necessarily influences the initial distribution of seats, since the votes will be added to party totals irrespective of whether they become operative at candidate level. *Panachage* has no additional effect at the stage at which seats are allocated to remainders.

In conclusion, we may say that with the possible exception of the St. Lagüe system, which could, under extreme circumstances, allocate a very large party fewer seats than there are natural quotas contained in its total of votes, the essential difference between methods of PR lies in their treatment of remainder or surplus votes. No system is perfect, and they all depart from absolute proportionality to a greater or lesser extent. In terms of votes cast and not utilised to achieve a candidate's election, so-called wasted votes, the highest average method leaves the most, followed by the Lagüe and highest remainder methods<sup>11</sup>, followed by the ordinal ballot. It is no coincidence that the percentage of wasted votes corresponds to our original rank ordering of systems according to their degree of proportionality.

### *Constituency size*

We have now examined the major voting systems according to the formulae which they use to distribute seats and have compared

<sup>11</sup> In the favour which they show to large or small parties, the variants of these two methods may be roughly ranked as follows (from larger party benefits to smaller party benefits): Modified St. Lagüe (divisor 1.4), Highest Remainder with Droop Quota, Unmodified St. Lagüe, Highest Remainder with Natural Quota.

the PR systems, in particular, according to the extent to which each one departs from absolute proportionality *ceteris paribus*. In practice, other things are never equal and perhaps the most important variable in terms of its effect on representation is the size of the constituency. By this we do not mean the geographic area covered by a constituency, but the number of seats to be distributed per unit of aggregation. This is what Rae refers to in his book<sup>12</sup> as district magnitude.

Let us be more specific. We are not concerned here with the areas within which candidates or lists are proposed and within which the electors vote. The sole criterion affecting the proportionality of the different systems is the level or levels at which votes are aggregated in order to determine seat distribution. While these will frequently coincide with the areas which serve for candidacy and voting purposes, this is by no means always the case.

We have already pointed out that plurality and majority systems normally operate within single member constituencies. No calculations take place which alter the level of aggregation from the individual constituencies, except in the case of "complex" systems, which are examined below. It is possible, however, to operate plurality and majority systems in multi-member constituencies. In plurality systems this usually takes the form of multiple 'X' voting (the block vote) while in majority systems voting is between lists of members. Mathematically, there is no difference in the operation of single and multi-member constituencies. Assuming that the number of members is more or less constant in a given geographical area, however, the consequences of multi-member constituencies may be severe.

If increasing the district magnitude is synonymous with reducing the overall number of districts, it will tend to increase the distortion caused by majority and plurality formulae. We have drawn attention to the extreme case of a single party winning all the seats with a popular vote equal to the total vote divided by the number of parties. This would be much nearer reality if all the Members of a Parliament were elected in a single constituency. That plurality systems do not cause distortion to such an extent is due solely to localised variations from average voting patterns. The smaller the number of

<sup>12</sup> Rae, D. W., *op. cit.*

constituencies, however, the smaller the potential for deviation from the mean, hence the greater potential for distortion.

In short, we may say that under plurality and majority systems, increasing district magnitude, if unaccompanied by a proportionate increase in the members of the body to be elected, will tend to increase the distortion caused by such systems when translating votes into seats. The only case in which this would not necessarily be true is where increased district magnitude corresponded to the introduction of a single, limited or cumulative vote.

Systems of proportional representation respond quite differently to variations in district magnitude. It does not require a great deal of thought to understand that increasing the number of seats to be allocated makes it a simpler task to distribute seats among the parties more nearly in proportion to their popular support. At the same time, however, the benefits of increased district magnitude may be counterbalanced by the system-based potential for distortion.

To turn once more to Rae<sup>13</sup>, we find that "the proportionality with which legislative seats are allocated increases in relation to the magnitude of electoral districts: the higher the magnitude, the greater the proportionality". The extent to which proportionality can be achieved with different district magnitudes depends on the number of parties contesting the election since, again fairly obviously, the number of seats required for a given degree of proportional distribution is greater where the number of parties is higher. In general, it may be said that greater proportionality is achieved in two ways. Firstly, because the electoral quota represents a smaller percentage of the total vote, a larger proportion of the seats can be allocated to the parties at the first stage, before beginning distribution on the basis of remainders. Secondly, small parties which fail to gain sufficient votes to win a single seat will find it easier to secure representation as district magnitude increases. All in all, the number of votes wasted is minimised.

It is equally important to note another of Rae's propositions in respect of district magnitude, namely that «the positive relationship between proportionality and district magnitude is curvilinear: as district magnitudes increase, proportionality increases at a decreasing rate»<sup>14</sup>. We would suggest that beyond a certain point, dependent

<sup>13</sup> Rae, D. W., *op. cit.*, Chapter 7, pp. 114-25.

<sup>14</sup> Rae, D. W., *op. cit.*, Differential Proposition Eleven.

on the number of parties and the size of their vote, the process may actually go into reverse, the advantages of more even spread being overtaken by the distortions inherent in the particular system. We cannot draw any conclusions here as to the optimum constituency size, except to agree with Rae that, from the point of view of increased proportionality, there is not a great deal to be gained by raising district magnitudes substantially beyond ten to twenty.

It should be noted at this point that large district magnitudes are in practical terms only compatible with categorical or ordinal voting systems which require the voter to choose between parties and have difficulty in accommodating forms of preferential voting for candidates. This is particularly true of the standard form of STV which becomes very cumbersome in constituencies larger than about ten. Thus, while STV was found earlier to be the most proportional system, *ceteris paribus* in its operation, the fact that the potential for distortion of different district magnitudes is generally greater than that of different PR systems gives those systems applicable to the largest constituencies a much greater potential for proportionality. As Rae points out, "larger magnitudes of, say, fifteen seats, will allow even less precise formulae to approximate proportionality rather closely" <sup>15</sup>.

The consideration of constituency sizes or levels of aggregation would not be complete without a word about those systems which operate on more than one level, i.e. where seats are allocated according to more than one set of calculations. If the computations at higher levels take no account of seats already allocated at lower levels and are solely concerned with the distribution of a fixed number of seats, one must consider the system to be a mixed one. Its overall proportionality will depend on each method of computation.

On the other hand, the system may involve the distribution of a fixed or variable number of seats (whether additional or not) at higher levels, taking into account those already allocated to the parties at the lower level or levels. A sufficient number of seats at the highest level, barring the unusual distortion of an *Überhangmandat* <sup>16</sup> in the case of lower level plurality/majority, will always ensure that the system as a whole functions according to the electoral formula

<sup>15</sup> Rae, D. W., *op. cit.*, p. 119.

<sup>16</sup> See discussion of the FRG electoral law below, p. 65.

which is superposed (for which only PR list methods are suitable). If a fixed number of seats are to be allocated at that level, the required number will depend on the degree of distortion inherent in the system or systems used at lower levels. The district magnitude may be considered in this case as the total number of seats already allocated together with the total of the additional seats. In spite of possible appearances to the contrary, the lower level system or systems are only operative in the allocation of party seats to individual candidates, the distribution of seats to parties having been determined by the superposed electoral formula.

Thus we may conclude that the proportionality of different formulae depends to a remarkable extent on the number of seats to be allocated within each unit of aggregation. In as much as the implications for the proliferation and fractionalisation of parties depend on the level of proportionality, it will be important to bear this fact in mind as we now go on to discuss the repercussions of electoral systems on the party system.

### *Political Parties*

The question of the influence which electoral systems have on the political parties, and particularly the number of political parties, is one which has concerned almost every writer on this subject. Various approaches have been adopted and none has secured universal agreement. This is primarily due to the difficulty of isolating the electoral system as a factor influencing party formation or proliferation, the impossibility of controlling for all the other independent variables. Two further caveats must be added to our own discussion in so far as it may provide lessons to be drawn in relation to the European Parliament. Firstly, the available literature has been concerned almost exclusively with party systems affected by the need to form or approve governments and to adopt legislation — a factor clearly absent from the European Parliament. Secondly, elections to the European Parliament will take place in an already highly structured situation as far as national parties are concerned, so that the question of effects at the European level are unable to be considered in isolation.

Having expressed the possible pitfalls, however, it does seem that certain comments can be made regarding the more "objective" implications of different voting systems. There may, after all, be a deal



of truth in Rae's non-verifiable "speculation" that "the perceived effects of electoral systems may be just as important as their actual consequences... The idea that an electoral system refuses representation to small parties becomes a self-fulfilling hypothesis, because it causes leaders of small parties – or persons tempted to form them – to conclude that they cannot hope to gain representation" <sup>17</sup>.

### *Plurality*

It is commonly agreed that the use of plurality systems is both a factor encouraging the development of an essentially two-party system and a strong disincentive to the multiplication of parties. It is fairly clear why this should be the case. The formation of large parties will maximize the benefit accruing from the distortion which the system causes. The splitting of parties will split the vote and advantage the opposition. A premium is placed on electoral alliance and party unity.

### *Majority*

The Alternative vote appears in practice to function in the same way as plurality systems <sup>18</sup>. Provided there is an electoral alliance between parties on transfer strategy, however, there is no overriding reason why the system should discourage party proliferation. The main unknown is the extent to which voters would transfer according to party instructions, but this might be counteracted by the acquisition of additional votes or of transfers from other parties which might otherwise have been non-transferable.

The Alternative vote certainly does not allow the same scope for localised alliances as the *double ballot*. In the latter case, the pre-requisite for a multi-party system would appear to be the ability of allied parties to trade districts among themselves between the first and second rounds.

Duverger suggests that the double ballot must encourage the proliferation of parties <sup>19</sup>. Rae <sup>20</sup> adds two conditions for such a

<sup>17</sup> Rae, D. W., *op. cit.*, p. 79.

<sup>18</sup> *Loc. cit.*; Similarity Proposition Seven.

<sup>19</sup> Duverger, M., *Political Parties* (New York (Wiley); 1954), p. 205.

<sup>20</sup> Rae, D. W., *op. cit.*, p. 110.

causal relationship, while Fisichella <sup>21</sup> thinks that the system is non-operative. It appears to us that the only objective reason why the double ballot should have greater fractionalising influence than the Alternative vote is the greater ease with which alliances can be concluded involving the withdrawal of an electorally stronger party in favour of an electorally weaker one. In the same way, the Alternative vote might be felt to impede fractionalisation by systematically disadvantaging the weaker of the two allied parties.

We must conclude, in common with Fisichella, that the double ballot is unlikely to cause proliferation but equally unlikely to prevent it, while the Alternative vote will discourage the formation of smaller parties if they have geographically homogeneous support. Both systems, due to their elimination of the smallest parties first, will tend to discourage extreme fractionalisation.

A further comment must be made in relation to the representation of so-called anti-system parties, notably Communist parties. The use of the double ballot has been advocated as a means of systematically distorting the results against such a party, so long as more than half the electorate were opposed to it. For this to be fully achieved, a single candidate in opposition would normally have to be presented to fight the anti-system candidate in the final round. This would automatically be the case using the Alternative vote, though the absence of the finality of ballotage could induce more voters to transfer to the anti-system candidate. This discussion can be formulated in more general terms by the proposition that majority systems will tend to disadvantage those parties which are actively disliked by a majority of the voters.

### *Proportional Representation*

The literature on systems of proportional representation once again disagrees as to the effects of its introduction and use. Some authors consider it to be the cause of party proliferation while others think that it is non-operative.

It cannot be denied that the party systems in countries where PR formulae operate tend to be more fractionalised than those where plurality systems are in use. There are some countries, nevertheless,

<sup>21</sup> Fisichella, D., *op. cit.*, p. 208.

where PR is not accompanied by such fractionalisation. The conclusion drawn by Sartori<sup>22</sup> is that "extreme pluralism follows from a *nonsequential timing* in the adoption of proportional representation and is aggravated whenever enfranchisement and proportional representation are injected more or less simultaneously into an atomized party system. Under these circumstances a feeble party system is combined with a feeble electoral system and the situation gets out of control".

Many systems of PR, as we have pointed out, tend to produce a slight bonus for large parties. The most notable exceptions are the highest remainder system using the natural quota and the unmodified St. Lagüe system, which are those systems most favouring the small parties. In the case of party splits, however, both these formulae may either advantage or disadvantage the parties thus formed as compared to their prior performance as a single party. Thus, it is difficult to state with conviction that either system favours party fractionalisation. Under the St. Lagüe system, any incentive to split is likely to be most strongly felt among parties with only a few seats because of the steep initial rise in the average cost of a seat.

On the other hand, the d'Hondt system will provide a slight disincentive to party multiplication because of the tendency of such multiplication to increase wasted remainders. The same might be said of ordinal party voting due to greater chances of terminal transfer "leakage" to other parties. STV is totally inoperative at the party level so long as the party vote is not reduced below a single quota.

In all cases, the approximation of a system to absolute proportionality will be the measure of its "inoperativeness" on the party system. The very weak effects of all PR systems compared to plurality lead to the general finding that PR systems have no significant effect on fractionalisation; they neither encourage it nor act as an obstacle to it.

At the same time, it is important to understand that all systems in operation will involve the ultimate obstacle to fractionalisation, that is to say non-representation. This will vary according to the system used, to the number of parties contesting an election, and to

<sup>22</sup> Sartori, G., 'European Political Parties', in La Palombara, J. & Weiner, M., eds., *Political Parties & Political Development* (Princeton, New Jersey (Princeton University Press); 1966), p. 169.

the district magnitude. It may be inherent in the system itself or it may be fixed at a specific level by different electoral laws. Before ending our examination of the effects on parties, we must turn to the question of minimum thresholds of representation.

### *Thresholds of Representation*

In the operation of electoral formulae, two types of threshold must be distinguished. There is a minimum proportion of the votes, below which it is impossible for a party to secure any representation. This threshold, commonly known as the "threshold of representation"<sup>23</sup>, we shall refer to as the minimal threshold. It is generally a function of both the computational formula and the number of parties contesting a given election. It assumes the distribution of wasted votes among other parties most favourable to that party seeking representation.

Above this threshold is a grey area, where a party may or may not acquire a seat with given electoral support. There is then a maximal threshold, otherwise known as the "threshold of exclusion"<sup>23</sup>, beyond which a party is certain to be represented. This threshold, which assumes the distribution of votes most unfavourable to the party seeking representation, can be fixed independently of the number of parties. In some systems, however, the maximal threshold will effectively be reduced when the number of parties drops below the number of seats to be allocated (intermediate maximal threshold).

The following are the thresholds associated with the different systems<sup>24</sup>. V represents the total poll; S represents the number of seats (district magnitude); P represents the number of parties. Capital letters refer to the election as a whole taken over all the districts; lower case refers to a single district.

It can clearly be seen that the major difference between the systems of proportional representation lies in the level at which they set

<sup>23</sup> See Rae, D. W., Hanby, V. & Loosemore, J., 'Thresholds of Representation and Thresholds of Exclusion: An Analytic Note on Electoral Systems', *Comparative Political Studies*, 1971, no. 3, pp. 479-488.

<sup>24</sup> Some of these figures, together with others relating to "payoff functions", i.e. votes required to gain seats subsequent to the first, can be found in the extensive treatment given to the subject by Arend Lijphart and Robert W. Gibberd in 'Thresholds and Payoffs in List Systems of Proportional Representation', *European Journal of Political Research*, vol. 5, no. 3, 1977, pp. 219-244.

TABLE 1

System	Minimal Threshold	Intermediate Maximal Threshold *	Maximal Threshold
Plurality ( $s=1$ or block vote)	$\frac{v}{p}$	—	$\frac{v}{2}$
Majority ( $s=1$ or list vote)	$\frac{v}{2}$	—	$\frac{v}{2}$
d'Hondt (and allied systems)	$\frac{v}{s+p+1}$	—	$\frac{v}{s+1}$
Highest Remainder (Natural Quota)	$\frac{v}{sp}$	$\frac{v(p-1)}{sp}$	$\frac{v}{s+1}$
Highest Remainder (Droop Quota)	$\frac{2v}{(s+1)p}$	$\frac{v(p-1)}{(s+1)p}$	$\frac{v}{s+1}$
Highest Remainder (Imperiali Quota)	$\frac{3v}{(s+2)p}$	$\frac{v(p-1)}{(s+2)p}$	$\frac{v^{***}}{s+2}$
St. Lagüe	$\frac{v}{2s+p-2}$	$\frac{v}{2s-p+2}$	$\frac{v}{s+1}$
Modified St. Lagüe	$\frac{1.4v}{2s+1.4p-2.4}$	$\frac{1.4v}{1.6s-2p+1.6}$ (A)	$\frac{v}{s+1}$
		$\frac{1.4v}{2s-p+2.4}$ (B)	
STV	$\frac{v^{**}}{s+1}$		$\frac{v}{s+1}$

\* The intermediate maximal threshold applies where the number of parties falls to the level indicated in relation to the number of seats:

Highest Remainder (Natural Quota)	$p-1 \leq s$
Highest Remainder (Droop Quota)	$p-2 \leq s$
Highest Remainder (Imperiali Quota)	$p-3 \leq s$
St. Lagüe	$p-1 \leq s$
Modified St. Lagüe	(A) $\frac{s}{2} \leq p-1 \leq s$
	(B) $p-1 \leq \frac{s}{2}$

\*\* The minimal, and indeed intermediate maximal threshold, will be somewhat reduced in practice by the incidence of non-transferable votes. Total non-transferability would have the effect of reducing the thresholds to the levels indicated for the Highest Remainder method using the Droop quota ( $\frac{v}{s+1} + \dots$ ).

\*\*\* Applies only where division by quota does not allocate  $s$  seats.

the minimal threshold. STV, assuming that the system of transferability is exploited, sets the highest absolute threshold, though it can and does award seats to parties whose initial vote was much lower. It is followed by the d'Hondt method, then St. Lagüe, then the highest remainder method. Rokkan interprets the geometric function of the latter as "a direct invitation to party fragmentation, since the threshold decreases rapidly with increases in the number of parties"<sup>25</sup>. Certainly, that system, followed by St. Lagüe, is particularly favourable to the incursion of new parties where the number of existing parties is already high. It is interesting to note that the lowering of the initial quota in the highest remainder system has the opposite effect of raising the minimal threshold and can be used to mitigate the multiplicative effect to which Rokkan refers.

As far as the absolute maximal threshold is concerned, it is fixed at the same level of  $\frac{v}{s+1}$  for all PR systems if the anomaly of the Imperiali system is discounted. Below the level at which the intermediate maximal threshold takes its place as the operative threshold, a smaller number of parties will not only raise the minimal threshold but will, in addition, lower the maximal threshold.

On the face of it, plurality and majority systems are much less conducive to the incursion of new parties. This impression can be shown to be misleading if we return to our previous remarks about district magnitude and the assumption of a fixed number of parliamentary seats. If increased district magnitudes under PR are a corollary of a smaller number of constituencies than in first-past-the-post, then it can be seen that PR will not prevent the incursion of parties with geographically homogeneous support while first-past-the-post will reduce the minimum threshold drastically for geographically isolated parties. For example, with a hundred Members to elect, 100 single member constituencies will give a minimal threshold of  $\frac{v}{100P}$  while with 10 ten-member constituencies d'Hondt will give

$\frac{v}{(10 + P - 1) 10}$  With four parties, a new party could gain a seat with  $\frac{1}{400}$  of the total vote under plurality but would require  $\frac{1}{130}$  under

<sup>25</sup> Rokkan, S., *Citizens, Elections, Parties* (Oslo (Universitetsforlaget); 1970), p. 160.

PR. The maximal threshold will remain at  $\frac{1}{2}$  in the former and at  $\frac{1}{11}$  in the latter case<sup>26</sup>. Taking an election over all the constituencies in this way, increasing constituency size in PR systems will raise the minimal threshold while lowering the maximal.

The ease with which parties may secure representation under PR systems may be attenuated or reversed by fixing a minimum threshold in the electoral law. These usually have the effect of raising the minimal threshold so as to deter the development of new parties. They may additionally be fixed as a percentage of the electorate rather than simply of the votes cast. They take the form of the exclusion of a party from the distribution of "remainder" seats if it polls below a certain percentage of the quota or else a modification of the divisors, e.g. the first divisor in St Lagüe becoming 1.4. They may also exclude parties *a priori* if they fail to poll a certain percentage of the national vote. Where the threshold fixed by law exceeds the maximal threshold inherent in the system, it will prove an important obstacle to fractionalisation.

Thresholds are commonly used in the double ballot system but have no operative effect in respect of fractionalisation, unless they are linked to computations involving a superior level of vote aggregation.

We may summarise our conclusions as follows. Plurality and majority systems distort the representation of parties by awarding large bonuses to the first and lesser bonuses to the second main parties. Plurality tends to manufacture a one-party seat majority where none was present in the vote. Plurality and majority systems operate mainly in single-member constituencies. They form an obstacle to the proliferation of parties but favour the incursion of geographically concentrated parties. The potential for distortion is greatest when plurality is introduced to a multi-party contest.

Systems of proportional representation approximate absolute proportionality but discriminate between parties in different ways, according to their formula. In general they do not encourage party proliferation, but neither do they prevent it. Proportionality is approached more nearly and party systems become more fractionalised when constituency size is increased. The different systems may be

<sup>26</sup> Intermediate maximal thresholds apply in other than highest average systems.

listed in the following descending order as regards the likelihood of their being associated with fractionalisation: Highest Remainder (Natural Quota) & St. Lagüe; Highest Remainder (Droop Quota) & Modified St. Lagüe; d'Hondt and allied systems; STV. This may be significantly altered by the modification of thresholds. In the absence of fixed thresholds, proportional systems will impose higher thresholds than plurality/majority systems on geographically localised parties and lower thresholds on parties with homogeneous geographical support.

### 2.1.2. DESIGNATION OF ELECTED CANDIDATES

The process by which seats are allocated to individual candidates is one which has not attracted a great deal of attention from experts on electoral systems. This is understandable when dealing with established national systems. Parties are the main actors affected by election outcomes and there is ample evidence to show that, even in the absence of list voting, the elector identifies primarily with a party.

We are now dealing with the introduction of a voting system to a situation where the principal actors are, as yet, undefined. National party systems are well-established and may be characterised by greater or lesser stability. The major parties have formal selection procedures, which have either been built up by the parties themselves or are regulated by law. Co-operation between parties at the European level is, however, ill-defined, and any moves towards closer alliance are no more than embryonic.

In such circumstances, it is pertinent to examine the extent to which different systems require the selection of candidates to have been undertaken before the election takes place. How much influence does the elector have over the choice of the elected Member; what are the chances of the individual candidate? We do not propose to examine the ways and means used by parties internally for the selection of candidates. Neither shall we be concerned with the possibility of American-style primaries. Our comments will be confined to the capacity of different voting systems to accommodate voter choice.



### *Plurality*

It goes without saying that the operation of plurality systems in single member constituencies allows the voter no influence whatsoever in the choice of Member. Candidates may well be chosen for their personal appeal, but the system does not admit a choice between more than one party candidate. At the same time, the system imposes no centralised selection process and this can be carried out at constituency level. First-past-the-post elections place a penalty on individual candidacies which may split the party vote.

Plurality voting in multi-member constituencies allows the voter a certain degree of influence, but the nature of the system will mean that the exercise of such influence will disadvantage the party.

### *Majority*

Majority systems as they are usually operated allow the voter no more choice than plurality systems. The fact that a party normally presents one candidate in a single member constituency is not necessarily preconditioned by the system. The double ballot will discourage the presentation of more than one candidate if it operates a high first-round threshold for candidates to enter the second round. There is no reason, however, why the more exhaustive rules of the Alternative vote should disadvantage a party or alliance which presents more than one candidate. In this case the voter would be given a say in the election of a particular candidate from his party.

### *Proportional Representation*

A number of systems have been developed which allow the voter to influence the election of particular party candidates in conjunction with PR systems. The extent to which this is positively required of voters depends on the particular method adopted. It will be convenient, as when we were discussing party representation and STV, to look first of all at the influence which a voter for a particular party can have over the order in which that party's candidates are elected. We shall then consider the effects of cross-party preferential voting.

*Intra-party preferences*

Whether we talk about list systems or personal systems, the means of their operation can, for ease of understanding, be assimilated into a single model. That model, as we tried to show earlier, involves the attribution of seats, at a first stage, according to the number of quotas which a party's vote contains. Let us consider the party list rather as a preference schedule. It is a list of the party's candidates in the order in which the party would like them to be elected. We can say that voting for a list, although the voter may object to its order, he is nevertheless voting for the party's preference schedule. The significance of this is that we can envisage the allocation of list seats in exactly the same way as under a system of ordinal voting. Each candidate is deemed to be elected when he has reached one full quota, and his surplus is then transferred to the next candidate in accordance with the wishes of the voter. Thus, all of a party's list votes go to the candidate at the head of the list, if he receives the quota, that quota is subtracted from the total vote and the remainder or surplus is then transferred on down the list. This process continues until one candidate is left who gains less than the quota. Whether he is elected or not is determined by the rules of the system for treating party remainders.

This is basically what happens when the list is blocked. The order of a blocked list has to be fixed at the level of the constituency used for voting purposes (not equivalent, necessarily, to the district magnitude), or at a higher level. It has been criticised for being too centralised and this has been met by the adoption of a number of means whereby the voter may influence the way in which surpluses are transferred.

Means to this end depend on whether the ballot is categorical or ordinal. The most usual form is the single preferential vote. This may be exercised by marking a cross, writing in a name, or underlining a name. Other systems involve a negative vote, i.e. crossing out a name, a multiple preferential vote (no more than one per candidate) or a cumulative preferential vote (more than one to be allocated per candidate). The most highly developed form of intra-party preference scheduling is the writing-in of candidates, names to be treated in order of preference or else the ordinal ballot.

An extensive examination of different methods here would serve little purpose. The crucial questions in all the systems, however, are

firstly whether it is possible to vote for a list without indicating a preference, and secondly how the "list votes" are treated for the purpose of transfers. If it is not possible to vote for a list, the method of proceeding depends on whether the preferential votes are categorical or ordinal. In the former case the order of candidates is determined by what is analogous to a plurality voting system using one of the non-block votes in a multi-member constituency. In the latter case it is determined by proportionality, that is to say an intra-list quota is fixed and successful candidates are determined by the transfer of votes according to the voter's preference schedule. In these cases, the election of the particular candidates is therefore totally dependent on *all* of the voters.

Where list voting is possible, two solutions may be adopted. Firstly, list votes may be ignored for the purpose of allocating seats to candidates by proceeding as in the previous example. This is open to the objection that the transfer of the list votes is effectively decided by the non-list voters. The determination of the candidates to be deemed elected is totally dependent on *some* of the voters.

Secondly, the list votes may be treated as votes for the party's preference order, and transferred down the list to bring the candidates in order up to the quota. The election of candidates is therefore partly dependent on the party and partly dependent on those voters who disagree with the party. Experience has shown that the latter possibility is very rarely operated by voters to the extent necessary to alter the party's own order.

### *Cross-party preferences*

Systems could be operated which, in conjunction with party lists, allowed the voter to preference schedule every party's candidates. It is generally accepted, however, that the use of a preferential vote for more than one party involves a partial or total transfer of one's vote to that party.

In categorical systems, this is generally known as *panachage* (see above). While panachage is combined with intra-party preferential voting it has entirely different consequences. They are of relatively little importance if party schedules are taken into account in the designation of Members. If only preferential votes determine the list order, however, panachage can be operated by a relatively small number of opposition voters to "decapitate" a party's list, i.e. to

secure the election of a party's less able candidates. The other type of list voting is that of the voter's drawing up his own list from the candidates offered. Such a system involves a different type of ballot but changes nothing if "nominative votes" are counted for the party of the candidate in question, irrespective of the fate of the personal list.

The most satisfactory form of cross-party voting is undoubtedly the single transferable vote. It may be combined with a regulation compelling the voter to confine his preferences to one party at a time, but its normal operation allows the voter to switch between parties at will. The system still operates on the basis of transferred votes. The surplus votes of each elected candidate are transferred according to the wishes of those who voted for that candidate. When all available surpluses have been transferred, the weakest candidate is eliminated and his votes transferred to their next preference. A candidate is deemed elected as soon as he reaches the quota. The essence of STV is that the vote cannot count against the voter's preferred candidate or candidates, a factor which is absent from other systems. No subsequent preference can jeopardise the chances of a candidate already voted for. The voter may thus, if he wishes, exercise total control over the transfer of his own vote, a possibility which is not given him by categorical systems. He is entirely free of any predetermined order of election.

A whole range of possibilities exists between blocked lists, where the party has full control over the individuals elected, and STV, which gives the voters a great deal of that control. Here we should not forget the importance of the form of the ballot paper itself. Whether there is a single ballot paper or a number of separate list ballots depends to a large extent on the options available to the voter when casting his vote. Nevertheless, even with STV, the parties' influence can be considerably enhanced by separating into "lists" the candidates belonging to each party and secondly by listing candidates on the ballot paper in the order determined by the party<sup>27</sup>.

Studies of ordinal system elections have shown that the position of a candidate on the ballot paper does have an influence on the result<sup>28</sup>. Parties may further ease the task of the disciplined party

<sup>27</sup> See Van Den Bergh, G., *op. cit.*, Chapter IV, for a full discussion of this question.

<sup>28</sup> See, for example, Robson, C. & Walsh, B., 'The Importance of Positional Voting Bias in the Irish General Election of 1973', *Political Studies*, XXII no. 2, June 1974.

voter by issuing "How to Vote" cards. Finally, nothing rules out a flexible combination of methods of seat allocation corresponding to the wishes of each party.

### *Voting districts and levels of vote aggregation*

It is not uncommon for proportional systems to combine centralised vote aggregation with decentralised candidate selection. Candidates are presented and voted for in voting districts which are then combined into one or more groups for the purpose of allocating seats to parties. Once the number of party seats has been determined at this higher level of aggregation, the distribution of seats among voting districts is decided, using one of the methods of proportional representation. This process can be likened to district lists competing among themselves for party seats in the same way as different parties competed for their own allocation. Such a system enables the decentralisation of the selection process and the attachment of elected Members to a smaller geographical unit. It also encourages the candidates to "get the voters out" because of the bonus that high turnout will give in the competition for party seats.

### *Complex systems*

It is impossible here to detail the precise effects of every type of complex system on the designation of the elected Members. One or two pertinent comments may nevertheless be made. We have already stated that the distribution of seats to parties will, under normal circumstances, correspond to the operation of the superimposed electoral formula. It would appear that the determination of the successful candidates will correspond to the operation of the lower-level electoral formula(e). The effects of any lower-level formula may be mitigated by the use of a list – or set of lists – operating at a higher vote aggregation level (see above). This will involve a more centralised candidate selection for the higher level. The provision of a vote for different levels may additionally incorporate any of the preferential voting methods already discussed.

Where proportional systems are combined at different levels, the slight distortion present will be virtually non-operative as regards preferential voting. When plurality systems are used at the lower level, on the other hand, the operation of the plurality rules will

distort the determination of the elected Members. Thus, a single vote in single-member constituencies can be likened to voting for a list with a compulsory preferential vote for one candidate. Votes to be cast at different levels will give the voter the choice of voting for the list, casting a directed preferential vote for one party candidate, or casting a single vote which might be called directed panachage, to influence the order of election of another party's candidates. It seems unlikely that the elector will fully appreciate the implications of his lower-level vote.

From all that has been said, it is clear that the range of choices for electoral engineering is wide. There is no ideal model. Different systems can be adopted and combined to form models which may be suitable for use in the case of direct elections to the European Parliament. As with any type of engineering, however, there are certain parts which will not fit together and certain compromises must be found.

We have examined mainly the technical aspects of the different systems as they may be operated in conditions of "perfect competition". It goes without saying that most systems, particularly those which operate in small constituencies, and most of all single-member constituencies, are subject to the vagaries of imperfect implementation. We shall now go on to look at the systems which nine Member States put into practice in their national elections.

## 2.2. NATIONAL VOTING SYSTEMS OF THE NINE

In this section we shall examine the voting systems currently in use in the nine Member States of the European Communities. We shall confine our attention to the systems of direct election used in national as opposed to local elections and, in general, to that system used in elections to the lower house of each national parliament. In some countries, however, the nature of the particular bicameral parliamentary system will lead us to discuss the voting systems used in elections to both houses.

At this stage, we shall not examine any aspect of the wider electoral system which is not strictly relevant to the choice of a particular voting system. Thus we shall analyse each national electoral system in the light of those questions discussed earlier in our examination of major voting systems. In this respect, rather than take each country in turn in alphabetic order, it seems more appropriate to follow the pattern of the first section of the chapter, taking plurality and majority systems first, through simple proportional systems to complex systems operating on more than one level<sup>29</sup>.

### 2.2.1. SIMPLE PLURALITY – UNITED KINGDOM

The United Kingdom operates a system commonly known as “first-past-the-post” for elections to its parliament. For this purpose,

<sup>29</sup> An alphabetical order, with an arrangement directed at quick comparison of points of detail rather than at giving global impressions, was followed by some of those concerned with the present book, together with other contributors, in a publication of 1979. English edition: Hand, G., Georgel, J. and Sasse, C., *European Electoral Systems Handbook* (London (Butterworth); 1979). German edition: Sasse, C., Georgel, J. und Hand, G., *Das Wahlrecht der Neun* (Baden-Baden (Nomos); 1979). French edition: Georgel, J., Hand, G.-J. et Sasse, Ch., *Les Régimes Electoraux dans la Communauté Européenne* (Paris (Cujas); 1979).

the country is divided into 635 single-member constituencies. In each constituency, the voter is presented with a ballot paper bearing the names of a number of individual candidates, mostly supported by a given party, and indicates with a cross his preference for one or other candidate. The preferences for each candidate (party) are added up and the one with the highest number wins the seat. The size of each constituency is based on a number of considerations, the main one being the electorate. In practice, there is wide variation in constituency size.

The general characteristics of the United Kingdom system correspond to those described for plurality systems in the first part of the chapter. There is a considerable bias in favour of two major parties. The threshold of representation is high for parties with widespread support and low for parties with concentrated pockets of support. In practice, the distorting effects of plurality are somewhat mitigated by the large number of constituencies, which caters for local variations. This additionally means that it is not unknown for one of the two major parties to have less seats but more votes than the other.

In most constituencies, elections are contested in three- or four-cornered fights. The elector has no opportunity to express any form of preference for different candidates of the same party. Candidates are generally selected by a comparatively small number of party members.

Casual vacancies arising between elections are filled by means of a by-election held in the constituency and run in exactly the same way as in a general election (although with minor variations in the timing).

### 2.2.2. MAJORITY — FRANCE

France, like the United Kingdom, divides its territory into single-member constituencies, 491 in all. Unlike the United Kingdom, voters go to the polls on two successive Sundays. The voter is presented on the first occasion with a number of ballots, each with the name of one candidate. Most candidates will be supported by a given party and the voter indicates his preference by inserting one of the ballots into an official envelope, which he then deposits in the ballot box. On the second occasion, only those candidates who



achieved one eighth of the votes cast in the first round may stand <sup>30</sup>, although if there are less than two candidates meeting this requirement, the top two candidates go through to *ballotage*. The need for a second round is obviated by any given candidate's securing at least half of the votes in the first round, in which case he is declared elected. Otherwise the second round is conducted as a first-past-the-post election.

Thus the French system may in some ways be compared to a simple plurality system with a local threshold of 12½%. It differs significantly from that model, however, in that it allows voters who prefer minority candidates to transfer their votes to more successful ones between the two rounds. What makes the French system into a predominantly majoritarian one, on the other hand, is the widespread practice of withdrawal between the two rounds. Thus, though the rules allow more than two candidates in the second round, this has tended to become the exception rather than the rule as a result of inter-party bargaining. Alliances between parties of the right and of the left have resulted in agreements for one or other candidate to stand down voluntarily. This can enable voters to exercise a certain degree of choice between candidates of the same general tendency in the first round. However, it is by no means always the case that the candidate with fewer votes stands down in favour of another. The opposite can and does occur.

Apart from the possibility just mentioned, voters in France have no more influence than those in the U.K. over the selection of individual candidates. Again, the threshold which needs to be crossed by smaller parties is high in the case of parties with widespread support and low for parties with localised support. While general characteristics correspond in practice to majority systems, therefore, the nature of party alliances may prove of far greater significance than effects pre-determined by the system.

As far as casual vacancies are concerned, these are usually filled by a *suppléant* or "remplaçant éventuel". Each ballot paper at the time of the election, apart from the name of the candidate, also carries in smaller letters the name of his *suppléant*. This person automatically fills any seat falling vacant between elections. Should the *suppléant* be unable to take up the seat for any reason, a by-election

<sup>30</sup> In the case of presidential election, only the top two candidates may proceed to the second round.

will be held in the constituency according to the usual rules. By-elections are not held, however, in the year prior to a general election.

### 2.2.3. PROPORTIONAL REPRESENTATION

#### 2.2.3.1. "Simple" systems operating at one level of vote aggregation

##### — Ireland

The system operated in the Republic of Ireland is the Single Transferable Voting System, otherwise known as S.T.V.<sup>31</sup> As with all systems of proportional representation, it must operate in multi-member constituencies. It distinguishes itself from most systems of proportional representation, however, in that it does not allow for the presentation of a party list and makes individual candidatures just as easy as in the plurality and majority systems.

For the purposes of national elections, Ireland is divided into 42 constituencies which each elect between three and five members, though in the early history of the state constituencies ranged up to nine and tended therefore to be rather more proportional. The voter casts his vote by numbering the candidates from one onwards until he is indifferent. The voting paper lists all candidates, irrespective of party, in alphabetic order.

The essence of the system is that, in order to achieve election, a candidate must reach one quota — the Droop quota<sup>32</sup> — or else have the highest number of votes when only two candidates and one seat remain. The surplus which any candidate may achieve over and above the quota required for election is transferred to other candidates in accordance with the subsequent preferences of the voter. When there are no surpluses to be transferred, the bottom candidate is eliminated and his votes transferred in total. This process continues until all the seats have been filled.

<sup>31</sup> The system is also used in Northern Ireland in elections other than for the U. K. Parliament.

<sup>32</sup>  $\frac{\text{votes}}{\text{seats} + 1} + \dots$

Again, the general characteristics of S.T.V. have been described previously. The voter has absolute choice as to which of the proposed candidates are elected. He may vote on purely party lines, listing first his own party's candidates in order of preference and then those of other parties. Alternatively he may indulge in cross-party transfers. He has only one vote, however, which, while it may be transferred to the extent that it has not been used already to elect a candidate, is not counted twice. A vote may not, therefore, be transferred until a prior candidate has either been elected or eliminated and thus cannot, unlike *panachage* or cumulation or multiple 'X' voting, count against a higher choice.

The rules for counting S.T.V. are not unduly complex, but involve a series of successive counts which may be very time-consuming. The rules can vary, with results which may be correspondingly more or less accurate. The rules operating in the Republic of Ireland are open to the objection that they introduce random elements when votes arising from a surplus are transferred a second time. Thus, a special rule is needed to prevent a recount from producing a different result. The rules adopted in Northern Ireland are more satisfactory, though not necessarily entirely so<sup>33</sup>.

Effects on the party system are difficult to determine. The use of small constituencies which ease the operation of S.T.V. has tended to raise thresholds and favour existing parties. The special nature of the Irish party system, however, makes it difficult to draw conclusions as to the effects of S.T.V. Nevertheless, it is undoubtedly the case that S.T.V. has encouraged competition among candidates of the same party. As in the case of the United Kingdom and France, the very existence of organised parties is not a prerequisite for the system to function.

A final word must be said regarding by-elections. Although the S.T.V. system allows by-elections to be avoided if the original voting papers are kept, the Irish have chosen to fill casual vacancies by holding by-elections. Since, in most circumstances, there will be only one vacancy in a constituency, the by-election assumes the character of a majority system election. The same voting and counting rules apply as in S.T.V., but the presence of only one seat means that the

<sup>33</sup> One set of model rules is published by the Electoral Reform Society in Newland, R. A. & Britton, F. S., *How to conduct an election by the Single Transferable Vote* (London (E.R.S.); 1973).

quota is set at 50% and the election is effectively an application of the system known as the Alternative Vote (see the first section of this chapter).

— *Luxembourg*

Luxembourg uses larger constituencies than Ireland. It has four regions which range in magnitude from 6 seats to 24 seats. Unlike Ireland, however, parties do have a function, since candidates are presented on party lists. Each voter has as many votes as there are seats to be filled. He is not required to cast them all for the same party and may split them between two parties or more. Although individual candidacies are allowed, they are considered as lists of one person.

Seats are distributed to each list according to a highest average method. The votes for each list are added together and seats distributed according to the Hagenbach-Bischoff method<sup>34</sup>. While different in its process of calculation, this method achieves precisely the same result as d'Hondt, thus favouring the larger parties.

In common with the Irish system, that employed in the Grand-Duchy gives no say to the parties regarding which candidates finally fill its seats. That choice is left to the voters, but in this case only *some* of the voters. Lists are generally presented in alphabetic order and may contain no more names than there are seats to be filled. Parties may, however, try to maximise their own influence by determining the list order and by shortening the list. But in the latter case they run the risk of losing seats. In practice, party influence is minimal.

Those voters who vote for the list equally exercise no influence over the candidates finally elected to the party seats. Such influence is exercised only by those voters who cast preference votes for individual candidates. It has been pointed out that each voter has as many 'X' votes as there are seats to be filled. He may cast his votes for more than one party (*panachage*) and/or may cast his votes differentially for candidates within a party's list, allocating a maximum of two votes to any one candidate (cumulation). In addition, he may refrain from casting all of his votes. The candidates finally elected are determined solely by those voters who use the possibility of

<sup>34</sup> See Appendix III.

*panachage* or *cumul*, or else do not cast all their votes. The effective choice of candidate may thus be somewhat arbitrary and the system is open to manipulation to secure the non-election of an opposing party's best candidates. The order of non-elected candidates is noted in order to fill casual vacancies from the same list, allocating seats to the next available candidate.

In short, at the level of party competition, the Luxembourg system corresponds to a d'Hondt highest average system. At the level of competition between rival candidates of the same party, while allowing great freedom of voter choice, the system may be likened to a modified plurality system — limited and cumulative — with a high rate of abstention (see the first section of this chapter) and with potentially great disruptive influence able to be exercised by opponents.

#### 2.2.3.2. *"Complex" systems operating at more than one level of vote aggregation*

Before we proceed to examine the remaining Member States of the Nine, all of which operate "complex" systems, a word needs to be said about the effects of the different systems in operation. We saw in the first section of this chapter that it was important to distinguish the truly mixed systems from those where the distribution of seats at the higher level took account of those seats already distributed at the lower level. Thus it should be borne in mind when considering the following account that the chronological order of the calculations undertaken does not necessarily correspond to the relative importance of the different operations. Where the second-stage seat distribution takes into account the first-stage distribution, the former will usually be the decisive one.

##### a) *Countries operating an overall national tier*

###### — *Federal Republic of Germany*

With the exception of the 22 Berlin members, who are indirectly elected through the Berlin House of Representatives, members of the Bundestag are elected through a combination of two methods. 248 are elected in single-member territorial constituencies by simple

plurality. A further 248 members come from lists put forward by the parties in each *Land*.

Each voter may express two 'X' votes. The first is cast for one of the individual candidates, mostly supported by a given party, within the voter's single-member constituency. The second may be cast for any of the party lists put forward in the *Land* in which the voter resides.

In each single-member constituency, the candidate who receives the most votes is declared elected. Provided a voter's first vote was not cast for an independent candidate who secured election or for a candidate whose party was not allowed to enter a *Land* list, his second vote goes towards the total for each party in the *Land*. Unless a declaration has been made to the contrary, the second votes cast for each party's *Land* lists are then added together at federal level in order to allocate seats to the parties. Further, in an effort to avoid the extensive party fragmentation which characterised the Weimar Republic, only those parties which reach five per cent of the national vote or whose candidates have been successful in at least three single-member constituencies are allowed to take part in the calculations which follow.

It is of crucial importance that not 248, but 496 seats are then divided among the parties at federal level using the d'Hondt highest average method<sup>35</sup>. The number of single-member seats won by a party is then subtracted from the total thus achieved to determine the number of seats to be allocated to that party's list(s). Only where the total number of seats obtained from the second votes is smaller than the number of seats won in the single-member constituencies can there be any discrepancy. In that case, the party retains the extra seats it has obtained as *Überhangmandate* and the total size of the Bundestag is increased. The total size is similarly increased when independent candidates are successful. In practice, because discrepancies in the size of single-member constituencies have been reduced to negligible proportions, in the absence of any successful independents, there have been no such supernumerary seats since 1961.

As a consequence of what has been said, the German electoral system in practice may be accurately described as a pure system of proportional representation, operating according to the d'Hondt

<sup>35</sup> See Appendix III.

method. While thresholds for parties wishing to gain representation would normally be quite low with 486 seats to distribute, the legal threshold of 5% penalises to a considerable extent any small party with nationally homogeneous support. Until it increases its support to the level required to win no less than 24 seats, it will gain none. This is not true of parties with strong localised support which will be advantaged by the lower level plurality system. Though it is possible for parties not to have their *Land* lists combined at federal level, the bias towards larger parties in the d'Hondt system would tend to penalise any party which chose not to. Thus, the German system is characterised by an incentive to large groupings combined with a powerful disincentive to small parties.

Where first votes come into their own is not in "electing" candidates directly, but in determining the individual candidates who will fill the seats allocated to a party by the second votes. If one imagines, then, a sort of federal list order for each party, top of the list will come those candidates who have beaten the competing candidates of *other* parties in the single-member constituencies. In this way, the first vote may, in terms of electoral engineering, be construed rather as a categorical preference vote which may be cast for a predetermined candidate from *any* party, without thereby affecting the number of seats a party may win (again barring the still unlikely eventuality of creating supernumerary seats)<sup>36</sup>. This is not to condemn the system as such. Indeed, by making individual candidates compete with those of other parties for their 'preference vote' it can both avoid intra-party bickering and bring the electoral campaign closer to the voter. It seems unlikely, however, that the average voter will realise that his first vote is much more a question of affecting any given party's 'federal list order' rather than representing a choice between competing candidates of different parties. For each of those individuals is, in fact, competing with his party colleagues for one of the party seats.

After the successful constituency candidates, who take first place on a party's theoretical 'federal list', the *Länder* lists of that party then compete among themselves for the remaining seats. Successive seats are allocated in turn, using the d'Hondt method, to the list with the highest average number of votes per seat, until all the seats

<sup>36</sup> It is interesting to note that the system of *Überhangmandate* could also comparatively easily be manipulated through split 1:2 voting to produce gross distortions.

have been allocated. Thus the larger *Länder* are favoured at the expense of the smaller. Seats won by each *Land* list are allocated in order to the candidates on that list. The order of the candidates is decided by the party at *Land* level and only the five first names appear on the voting paper. The voter has no opportunity whatsoever of influencing that order. Seats falling vacant between elections are disposed of by transferring them down the list in the same way to the highest placed unelected candidate.

A final word must be added on candidate selection. While the voter is confined, in terms of preferences, to his first vote, considerable efforts have been made in the Federal Republic to ensure democratic selection of party candidates. Thus the federal law lays down minimum standards to ensure that party members can participate effectively in both choosing candidates and determining the *Land* list order of his party<sup>37</sup>. In addition, candidate nomination is carried out both by the local constituency parties (single members) and by the *Land* organisations. While a candidate may not be put forward in more than one constituency, nor appear on more than one *Land* list, it is both possible and common for constituency candidates to appear additionally on *Land* lists.

— *Denmark*

In many respects, the functioning of the Danish electoral system closely mirrors that of the German in the relationship between its different levels. It is, however, a much more complex system in its operation, and recalling the German system may help in recognising its essential features.

Four levels of vote aggregation come into play in different ways when one examines either the allocation of seats to parties or the determination of which candidates will fill those seats. At the highest level is the country taken as a whole<sup>38</sup>. The country is then divided into three areas (*område*) — Copenhagen, the Islands and Jutland — which are further subdivided into three (*storkredse*), seven (*amtskredse*) and seven (*amtskredse*) constituencies respectively. Each of the 17 constituencies comprises a number of nomination districts (*opstillingskreds*).

<sup>37</sup> For further details, see Hand, Georgel and Sasse, *op. cit.*, pp. 77-79.

<sup>38</sup> Not including Greenland or the Faroes, which operate their own system.



Only two of these levels are of importance in deciding the allocation of seats to parties. The lower level, rather than single-member constituencies as in the case of Germany, consists of the 17 multi-member constituencies, which elect a total of 135 members. Party votes are then added together on a national basis in order to allocate a further 40 "supplementary seats". Unlike Germany, the voter has one 'X' vote only, which may be cast for a party or for a specific candidate. In the latter case it will nevertheless count as a party vote for the purposes of seat allocation.

Once more, the crucial point to note on the question of seat allocation to parties is the fact that the 40 so-called supplementary seats are not allocated in isolation, but taking account of the 135 constituency seats. The constituency seats within each multi-member constituency are allocated to each party using the modified St Lagüe method<sup>39</sup>. Because, in spite of the distortions introduced by the district magnitude, this system operates more or less proportionally, only a smaller number of seats are required at national level in order to avoid the possibility of an *Überhangmandat*. At national level, not 40, but 175 seats are then allocated to each party according to the Highest Remainder method using the natural quota<sup>40</sup>. The constituency seats already won are then deducted from a party's total to give the number of supplementary seats to which a party is entitled. In the case of Denmark too, a legal threshold is fixed, below which a party may not be granted seats at the national level. This threshold is fixed at three of the levels previously mentioned: a party must have gained

- one constituency seat; or
- within at least two of the three areas, as many votes as were cast on average per constituency seat; or
- at least two per cent of the votes cast in the whole country.

Although these thresholds are higher than the thresholds inherent in a Highest Remainder system, they are certainly not so severe as in the Federal Republic and there is a somewhat more even balance between the thresholds applicable to locally concentrated and nationally homogeneous parties. Nevertheless, a requirement to gain two

<sup>39</sup> See Appendix III.

<sup>40</sup> See Appendix III.

per cent could deprive a party of the three seats which might otherwise be acquired. Above these thresholds, the system of allocating seats to parties corresponds solely to the Highest Remainder method and not at all to that of St Lagüe.

A completely different and far more complex story applies to the determination of which members should fill the seats now allocated to a party. Calculations for the distribution of party seats to candidates take place at constituency level. The number of constituency seats per constituency has already been fixed, according to principles which, while using the Highest Remainder method (natural quota), take into account the population, the electorate and the surface area. This is a necessary prerequisite before any of the calculations described above can take place. In addition, since there are no national or area lists, supplementary seats now have to be allocated back to the constituencies. Unlike the German case, where the exact number of seats allocated back to the *Länder* depends on turnout, the Danish system imposes a fixed number of supplementary seats on each of the areas, calculated in advance of the election on the same basis as that used to allocate constituency seats to the constituencies.

The first calculation to take place must therefore determine how each party's supplementary seats are to be split among the three areas so that the total number of supplementary seats per area is the correct one. In order to achieve this, each party in each area enters into competition with all the others for the supplementary seats. This is effected by applying the St. Lagüe (unmodified)<sup>41</sup> method to the total area votes of each party and ignoring for each party in each area as many of the quotients as the party has already won constituency seats in that area. On the basis of the highest quotients remaining, seats are allocated in turn to a given party in a given area. Of course, no party may receive more supplementary seats by this method than it has already won at national level, but equally, no area may receive more than its stipulated share. Thus if a seat remains to be allotted to a party, even though its next quotient may be highest in a given area, if that area has already received its quota of supplementary seats, the seat in question must be allocated to the party in another area. This system can therefore introduce a degree of distortion not usually present since it will be based partially on

<sup>41</sup> See Appendix III.

geography, population and electorate, rather than simply on votes cast.

Within each area, party supplementary seats are then further distributed among the constituencies using the party vote per constituency. Unlike the case in respect of the areas, the distribution of supplementary seats among the constituencies is variable, and therefore depends on turnout and the party vote in each constituency. The vote of any given party in the different constituencies is used to allocate the area supplementary seats which the party has won. For this purpose, a specially modified highest quotient method is used, similar to the St. Lagüe method but exaggerating its effects by using the divisors 1, 4, 7, 10, ... This gives an obvious advantage to the constituencies with no constituency seat for a given party since, again, as many quotients are ignored for each constituency as the party has already gained constituency seats there. Thus, with this two stage calculation which works not too proportionally, supplementary seats are assigned from national to constituency level.

From this point onwards, no distinction is made between constituency and supplementary seats (though it will still be clear which candidate owes his election to a supplementary seat). The "list order" for each party has now to be determined in order to declare individual candidates elected.

As was referred to earlier, the 17 constituencies are divided into a total of 103 nomination districts. This does not mean that different names appear on the list in different districts — in fact, the same names appear in all districts — but it does mean that the order of the list on the voting paper may be changed. The order will be the same in all districts except that a single candidate on the constituency list, nominated by the party for a particular district, may have his name in bold type at the top of the list as it appears in that district. Thus, though the candidates are presented for the constituency, the voting paper — at the party's choice — may be peculiar to the nomination district.

This is not purely a question of drawing votes for the party. In fact, the Danish voter is able, as we remarked earlier, to cast a categorical preference vote. He can do this for any candidate on the constituency list, irrespective of the nomination district in which he votes. If, however, he casts his vote for the party, it will automatically count as a preference vote for the candidate who appears at the head of the list in the particular nomination district unless the party

has opted for "simultaneous list presentation". In the latter case, it will be treated somewhat differently, but will still be used as a form of preference vote.

The precise treatment of preference votes in order to determine the party's effective order of candidate election will depend on the method of list presentation which the party chooses. Three different ways of organising the list are provided for in the electoral law, and we shall examine each in turn.

i) In the "usual nomination" procedure (*almindelig opstilling*), one candidate is nominated for each district, appearing in bold type at the head of the list. Other candidates are listed alphabetically. Votes cast for the party in any nomination district automatically go to the nominated candidate. The total vote cast for each candidate throughout the constituency is calculated and candidates are elected in order of their number of votes. Such a system of preference voting can therefore be likened to a plurality election where voters have a single non-transferable vote in multi-member constituencies. The nature of the voting paper and the way the voter can vote enable the party to guide or direct the voter to its special nominee in any given district.

ii) With the system of "party list nomination" (*partilisteopstilling*), candidates do not appear in alphabetical order, but in the order predetermined by the party. The party nominee in a particular district still appears at the top of the list and votes cast for the party are again considered as a personal vote for the nominee. Votes are added up throughout the constituency, but, instead of being non-transferable, the preference vote becomes transferable according to the party's own preference schedule (list order) similar in some respects to S.T.V. The Droop quota is calculated for the party list in the constituency<sup>42</sup> and those candidates who reach the quota are declared elected. Surplus votes are then transferred to other candidates in the list order as far as this is possible.

iii) The third method of list presentation is known as "simultaneous nomination" (*sideordnet opstilling*). In this system, although the party may still put a particular candidate at the top of a list in a particular district, it may also simply list all candidates in alphabeti-

<sup>42</sup> 
$$\frac{\text{Party votes}}{\text{Constituency} + \text{supplementary seats} + 1} + \dots$$

cal order in all districts. The essential difference, as compared to the first two systems, is that votes cast for the party are not directed to the candidate at the head of the list. Their distribution is instead determined by the voters who plump for individual candidates. Within each district they are therefore allocated to each list candidate in the same proportion as that of the actual personal votes before all the votes for each candidate are added together at constituency level. Thereafter, the candidates are, as under method one, elected in the order of the number of their votes. In this case, then, the plurality election is determined by the personal voters and party influence (as well as that of party voters) is reduced to a minimum. Distortion may be introduced by differential district sizes since party votes are allocated according to district rather than constituency proportions.

Whatever the method of list presentation, when all candidates have been elected, the unsuccessful candidates in each constituency are listed as substitutes in the order of their total number of preference votes. Seats falling vacant between elections are filled from this list of substitutes. In the absence of any substitutes, the seat will be filled from the list in the constituency which would have received the next supplementary seat had there been one.

In conclusion, it may be said that though the Danish system may act somewhat arbitrarily in determining the candidates to be declared elected, the voter has a considerable degree of influence at constituency level, which may be combined to a greater or lesser extent with party influence.

#### — *Netherlands*

The electoral system in operation in the Netherlands, unlike the German and Danish, uses only one level of vote aggregation to determine the number of seats allocated to each party — the country taken as a whole. Nevertheless, it may be treated on a par with Germany and Denmark if, as we have tried to show, it is accepted that the lower tiers in those two countries are operative only in determining which individuals fill the party seats. For the Netherlands, too, has its lower tier for the purpose of determining those candidates who are elected.

The country is divided into 18 electoral districts (*kieskringen*) for the purposes of nominating candidates. Lists of no more than 30 candidates are presented in one or more districts and the voter is called on to plump for a particular candidate on a list by pencilling in a circle (in red). He may not vote for a list as such, but his vote for a candidate counts as a vote for the list. Votes are then added together at the national level. If a declaration has been made in advance, linking two or more of the lists together across districts, they are, as in the case of the Federal Republic of Germany, treated as single lists for the purpose of allocating seats to parties. There is nothing to prevent a candidate from appearing on the same party's list in different districts. In practice, the parties do link their eighteen district lists together.

The method of calculation is normally a variation of the Hagenbach-Bischoff method<sup>43</sup> using the natural quota. The valid votes are added together for the whole country and then divided by 150 (the total number of seats) in order to give the national quota. The total vote for each list (or group of lists) is then divided by this natural quota to give the total number of seats allocated at this first stage. The natural quota is also fixed as a legal threshold (= 0.67% of the national vote), which is slightly in excess of the system-inherent maximal threshold (= 0.66%). Thus, no list which fails to gain one quota is allowed to participate in the allocation of seats at the second stage.

The method of calculation used at the second stage depends on the number of seats still to be allocated. If that number is in excess of nineteen, then the Highest Average method is used, producing precisely the same end result as d'Hondt. If, on the other hand, the number of remaining seats is less than nineteen, then they are allocated to the highest remainders. Because of the legal threshold mentioned above, neither of these systems will have any effect on whether a party can secure representation. The different payoff functions of the two systems are such that in the presence of a small number of large parties, the smaller parties will be favoured, while the larger parties will be favoured in the presence of a large number of smaller parties. The number of remaining seats expected in any

<sup>43</sup> See Appendix III.

election may affect a party's decision as to whether and how district lists should be linked. In this way, one may say that while the large number of parties competing together in the Netherlands encourages larger parties and the linking of lists, there is a specific cut-off point (nineteen remainder seats) at which this influence ceases to apply.

Having allocated seats to the parties at the national level, it is necessary to determine which candidates fill the seats. In the case of seats allocated to groups of district lists, however, it is first necessary to divide the seats among the different district lists. To this end, unlike Germany, which uses the d'Hondt method, or Denmark, which uses a two-stage St Lagüe method, the Netherlands adopts the Highest Remainder system with the natural quota<sup>44</sup>, thus favouring the lists presented in the smaller districts. Each list gains as many seats as it contains the group quota<sup>45</sup> with remaining seats allocated to highest remainders.

Within each district list, a list quota is calculated as the total list vote divided by the seats allocated to the list. It is the preference votes which each elector must cast which then determine the candidates who win the seats. Rather than being simple categorical preferences, the votes are in fact transferable according to the party's preference schedule (list order). Those candidates who reach the list quota are declared elected and their surplus votes transferred to the highest placed candidates not yet elected. If this process fails to allocate all the seats, then the candidates with the most votes are taken in order, provided they achieved at least half a quota. Otherwise the party list order applies.

Although Dutch voters may thus exercise some influence on the candidates finally elected, the necessity for an individual to gain at least half of one quota is a formidable obstacle. In practice, the vast majority of Dutch voters choose the party's own list order by casting their vote for number one on the list.

Casual vacancies arising between elections are filled by the next available candidate on the list.

<sup>44</sup> See Appendix III.

<sup>45</sup> 
$$\frac{\text{Total vote polled by group}}{\text{Total Seats allocated to group}}$$

b) *Mixed systems*

— *Italy: the Senate*

For the purpose of senatorial elections, Italy is divided into single-member constituencies. Except for the special cases of the Val d'Aosta and Molise, each region is entitled to a minimum of seven seats. In excess of that figure, seats are allocated to each region using the Highest Remainder method with the natural quota<sup>46</sup>, thus slightly favouring the more sparsely populated areas. It should be noted, however, that within each region, the constituency boundaries were drawn on the basis of the number of senators allocated to that region in 1948. It is thus conceivable that the number of senators to be elected in a region will not coincide with the number of constituencies.

In each constituency, the voter may cast a single vote by crossing the symbol printed against the name of a candidate (usually that of his party). The votes for each candidate are added and a candidate is then elected if, and only if, he succeeds in gaining 65% of the votes cast in his constituency. This happens very rarely, and the majority of seats are not awarded in the single-member constituencies.

The law does not allow for single candidatures. Thus, each candidate must have declared himself to form a group jointly with candidates in at least two other constituencies in the same region, although nothing prevents him from forming a group with himself by standing in three constituencies. In general, groups are formed from candidates in every constituency in the region, where candidates of the same party form that party's group or "list".

Most of the seats, then, are subsequently allocated at regional level. The regional total is calculated for each group (excepting constituencies where a candidate reaches 65%) and seats are allocated according to the d'Hondt method<sup>47</sup>. Within each group, the seats are awarded to those candidates who gain the highest proportions of the total votes cast within their constituency. It is not impossible that in this way two candidates of different parties may be elected in the

<sup>46</sup> See Appendix III.

<sup>47</sup> See Appendix III.



same constituency while none may be elected in another. In the case of a casual vacancy, the candidate with the next highest proportion of votes (i.e. from a different constituency) fills the seat.

No other preference vote is available to the voter save that of voting for the particular candidate presented. In this respect, the voter has no greater choice than in a simple plurality system. Similarly, it should be fairly easy to determine which are the "safe seats" such that a candidate's election may be very much due to his selection by the party.

In the absence of thresholds fixed by law, the senatorial election system will operate almost exclusively in accordance with the general characteristics of the d'Hondt method. In combination with the use of regional (as opposed to national) vote aggregation, this will work to the benefit of the larger parties.

— *Italy: the Chamber*

In contrast to the system used for the Senate, Italian Deputies are elected from 32 multi-member constituencies corresponding to one or more provinces. Each constituency is allocated a number of seats proportional to its population, using the same Highest Remainder method as applies to the Senate.

Within each constituency, a party or political group may present a list of candidates. On the voting paper, however, only the party or group symbol appears and a vote is cast by crossing out that symbol. The votes for each party are totalled for the constituency and seats are allocated immediately to each party using a special variation of the Highest Remainder system which employs the Imperiali quota<sup>48</sup>. Since this quota is small enough to allocate more seats than are available for distribution, it works to the advantage of the larger parties. Should it ever allocate more than the required number of seats, provision is made to revert to the Droop quota.

Instead of continuing with the system at constituency level, after allocating seats by the quota, remainders are added together at national level and the seats still remaining to be allocated are distributed there (*collegio unico nazionale*). Similarly to the case in other countries, a threshold applies for a party to qualify to receive seats at

<sup>48</sup> See Appendix III.

the national level. It must both have received at least one quota at constituency level and have a national vote in excess of 300,000. Among those parties which qualify, the seats still remaining are allocated according to the Highest Remainder system using the natural quota<sup>49</sup>. It is important to observe, however, that this allocation does *not* take account of seats already distributed at constituency level. The quota is calculated by dividing the total of the "remainders" throughout the country by the total of seats still to be allocated. Thus the superposed system does not act to correct the imbalances introduced at the lower level.

As far as the allocation of seats to parties is concerned, it may thus be said that there is a degree of distortion in favour of the largest parties which is not corrected by the use of a *collegio unico nazionale*. The actual threshold and lower payoff functions are kept fairly high by requiring both a degree of localised support (one constituency quota) and a minimum of national support of around one per cent. This could be raised, depending on the number of "remainder seats" to be allocated at national level. Nevertheless, small parties still retain a chance of putting their remainders to good use in the national calculation. The main losers in this system are likely to be those parties which are not large enough to make use of the distortions at constituency level and yet will be prevented by the system from regaining lost ground at national level. The smallest parties will be catered for at the national level through the use of the natural quota. In its operation, therefore, while the Italian system allows more representation to smaller parties than in Denmark or Germany, it is likely to give larger bonuses to the largest parties than would be the case under the d'Hondt system operated at national level.

Since, again, no lists are presented at national level, seats allocated at this level must subsequently be redistributed to the constituencies. For this purpose, it is not necessary to take account of the seats previously allocated to each constituency. For each party, a rank order of constituencies is established by expressing the party's remainder in a given constituency as a percentage of the constituency quota. The seats allocated to a party at national level are then given to the constituencies in descending order.

Once the number of party seats in each constituency has been

<sup>49</sup> See Appendix III.

determined, they must be allocated to the party's candidates. For this purpose, account is taken of preference votes. The casting of a preference vote is not necessary when voting for a party and the two are kept separate. While the party list is not printed on the ballot paper, three lines appear at the side of each party's symbol where the voter, having crossed that party's symbol, may write in the names of one, two or three candidates on a party's list. Each list must contain a minimum of three names and not more than the number of seats allocated to the particular constituency, while no one candidate may appear on the same party's list in more than three constituencies (a candidate may not appear on different parties' lists).

Irrespective of the order in which the candidates are written in, the number of times a candidate is mentioned is totalled for each candidate and seats awarded according to the number of preference votes thus obtained. This can be compared to a plurality election among the party's candidates in a multi-member constituency where the (party-)voter is limited to a maximum of three votes. Needless to say, the result of such voting may be somewhat arbitrary. Only those voters who cast preference votes have any influence. The party list order is of no significance, neither is the vote of the person who simply chooses a party. Seats falling vacant between elections are filled by the candidate with the next highest number of preferences.

#### — *Belgium*

The Belgian electoral system is somewhat similar in its principles of operation to those of Denmark and Germany. It operates at two levels, but without any aggregation at national level, and the same basic system applies to elections to both the Chamber and the Senate. The country is divided into 30 (Chamber) and 21 (Senate) multi-member constituencies, none of which cross the boundaries of the country's nine provinces. The number of seats per constituency is calculated on the basis of population, rather than electorate, using the Highest Remainder system with the natural quota<sup>50</sup>. In each constituency, lists of candidates are presented containing no more names than there are seats to be filled. The voter indicates his preference by filling in a circle at the top of a list or at the side of a candidate's name. Votes for a candidate count as votes for the party

<sup>50</sup> See Appendix III.

and votes are added together at constituency level for the first-stage allocation of seats.

The method used is the same as that used in elections to the Italian Chamber, except that the natural quota is used. Seats are allocated to complete quotas while seats remaining to be allocated revert to a provincial pool. At provincial level, however, unlike Italy, all the votes are added together rather than just the remainders. For this purpose, a declaration must be made prior to the election allying any number of constituency lists in a given province. In practice, every party's constituency lists form the object of such a declaration. To the combined lists thus established seats are allocated using the d'Hondt method<sup>51</sup>, but ignoring as many quotients as the party or group has already been allocated seats at constituency level. Thus, the constituency quota system is inoperative as far as concerns the allocation of seats to parties: the latter is effectively determined solely by the d'Hondt method at provincial level. The effects of this system are such that there is a definite incentive for constituency lists to be allied.

It should be noted that in order to participate in the second-stage allocation, a party must have secured at least 66% of a natural quota. Given that this legal threshold is somewhat lower than the maximal threshold, its significance is limited. The wide variance in constituency sizes does mean, however, that small parties may find themselves in considerable difficulties in areas of sparse population or where the number of constituencies in a province is high.

The extra seats allocated to a group of lists at provincial level must, of course, be re-allocated to the constituencies. For this purpose the number of seats previously allocated to the constituency is ignored (as in Italy) but a special provision ensures that the population bias introduced in the pre-election allocation of seats to constituencies is respected. The system used to divide a party's seats among its competing lists is again the d'Hondt system, but rather than use the actual vote divided by the number of seats already allocated to the party plus one, the Belgian system uses what is known as the "electoral quotient" of each list. In the first-stage allocation of seats by the natural quota, the division does not stop at the whole integers, but is carried to three decimal places to give the "electoral quotient" of a list. It is this quotient which is then divided by the

<sup>51</sup> See Appendix III.

next largest integer (i.e. seats already allocated plus one) and so on, according to the d'Hondt system, giving what are known as "local fractions" to which the supplementary seats are awarded.

Once the total number of seats allocated to a constituency list is known, the seats are divided among the candidates according to the preference votes. For this purpose, the number of individual preference votes are counted, as well as those cast for the list as a whole. While individual preference votes are categorical, those for the list are considered as ordinal votes which may then be transferred down the list according to the party's rank order, to bring each candidate in turn up to the required quota (similar to S.T.V.). The quota used is the Droop quota. As in the Netherlands, it is very difficult for a candidate to achieve sufficient personal votes to upset the party's list order.

A special system applies in Belgium to the filling of vacant seats. On the voting paper, alongside the list of candidates, a list of *suppléants* appears, containing no more than twice the number of names on the main list and in any case no more than six. Voters may additionally cast preference votes for *suppléants*, while list votes are considered in exactly the same way as outlined above to determine an order of placement at the time of the election. Seats falling vacant are then filled by the *suppléants* in that order. If there are no *suppléants*, casual vacancies are filled by a special procedure using a constituency electoral college.

It can be seen from this necessarily brief examination of the major aspects of the voting systems used in the Member States of the Nine both that the possible variety in electoral systems is very great and that the actual disparity between the national systems is considerable. Each has developed over time to suit particular circumstances and all are, to a greater or lesser degree, part of the constitutional reality of the countries concerned.

Before we go on to examine arguments surrounding the introduction of an electoral system for the first direct election to the European Parliament, it is perhaps appropriate to add a few words in order to situate the various national systems in their political context and to highlight any trends which there may be towards reform.

With the notable exceptions of France and the United Kingdom, the Member States of the Nine operate systems of proportional rep-

resentation of which they have considerable experience. Perhaps because actors on the political scene have grown accustomed to those systems, there is no great clamour for change. Where proportional representation is not specifically prescribed in the constitution, there are nevertheless strong indicators that a majority or plurality system might, even so, be considered contrary to the spirit of the Constitution.

This is not to say that in the countries concerned, attempts have not been made to replace P.R. by some majority or plurality formula. Such an option has been the subject of study and discussion both in Germany and in Italy, but without any really significant support. In Ireland, attempts to revert to plurality have twice been rejected in national referenda. In other countries, the basis of proportional representation has hardly been questioned.

As far as precise methods are concerned, there has generally been fairly little discussion in the countries concerned as to changing one system of P.R. for another. Different systems have been developed appropriate to the situation in which different countries have found themselves and there is no evidence of widespread dissatisfaction. In some countries, constituency boundaries have been and continue to be the source of some dispute, but perhaps only in Belgium could this seriously alter the basis of the particular system involved. In the latter country, changes in the system may very well be brought about in more far-reaching constitutional revision, but without really calling into question the essential characteristics of party list proportional representation. In Germany, which stands apart from the general norm with its five per cent clause, it may well be that some reform of this particular requirement could align the Federal Republic with its neighbours, though again without seriously questioning the German system of P.R.

Voices advocating reform are far more strident in the United Kingdom, where the debate over changing the electoral system has recently been revived by constitutional developments.

S.T.V. was re-introduced into Northern Ireland due to the special conditions in the Province and arguments in favour of P.R. for elections from Ulster to Westminster are only fuelled by the proposal (at the time of writing) to increase the number of Ulster Members in the House of Commons. The introduction of plans for devolution to Scotland and Wales were the occasion of further significant debates on the matter. And, as we shall see, the question of the electoral

system for direct elections to the European Parliament was no exception to the general trend.

Opposition to change in the United Kingdom is equally determined and vocal. There seems to be little likelihood of reform in the future unless the question is given renewed urgency with the return of a parliament in which no party has a majority. In short, then, the debate is a vociferous one and positions on both sides are entrenched.

In France, attitudes appear somewhat more equivocal, though perhaps this is hardly surprising in view of France's history in operating proportional representation. The introduction of the double ballot was dictated by the particular circumstances of 1958, but dissatisfaction since that time has centred on the wide disparity in constituency sizes rather than on the system itself. The system has been fairly successful in polarising the parties into "majority" and "opposition", and if there are objections to the system they remain fairly low key.

It is clear, then, both that national electoral systems are quite firmly embedded in the structures of their respective countries and that debate over reform has been mainly centred on the arguments over plurality/majority systems on the one hand and systems of proportional representation on the other. In all cases, the stability of governments able to command a parliamentary majority has been one of the central bones of contention. Perhaps because they lack this crucial facet, discussion of reforms within established systems has not been of such immediacy except for parties whose existence may be threatened at the threshold level.

If there are any lessons to be learned in regard to the debate over the introduction of a uniform system, they would appear to be that the major cleavage lies between plurality/majority advocates and P. R. advocates, while the European trend has tended towards P.R. Beyond that, the major questions would appear to involve the threshold levels for small parties, the nature and size of constituencies, and the nature of candidate selection and/or preference voting. On these matters, each country has in its own national system introduced the formula considered most suited to its political structure. Whether these solutions are reconcilable at the European level is a question we shall bear in mind as we go on to examine the way each state has responded to the need to legislate for elections to the first directly elected European Parliament.

*Christian H. Huber*

### 3. APPROACHES TO EUROPEAN ELECTIONS





### 3.1. NATIONAL APPROACHES

The Decision of the Council of Ministers on 20 September 1976 finally gave the green light for the holding of direct elections to the European Parliament. According to the annexed Act, however, these elections were initially to be governed by national provisions and not (as yet) by a uniform electoral procedure.

At that time it was inconceivable to have a uniform electoral system adopted by all Member States in time. The holding of the first European elections according to nine different national procedures on the one hand accommodated the existing sensibility of public opinion in some Member States against general tendencies towards harmonization within the European Community, while on the other hand it created the necessary pre-conditions for the actual holding of the first elections and 'seemed most likely to secure agreement from the national parliaments and thus ensure that the Council's timetable was not jeopardized' <sup>1</sup>.

The parliaments of the nine Member States were, therefore, not only confronted with the need to ratify this intergovernmental decision, but also with the adoption of the necessary electoral procedures. And although it was left to the legislative organs whether they would adopt a special electoral law for European elections or merely re-arrange their existing electoral procedures, it soon became evident that the debate was not concerned only with procedures for the first round of European elections. It also implied to some extent a pre-clarification of the positions *vis-à-vis* the future elaboration of a uniform electoral system, as indicated in Art. 7 of the Direct Elections Act.

<sup>1</sup> Cf. Huber, C. H., 'Legislation for European elections in the Nine', in Hand, Georgel and Sasse, *op. cit.*, p. 58, n. 29, *supra*, at p. 235.

The quasi-parallel parliamentary process of legislation for direct elections in the nine Member States enabled the political parties also to consider the experiences of their partner countries with other electoral systems. They thus became aware of possible alternatives to their own procedures, established for national elections <sup>2</sup>.

The following country-by-country survey attempts to show the basic problems involved in some Member States as regards direct elections, and how each Member State has responded to the need for European elections legislation. The data material is based on the parliamentary debates, statements of political parties and official government drafts. The analysis is not, however, primarily concerned with the principle of direct elections – such as was the centre of discussion during many of the ratification debates – or how the first European elections came about.

Thus the intention of this chapter is to identify political issues and aspects of national electoral laws, which are considered to be vital in individual Member States (so-called 'sacred cows') and may therefore prove difficult to change.

First, we shall try to show the underlying background conditions, insofar as they have had an influence on the legislation for European elections, and the major cleavages occurring on the issue. Secondly, we shall look, where appropriate, at possible alternative options to the controversial aspects and comment on the government drafts with special reference to the necessary derogations from traditional electoral procedures. Thirdly, the parliamentary debates are recalled in order to point at possible changes in the proposed legislation coming from the political parties.

In other words, this chapter asks:

- which are the core areas of contention and which political constraints exist;
- where are there already significant changes from national procedures;
- how big is the potential for a uniform system.

By trying to identify a maximum of sensitive points already obvious in the process of implementation of the first European elections it should be possible to draw attention to potential problems and facilitate the adoption of a future uniform electoral system.

<sup>2</sup> *Ibid.*, p. 249.

### 3.1.1. BELGIUM

#### *Background*

Deeply rooted socio-economic cleavages between the two main cultural and linguistic communities of Flemings and Wallons<sup>3</sup> have dominated Belgian domestic politics for many years. It did not, therefore, come as a surprise that legislation for European elections, too, was influenced by this conflict over the regionalisation of the hitherto unitary Belgian state. Since 1970 a constitutional reform has been pending, which should create three, to a certain extent autonomous, regions: Flanders, Wallonia and Brussels. The question whether the bilingual capital Brussels, which lies like an enclave totally in the Dutch-speaking area, should gain full regional status, was the stumbling block for any solution, as the Dutch-speaking community opposed it out of the fear of too strong a Francophone influence over Brussels. From 1976 the political parties were involved in a *dialogue communautaire* to solve the constitutional issue, but it needed an early dissolution of Parliament and general elections in April 1977 to overcome the deadlock. The coalition talks following the elections brought about a broadly based (82% of the members of the Chamber of Deputies) agreement and involved, for the first time, the linguistic parties in government. The so-called 'Egmont Pact' of May 1977, which was later completed by the 'Styvenberg Pact', contained a plan for the gradual realisation of the reform with the creation of three regional parliaments. Though we cannot go into the details of this *accord communautaire*, which is better dealt with elsewhere<sup>4</sup>, the agreement also meant a breakthrough for the legislation on European elections, since the parties reached a compromise on the allocation of seats between the two cultural communities: 'Parliament should give priority to the adoption of the law on these elections after it has, as soon as possible, adopted the Act of the

<sup>3</sup> Since 1970 the Constitution acknowledges the existence of four linguistic areas (Flanders, Wallonia, bi-lingual Brussels, and the German-speaking cantons in East Belgium), three linguistic communities (Dutch, French and German), three administrative regions (Flanders, Wallonia, Brussels) and two cultural communities (Dutch and French).

<sup>4</sup> A full and comprehensive account of the development in the community-issue is given in Clauss, J. U. and van den Berghe, G., 'Die regionalistische Struktur Belgiens', in Rabl, K. (ed.), *Regionalismus in Westeuropa 1978* (Munich; 1981).

Council. Of the twenty-four Belgian seats thirteen will be reserved for Dutch-speaking candidates and eleven for French-speaking candidates. The law will regulate the constituencies and the conduct of the elections' <sup>5</sup>.

The impact of the antagonism between the main components of Belgian society on the European elections legislation was twofold: causing a delay both of ratification of the Council Act and of the necessary electoral legislation far into 1978, and pre-determining the allocation of EP-seats to the cultural communities.

### *Alternative Methods for Seat Allocation*

Prior to the *Accord Communautaire*, several alternative methods were proposed to solve the allocation of the twenty-four Belgian EP-seats to the cultural communities and a corresponding division of the country into electoral constituencies. If the twenty-four seats were to have been distributed on a strictly proportional population basis, it would have had the following outcome <sup>6</sup>:

Language	Population	Percentage	Seats
Dutch	5,815,000	59.2%	14.8
French	3,943,000	40.2%	10.05
German	65,000	0.6%	0.15

Thus, fourteen seats would be assigned to the Dutch-speaking population and ten to the Francophone, leaving the German-speaking minority without direct representation. Yet it is obvious that it was not only difficult to divide the seats fairly on the basis of the population, but necessary too, to keep in mind the special situation of Brussels, where the overwhelming majority is Francophone, and which forms the centre of the linguistic conflict in Belgium <sup>7</sup>.

<sup>5</sup> See also Neels, L., 'Preparations for Direct Elections in Belgium', *Common Market Law Review*, vol. 15, no. 3 (1978), p. 340.

<sup>6</sup> Figures taken from Neels, *art. cit.*, p. 341.

<sup>7</sup> See also Clauss and van den Berghe, *art. cit.*

Eventually four models were discussed:

a) The so-called 'Michel plan' (after the then Minister of the Interior), which was discussed in the press as early as December 1976. According to this plan Belgium should be divided into *three electoral constituencies*:

— the four provinces of Flanders plus the Dutch-speaking arrondissement of Leuven<sup>8</sup> with 8 seats;

— the four provinces of Wallonia plus the Francophone arrondissement of Nivelles<sup>8</sup> with 12 seats;

— the Brussels-Halle-Vilvoorde arrondissement<sup>8</sup>, comprising the nineteen bilingual municipalities, which form the administrative unit of the capital, plus the Dutch-speaking unilingual districts of Halle and Vilvoorde, with 4 EP-seats.

The design of this plan tried to combine both the traditional division of three economic regions (Flanders, Wallonia and Brussels) with the exigencies of the linguistic differences within the Brussels area.

Given the demographic structure of Brussels it was clear that 3 of the 4 Brussels seats were to be won by the Francophone candidates and only one by the Dutch-speaking. The Michel plan thus remained a dead letter.

b) Another alternative, which was mainly favoured by Prime Minister Tindemans, was to consider Belgium as *one single national constituency*. This solution would have avoided letting the community issue spill over on to the implementation of the European elections proposals.

After all, so ran the argumentation of Tindemans, this was a European matter and not a domestic Belgian affair<sup>9</sup>.

Nevertheless, it was not as easy as that to by-pass the community problems. A single national list would have only meant shifting the controversy away from the electoral level to within the political parties. It would have been up to them to find a linguistic balance in the composition of the party list. Since all big parties are divided,

<sup>8</sup> The ninth Belgium province, Brabant, comprises the Dutch-speaking arrondissement of Leuven, the francophone arrondissement of Nivelles and the Brussels - Halle - Vilvoorde area.

<sup>9</sup> Cf. Agence Europe, 13.1.77; the same argument was used by the Belgian Committee of the Union of European Federalists, *Europäische Zeitung*, vol. 28, no. 4 (April 1977).

too, into Flemish and Walloon organisations respectively, this would have put substantial stress on party unity.

c) A third – more technocratic – proposal was to divide Belgium into *two electoral constituencies* (North and South) with a central area in between where the electors themselves would have the opportunity to decide individually in which zone they wanted to vote for a party list.

Yet, as in the Michel plan, the problem would be how to circumscribe the boundaries of the central area.

d) Finally, the linguistic parties – the Flemish Volksunie and the French Front Démocratique des Francophones – demanded the division of Belgium into *two electoral constituencies*, with exact parity of representation in the European Parliament, that is, twelve seats each.

All these proposals were just theoretical and the parties waited to settle the question in the *dialogue communautaire*, the all-party committee to study solutions for the constitutional reform. As mentioned above, it needed coalition talks after the April elections of 1977 to come to a common agreement.

### *The Government Draft of the European Elections Bill*

The *Projet de Loi* of 2 December 1977<sup>10</sup>, is characterised by two basic aspects:

— it is in general closely related to the traditional electoral provisions of the Belgian *Code Electoral*, and

— it draws attention to the 'Egmont Pact' agreement between the coalition parties on the allocation of seats between the two communities. In fact, the European elections bill was one of the first two bills based on this *Accord Communautaire*.

Traditionally, voting is conducted according to the principles of proportional representation. The application of this system to European elections was never in doubt. The voting system has stood the test of time and has been shown to be adequate for the Belgian political system with its strong polarised fragmentation along socio-

<sup>10</sup> *Projet de Loi relatif aux élections européennes*, Chambre des Représentants 195 (1977-1978). N. 1.

economic and linguistic-cultural cleavage lines; indeed, it is generally accepted that proportional representation has been an integrating factor in Belgium.

The candidates appear on loose party lists. The voter has, thus, the possibility either of a vote for the list as a whole, or of expressing a preference vote for a specific candidate (which is valid also for the party list). Though the personal votes a candidate receives are only counted for himself, it is rather difficult to change the order of candidates through preference voting, as the list votes are distributed to the candidates according to their appearance on the ballot paper<sup>11</sup>, determined by the parties beforehand. The distribution of seats to parties is based on the d'Hondt highest average method.

While, in general, the conduct of the elections follows the rules of the national electoral code, some specific changes seem worthy of being looked at in detail:

a) *The voting age was lowered to 18 years.* Three reasons are given in the government memorandum:

— it corresponds to the requirements in other Members States of the European Community;

— through a lowering of the voting age the government wanted to extend the franchise to a larger section of society and thus achieve a higher degree of awareness of and involvement in European affairs;

— the lower voting age is going to be introduced also in the near future for national elections. (This, however, requires an amendment of Art. 47 of the Constitution).

b) *The definition of electoral constituencies.* To implement the Egmont Pact division of the twenty-four Belgian EP-seats into thirteen seats for the Dutch-speaking community and eleven seats for the Francophone, the government draft envisaged forming two electoral colleges — a French-speaking and a Dutch-speaking<sup>12</sup>.

All electors in the Flemish constituencies (for national elections) belong to the Flemish electoral college; all electors in the French-

<sup>11</sup> Cf. Nohlen, D., *Wahlsysteme der Welt: Daten und Analysen* (Munich; 1978), p. 225.

<sup>12</sup> See Annex II to the government declaration of June 7, 1977; the formulation points to the fact that the *Accord Communautaire* envisages a retailoring of the Brussels region: if the Egmont Pact came into force three months before European elections, the Brussels constituency would be restricted to the 19 municipalities, and the district of Halle-Vilvoorde would be part of the Flemish constituency. Otherwise, the Brussels constituency would comprise Brussels-Halle-Vilvoorde (cf. also *Le Soir*, 28 Nov. 1977).



speaking and the German-speaking linguistic areas belong to the French electoral college. The electors of Brussels belong to both colleges and are free to choose.

For the conduct and organisation of the vote, Belgium is divided into three electoral areas:

- the Walloon constituency, comprising all voting-arrondissements of the French and German-speaking linguistic areas;
- the Flemish constituency, comprising all voting-arrondissements which are entirely in the Dutch-linguistic area;
- the Brussels constituency, 'such as it is composed or will be composed three months before the date of European elections'<sup>13</sup>.

In the Walloon and Flemish constituencies only candidates from the same linguistic community can stand for election. In the Brussels constituency each party can submit a list with Dutch-speaking candidates and one with French-speaking candidates. Both lists are printed on the same ballot paper, but placed against each other. The Brussels elector can then decide individually for which list he wants to vote, i.e. of which linguistic community he considers himself a member. By this device, it was hoped to give special importance to the close link between the elected candidate and his linguistic attachment.

The government defended its choice of electoral colleges, and the subsequent division of the electoral constituencies, which resembles the 'technocratic model' mentioned above, by referring to the *Accord Communautaire*. The agreement, found there, had to be seen as a *conditio sine qua non* for the acceptance of the European elections bill and the parliamentary survival of the coalition government.

### *Parliamentary debate*

Once the main controversial issue of the Belgian European elections legislation had been settled outside parliament through an inter-party agreement, little controversy was left for the debate on the electoral provisions.

The issue was too much overshadowed by the domestic constitu-

<sup>13</sup> *Projet de Loi, Exposé des Motifs*, p. 2.

tional dispute, and as all parties were in favour of the principle of direct elections little trouble could be expected in the passage through parliament. Nevertheless, in order to bring the bill before the whole house, thirteen committee sessions were necessary to scrutinize and discuss the eighty amendments tabled by individual deputies<sup>14</sup>. Most of them were not admitted for discussion and the few accepted were primarily concerned, again, with the distribution of seats among the cultural communities and the delimitation of the Brussels constituency. As they touch a more distinctly Belgian domestic problem we may leave most of the details aside<sup>15</sup>.

A major criticism concerned the introduction of regional lists while other countries like France and Germany, with a far bigger population, introduced a single national list for European elections<sup>16</sup>. Furthermore, the division into three electoral constituencies would favour the Socialists in Wallonia, the Christian-Democrats in Flanders and the FDF (*Front Démocratique des Francophones*) in Brussels.

Other arguments put forward came in defence of the German-speaking minority in East Belgium. Here special criticism was made of the fact that Prime Minister Tindemans had – during the negotiations in the Council of Ministers for the national seat allocations in the European Parliament – ceded the twenty-fifth Belgium seat, originally received, to Denmark, for the sake of a unanimous decision. This extra seat was asked for by the Danish government to accommodate the demands by the population of Greenland for their own representative, although their number (45,000) is much lower than that of the German-speaking community (64,000) in Belgium. Two amendments aimed at repairing this ‘present for the Eskimos’<sup>17</sup> by giving one seat to the German minority and recalculating the distribution of the seats to the other two communities<sup>18</sup>.

<sup>14</sup> Cf. rapporteur van Lent, BSP, Chambre des Représentants, *Compte rendu analytique* (C.R.A.), 10 July 1978, p. 996.

<sup>15</sup> A more expanded coverage of the various amendments can be found in Neels, *art. cit.*, pp. 337-345; see also Dubois, P., ‘Les élections au suffrage universel direct du Parlement européen: dispositions relatives à l’organisation de ces élections en Belgique’, *Revue belge de droit international*, vol. XIV, no. 1. (1978-79), pp. 274-295.

<sup>16</sup> De Croo, PVV, C.R.A., *op. cit.*, p. 996f.

<sup>17</sup> Kempinaire, PVV, *ibid.*, p. 1000.

<sup>18</sup> Cf. the amendments by Verroken, CVP, Doc. Parl. 195/6; Dupont, BSP, *ibid.*, 195/12; Damseaux, PRLW, *ibid.*, 195/20.

No express reference was made to the future development of a uniform electoral system, except that the Minister for the Interior, Boel, mentioned that in 1976 the time had not yet been ripe for such a step<sup>19</sup>. It is, however, quite interesting to note that the government introduced during the summer recess of 1978 an amendment to its bill that provided for the once-off character of the electoral provisions<sup>20</sup>. The provisions of the present law apply only to the first election to the European Parliament by direct universal suffrage. Art. 36 expressly provided that it would be valid only for the first European elections. Whether this can be interpreted as aimed at a later uniform system may be doubted. The actual reason for introducing the amendment was that the Egmont/Styvenberg agreements had run into difficulties, as did the question of the *droit d'inscription* for the periphery of Brussels<sup>21</sup>.

Expecting a future re-structuring of the Brussels constituency as an outcome of the regional reform, the government wanted to make sure that for later European elections this would also take effect.

Nevertheless, by making the present European elections legislation a once-off decision, the way is open for a future adoption of a uniform system.

### *General Conclusions*

The legislation on European elections did not surprise anybody: it was dominated, too, by the most important internal problem of Belgian politics – the constitutional issue of regional reform. Once the problem of accommodating the needs of the two major cultural communities for an adequate (in the sense of the relative proportional size of population) number of EP-seats was solved, legislation did not pose many difficulties. As all parties were in favour, the electoral details to be changed seemed of minor importance.

For the purpose of this chapter it seems worthwhile noting: proportional representation is a generally accepted system and has been in use in connection with loose party lists for many years. Given the future regional (federal) structure of the Belgian state, the

<sup>19</sup> Boel, *ibid.*, p. 1004.

<sup>20</sup> See Art. 36 of the Loi relative aux élections européennes.

<sup>21</sup> Cf. Dubois, *art. cit.*, p. 284.

division into regional constituencies seems unavoidable and essential to assure a balance between the communities. The overall impression is that of general flexibility so far as electoral provisions are concerned, as long as they stay within the framework of proportional representation with regional lists and preference voting. An overall national allocation of seats and counting of votes seems unlikely.

### 3.1.2. DENMARK

#### *Background*

In order fully to understand the Danish attitudes towards the implementation of the first European elections it may be helpful to remember the result of the 1972 referendum on Danish accession to the European Communities. The outcome was 64% of the votes in favour of membership, yet nearly half of the Social Democratic voters were among the 32% opposed to Danish entry. This anti-market opinion has prevailed ever since and has even grown in numbers<sup>22</sup>.

A second factor to keep in mind is the predominantly economic perception<sup>23</sup> of membership by the Danish public. The pro-entry lobby at the time of the referendum mainly stressed the economic importance of membership, while the political implications were underrated<sup>24</sup>. Thus, when the issue of European elections came up it meant an opportunity for the opponents of Danish EC-membership to bring up the whole question again and to play the 'national sovereignty card'.

The Danish government tried to soften the opposition by insisting during the negotiations in the Council of Ministers on two special conditions, which seemed necessary to secure the agreement of Denmark to the holding of the first European elections. They concerned the *timing of the elections*, which the government wanted to combine with national elections, and the *dual mandate*, which the government wanted to be obligatory for Danish EP-members. These conditions reflected the fear of great parts of the Social Democratic

<sup>22</sup> Cf. the various opinion polls by *Eurobaromètre*, Brussels, between 1972 and 1979.

<sup>23</sup> Auken, S., Buksti, J. and Lehmann Sørensen, C., 'Denmark joins Europe', *Journal of Common Market Studies*, vol. XIV, no. 1 (Sept. 1975), p. 3.

<sup>24</sup> 'The option for which Denmark voted in the EEC-referendum was a politically restricted one': Fitzmaurice, J., *The European Parliament* (Farnborough; 1978), p. 62.

Party and other groups in the Folketing that the composition of the Danish contingent would not reflect the party balance in the national parliament and that the coordination of the views of the parliamentarians in both houses would be difficult to obtain. On the other hand it was assumed that the turn-out for European elections would be much lower than for Folketing elections and that the anti-market opposition outside parliament would have great electoral success<sup>25</sup>.

The parliamentary debate in December 1975 showed a strong majority in favour of the principle of direct elections, and, surprisingly, also that the government position as regards the two reservations was not entirely backed by the Folketing<sup>26</sup>. Without there being a vote on it, it became clear that a majority of the deputies not only opted for separate European and national elections, but also against an obligatory dual mandate. The main arguments were the physical and psychological stress on the European parliamentarians and that sufficient coordination was possible, if the Euro-delegates were members of a Folketing party<sup>27</sup>.

In spite of the apparent unlikelihood of parliamentary support for the government reservations, the Danish government insisted that they should be included in the minutes of the Council of Ministers of 20 September 1976.

### *The government draft bill*

Apart from the two reservations no electoral provision caused any real controversy. After the government had given up its intention to include the reservations in a bill, the main features were the following<sup>28</sup>:

— *The special position of Greenland within Denmark*, both geographically and administratively, demanded a special regulation

<sup>25</sup> Haagerup N. J., 'Dänemark und die Wahlen zum Europäischen Parlament', *Dokumente*, vol. 33, no. 1 (March, 1977), p. 55.

<sup>26</sup> See also Vesterdorf P., *Det Nye Europa-Parlament: Valg og Bepoelser* (Albertslund; 1977), p. 87 ff.

<sup>27</sup> A summary of the debate and the subsequent discussion of the government reservations in the Market Committee can be found in Gulmann, C. and Vesterdorf P., 'Preparations for direct elections in Denmark', *Common Market Law Review*, vol. 16, no. 1 (Feb. 1979), pp. 119-126.

<sup>28</sup> Forslag til Lov om valg af danske repraesentanter til Europa-Parlamentet. Lovforslag nr. L 15, Folketinget 1977-78, blad nr. 15, 6 October 1977.

for its 45,000 inhabitants: one seat was given to Greenland and the electoral provisions were contained in a special bill <sup>29</sup>.

— The Danish mainland was to form *a single national constituency*. Two other possibilities had been under consideration: a) the division of Denmark into three constituencies on the basis of the existing three electoral regions for national elections <sup>30</sup> — Copenhagen, Jutland and the islands — which would have resulted in an allocation of the seats slightly in favour of the bigger parties; and b) a division of the country into 15 single-member constituencies or into 10 single-member constituencies with 5 additional seats. This could have meant giving up the traditional system of proportional representation and would have led to an even greater advantage to the bigger parties <sup>31</sup>.

The government's arguments for the introduction of a single national constituency were:

— Given the small number of EP-seats (only fifteen), a subdivision into several constituencies would not secure proportional representation of all the parties already in the Folketing.

— Local problems would not play a dominant part in the European election campaign, and the subdivision would create technical/administrative problems.

— Recalling the underlying idea of the obligatory dual mandate, i.e. the monopolisation of candidatures and list proposals by the Folketing parties, one of the salient points was the *right to propose candidates*. Here the government draft emphasized that primarily parties who were already represented in the national parliaments should have this possibility. Yet, to allow other groups which had substantial support in the country to put forward candidates, a quorum of signatures, in analogy to Folketing elections, was proposed. The government reckoned that a party could present candidates if it commanded at least the support of as many voters as were necessary at the last Folketing elections to gain a seat (about 2%) and would be necessary to gain a single seat in the European Parliament. Thus *a quorum of 62.000 signatures was demanded*.

<sup>29</sup> Forslag til Lov for Grønland om valg til Europa-Parlamentet. Lovforslag nr. L 16, Folketinget 1977-78, blad nr. 16, 6 October 1977.

<sup>30</sup> Cf. Nørby-Johansen, L., 'Denmark', in Hand *et al.*, *op. cit.*, p. 41 (C7).

<sup>31</sup> See Vesterdorf, *op. cit.* (p. 96, n. 26, above), p. 95ff.

— In consideration of the small number of Danish EP-seats and the relatively large number of parties represented in the Folketing, the Government proposed to allow the *formation of electoral alliances*. This should also help to limit the wastage of votes and the representation of differing views, since the natural threshold to be assured of gaining one of the Danish EP-seats was over 6% of the votes cast.

— *All lists were to be limited to twenty candidates*, in order not to let the ballot paper become too long. The Government reckoned that thus about 220 names would appear on the ballot paper for European elections, while in the biggest constituency for Folketing elections the ballot paper contains about 110 candidates.

— In contrast to national elections the counting of votes and allocation of seats to lists was to take place, not under the highest remainder system of the St. Lagüe method, but according to the *d'Hondt highest average method*, giving some advantage to the bigger parties and pushing the smaller parties towards forming electoral alliances.

— *The franchise was to be extended to Danes living in another Member State* of the European Community. In order to exercise their right to vote by postal ballot, they had to be inscribed in a special register in the Copenhagen district. To avoid any postal delay, voting abroad was planned to be held three months before European elections day in Denmark.

### *Parliamentary Debate*

The two bills (for the Danish mainland and for Greenland) were discussed together in the Folketing during autumn 1977<sup>32</sup>, and did not cause much controversial debate. Nevertheless, there were twenty-two amendments tabled (mainly from the minor parties)<sup>33</sup>, none of which, however, was accepted. Of these amendments three are worth mentioning:

— the minor parties proposed to substitute the d'Hondt high-

<sup>32</sup> Cf. Folketinget 1977-1978, pp. 724-796 (20 Oct. 1977) for First Reading, pp. 2711-2738 (29 Nov. 1977) for Second Reading and pp. 3034-3036 (2 Dec. 1977) for Third Reading.

<sup>33</sup> For details see Market Relations Committee Report, Pilslovforslag nr. L 15 og L16, Folketinget 1977-1978, blad nr. 194 (25 Nov. 1977).

est average method by the St. Lagüe system in order to give a fairer chance to the smaller parties;

— two proposals concerned the right of presenting list proposals by new parties: one amendment tried to restrict this possibility to parties represented in the Folketing only, while the other amendment tried to extend this right by lowering the necessary quorum to 40,000 signatures.

The two bills were adopted by a large majority on 2 December 1978. The relatively smooth passage through parliament can largely be explained by the fact that the major parties had agreed in advance not to introduce intra-party problems into the direct elections debate.

### *General Conclusions*

Originally the Danish Government had intended to impose an obligatory dual mandate and thus restrict candidatures for European elections to Folketing members only. Secondly, it was considered necessary to hold European elections on the same day as national elections.

But, due to an apparent change of opinion amongst the majority of parties in parliament, these two conditions were abandoned and not included in the final European elections legislation. Nevertheless, by demanding a relatively high quorum of 62,000 signatures for list proposals from new parties or alliances, and by changing the vote-counting method from the traditional highest remainder system to the d'Hondt highest average method with its bias towards the bigger parties, the Government and the major forces in the Folketing tried to prevent the opposition to the European Community outside parliament from participating in the European elections at all. Thus, the Danish provisions for European elections carry a clear mark of bias in favour of the established parties.

In spite of these restrictive regulations the parliamentary debate lacked any real controversy. In order to be acceptable for the Danish parties a future uniform system should be based on proportional representation with either national or regional lists, and some form of preference voting. Furthermore it should give liberal access to smaller parties and reflect the special position of Greenland. As such a uniform system should not pose any great problems.



### 3.1.3. FEDERAL REPUBLIC OF GERMANY

#### *Background*

Public opinion and political parties in Germany are generally in favour of European integration, and the introduction of direct elections to the European Parliament was strongly welcomed. The unanimous ratification of the Direct Elections Act by the German Bundestag<sup>34</sup> was a political demonstration of this overall positive attitude towards the European Community. It was generally accepted that legislation for European elections should give cause for party-political disputes. Nevertheless, the 'European-ness' of the parties has as well a pragmatic side, as far as their electoral chances are concerned. Thus, in spite of promising to be a non-issue, the electoral system to be chosen became the centre of electoral calculations for some of the parties concerned.

Internal disputes between the CDU and the CSU over the right electoral strategy to be followed for the national election campaign in the summer of 1976, and the close result of the autumn elections, led to a marked cleavage in the opposition group of Christian Democrats. The main argument was one of tactics: while since the foundation of the Federal Republic the two Christian Democratic 'sisterparties' – the CDU and CSU – formed a joint parliamentary group in the Bundestag, their electoral arrangements were different: the CDU put forward candidates in only nine of the ten Länder, while the CSU confined its candidates to Bavaria. Discontent over the near miss of an overall majority for the two parties concentrated in the discussion of an extension of the CSU to cover the whole country, bringing the creation of a fully-fledged fourth party at the federal level<sup>35</sup>.

European elections were seen by the party headquarters as a possible testing ground for such a move without endangering the party positions in the Bundestag.

Without going further into the details of the possible implications of such a step for the party system in Germany, we may note that

<sup>34</sup> Verhandlungen des Deutschen Bundestages, 8. Wahlperiode, 32. Sitzung, 16-6-1977, 2431 D – 2438 B.

<sup>35</sup> Cf. for example Hrbek R., Das Deutsche Wahlgesetz zum Europäischen Parlament in der Parteienkontroverse, *ZfParl*, 2 (1978), pp. 168-179.

this question caused a considerable delay in the European elections legislation.

Apart from these basically internal party problems, two other factors of a more constitutional nature had an impact on the choice of the electoral system: the *federal structure* of Germany and the markedly '*mixed*' electoral system for the German Bundestag. The two aspects are somewhat interwoven, as the federal structure finds its expression in the Länderlists, on which proportional representation is based; while the parallel device of single-member constituencies and plurality vote allows for a close regional link between voters and their representatives<sup>36</sup>. Consequently the choice of an electoral system for European elections also had to encompass the problem of which form of list system would be more appropriate to the federal structure and its consequences for the relationship between the electorate and the elected representatives.

### *Possible Options*

There was general agreement between the political parties and the experts of the Ministry of the Interior that the German European election provisions should be based as far as possible on the federal electoral law for elections to the Bundestag. This meant that in principle the major elements characterising the federal law – such as the personalised proportional representation aspect, a close relationship between voter and elector and the 5% threshold to avoid party fragmentation – should also be contained in the law for European elections.

As early as September 1975, the Federal Ministry of Interior communicated to the parties a first draft of the problems involved, where two systems in particular were discussed<sup>37</sup>:

a) Proportional representation on the basis of *federal lists* (Bundeslisten). Germany should form a single national constituency and the political parties were to submit lists containing as many names as there were members to be elected. Any regional equilibrium among the candidates was to be left to the parties.

<sup>36</sup> Grabitz E., *Europa-Wahlrecht* (Bonn, 1977), pp. 19ff.

<sup>37</sup> Problemskizze des Bundesinnenministeriums V I 5-121 341/4, vom 8.9.1975, Bonn.

b) Proportional representation on the basis of ten *combined regional* lists ('Länderlisten'). In the same way as in federal elections to the Bundestag the parties would submit lists of candidates for each 'Land', which would be combined at national (federal) level for the computing of votes and the allocation of seats. After the seats were distributed to the combined lists according to d'Hondt, there would be a second round of seat allocation within the parties to the different Länderlisten. According to the study of the Ministry, the problem with this system would be the very small size of some of the Länder, like Bremen and Saarland, which because of their small electorate would not gain any direct representation in the EP.

Further variants, like the direct analogous application of the mixed federal system or the introduction of a regional list system on the basis of the ten Länder without overall national calculation, were, like the British 'first-past-the-post system', considered as non-starters <sup>38</sup>.

A joint committee of the two coalition parties in government, SPD and FDP, opted in favour of the federal list system <sup>39</sup>. The two opposition parties CDU/CSU re-introduced, in a response to the study of the Ministry of Interior and to the option of the coalition parties, a third variant, based on federal elections practice <sup>40</sup>:

c) *In direct application of the federal electoral law*, half of the German EP-members should be elected in single-member constituencies by plurality vote; the other half via party lists on Länder basis by proportional representation. For seat allocation the Länder lists would be combined at federal level and seats would be distributed to the parties on the basis of the total of list-votes (*Zweitstimme*) a party received. In a second round the party seats would be allocated to the party Länder lists by the d'Hondt highest average method <sup>41</sup>. For European elections two problems could occur: the size of the Euro-constituencies would hardly guarantee the close voter-member relationship, common in the Bundestag constituencies. On the other hand, as with the second variant of the Ministry of the Interior, the smaller Länder would not gain a seat via

<sup>38</sup> *Ibid.*, p. 4.

<sup>39</sup> Cf. the joint FDP/SPD paper 'Grundsätze für ein Europawahlgesetz', 27 Jan. 1976.

<sup>40</sup> 'Stellungnahme gegenüber BMI sowie SPD und FDP-Bundestagsfraktion zu den Fragen eines deutschen Europawahlgesetzes zur Direktwahl 1978', mimo, January 1976.

<sup>41</sup> For details see chapter 2, 2.2.3.2, above.

the Länder lists<sup>42</sup>. As in each of the Länder there would be at least one single-member constituency, the problem of a possible additional seat (*überhangmandat*) would arise<sup>43</sup>. It is obvious that the fixed number of national seats in the European Parliament, as agreed upon in the Direct Elections Act of 1976, would not allow for such a device.

### *The Government Draft of the European Elections Bill*

The general provisions of the government draft proposal of May 1977<sup>44</sup> were based on the regulations of the federal law for elections to the German Bundestag. In the absence of any clearly discernible developments towards a future uniform electoral system for all Member States, the government wanted to ensure that the electorate was familiar with the electoral procedures and that the conduct of the first European elections would be in accordance with the constitutional requirements of the Basic Law<sup>45</sup>.

The government memorandum listed a number of criteria, which were applied to find the most suitable electoral system. Apart from the general criteria of legitimation, representativeness and ability to help the formation of a majority, the system to be chosen should:

- reflect as far as possible the political power relationships of the German party system;
- ensure a regional representation of the individual Länder at the European level;
- avoid any unnecessary changes in the established party system;
- be open to new political trends at the European level.

Neither the existing mixed federal election system nor the regional list system met the expectations of the government. The draft law followed the option of the two coalition parties<sup>46</sup> for the system

<sup>42</sup> Cf. Grabitz, *op. cit.*, pp. 18-24.

<sup>43</sup> For details see also Hrbek, *op. cit.*, p. 170.

<sup>44</sup> Gesetzentwurf der Bundesregierung über die Wahl der Abgeordneten des Europäischen Parlaments aus der Bundesrepublik Deutschland (Europawahlgesetz), Bundestagsdrucksache 8/361, 6 May 1977.

<sup>45</sup> *Ibid.*, Memorandum, p. 11.

<sup>46</sup> Cf. Bangemann M., 'Preparations for Direct Elections in the Federal Republic of Germany', *Common Market Law Review*, vol. 15 (1978), no. 3, p. 329.

of *proportional representation with federal lists* (i.e. the country should form a single national constituency).

According to the memorandum, this system would meet the expectations best, as it would:

“— guarantee a relatively proportional reflection of political forces in Germany;

— enable, via the process of candidate selection, the representation of all the Länder as well as a functionally well-balanced choice of candidates;

— take account of the European character of the elections by prescribing a nationwide uniform procedure for candidate selection;

— respect the specific character of the German party system by allowing for joint federal lists, and

— pose no technical or organisational problems”<sup>47</sup>.

The special character of direct elections to the European Parliament led to the introduction of two new regulations: the *extension of franchise* to all German citizens living within the European Community, and the *widening of the right to make list proposals* beyond the political parties to national or transnational political associations with an organised membership. In the memorandum<sup>48</sup> the government reasoned that ideally all European citizens should be entitled to vote for the European Parliament wherever they are living in the Community. But this community-wide franchise was dependent on a uniform electoral system for all Member States. Until this had been realised, it seemed justifiable for the government to reserve the election of the German EP-representatives to the German citizens living within the Community, and thus showing a certain affinity to it.

As regards the extension of the right to put forward candidates, the draft referred to the restrictive interpretation of the concept of party within the German political context, which would not correspond to the European situation where transnational associations are emerging. Therefore, the right to make list proposals was extended even to such associations from other Member States<sup>49</sup>.

<sup>47</sup> Memorandum, p. 12.

<sup>48</sup> *Ibid.*, p. 12 and 14.

<sup>49</sup> *Ibid.*, p. 12ff.

*Parliamentary Debate*

Already before the first reading of the European elections bill on 26 May, 1977, which coincided with the ratification debate on the Direct Elections Act, the Bundesrat, the second chamber, representing the Länder, had commented on the government draft<sup>50</sup> and submitted an amendment concerning the federal list system. Instead of the federal list the Bundesrat proposed to introduce Länder lists in order "to guarantee the adequate representation of the population of each Land in the European Parliament and to take into account the federal structure of the Republic"<sup>51</sup>.

Though the government in its response<sup>52</sup> rejected the Bundesrat proposal, one cannot speak of a strong division between the parties. The impression was rather that both sides tried to avoid a real controversy over electoral procedures<sup>53</sup>. The holding of the first direct elections to the European Parliament was too important for the German parties to endanger it by insisting on their respective positions. Indeed, the first reading of the bill in the Bundestag on 26 May 1977 gave the impression that a compromise could be found<sup>54</sup>.

Only a few parliamentarians actively participated in the debate, which confirmed the already well-known party positions. The spokesman of the opposition accused the government of ignoring the federative structure of Germany and of remoteness from the concerns of citizens and party-members. Furthermore, he recommended reconsideration of the application of the system currently in use for Bundestag elections "as this system is considered in nearly all Europe as exemplary, for which many neighbouring countries envy us"<sup>55</sup>.

The federal list system was defended by speakers from the coalition parties as most suited to represent the Federal Republic as a unit<sup>56</sup>, and it was argued that the Länder list system could only be

<sup>50</sup> Bundestagsdrucksache, 8/361, appendix 2, 6-5-77.

<sup>51</sup> Though it is hardly surprising that the Bundesrat took up the proposal of the CDU/CSU, which had the majority in this chamber, the amendment was supported, too, by Länder with a SPD/FDP government; for details see Hrbek, *op. cit.*, p. 174.

<sup>52</sup> Bundestagsdrucksache 8/361, appendix 3, 6-5-77.

<sup>53</sup> Bangemann, *op. cit.*, p. 322.

<sup>54</sup> An extensive account of the parliamentary debate can be found in Hrbek, *op. cit.*, p. 175.

<sup>55</sup> Lenz (CDU), Verhandlungen des Deutschen Bundestages, 8. Wahlperiode, 29. Sitzung, 26-5-1977 (siehe Bericht in *Das Parlament*, 4-6-77, p. 1).

<sup>56</sup> Schäfer (SPD), *ibid.*

applied if the electoral units were rather similar in size of population<sup>57</sup>. All speakers agreed that the European elections procedure at issue was only of a transitional nature since it would have to be replaced in future by a uniform system. The government's preparedness for compromise in this matter was indicated by the Minister of the Interior when he referred to the West German parliamentary tradition of regulating the basic rules of democratic procedures (such as elections) on a common basis<sup>58</sup>.

The subsequent discussion in the relevant committees concerned not only failed to produce a common solution, but by majority votes of the coalition parties the federal list system was maintained<sup>59</sup>.

Behind the scenes, however, leading exponents of the parties had started busy activities:

— the CSU made clear that under a federal list system the party would submit a list of candidates separate from the CDU and, thus, expand its electoral activities beyond Bavaria on a nation-wide level<sup>60</sup>;

— this threat to the unity of the two Christian Democratic parties alarmed the leadership of the CDU, who wanted to avoid any possibility for the CSU to test its electoral chances outside Bavaria, and contacts with the Liberal Party (FDP) were sought<sup>61</sup>;

— the FDP itself had suddenly realised that a federal list system could jeopardize the party's position within the German party system because of the probable electoral success of the CSU<sup>62</sup>, and entered into talks with the CDU.

As a result of these exploratory talks the parliamentary timetable ran into delay and the second and third reading of the bill, planned for 5 October 1977, were postponed to 16 March 1978. This time was needed to come to an all-party agreement in the electoral list question<sup>63</sup>. The final compromise left it to the parties either to sub-

<sup>57</sup> Bangemann (FDP), *ibid.*

<sup>58</sup> Minister of Interior Mañhofer, *ibid.*

<sup>59</sup> Bundestagsdrucksache 8/917, 20-9-77.

<sup>60</sup> See for example the article by the general secretary of the CSU, Gerold Tandler, in *Saarbrücker Zeitung*, 14 Sept. 1977: 'Bundesliste zur Euro-Wahl heisst CSU-Bundesliste'; also, *Frankfurter Rundschau*, 2 June 1977: 'Opposition uneins über die EG-Wahlen'.

<sup>61</sup> *Süddeutsche Zeitung*, 6 Oct. 1977, 'Annäherung über Europa-Wahlgesetz'.

<sup>62</sup> An interesting argumentation in this respect can be found in an essay by H. Rattinger, 'Landesliste oder Bundesliste', *ZfParl*, 2 June 1977, pp. 189-196.

<sup>63</sup> Bundestagsdrucksache 8/1602, Bericht des Innenausschusses, 16-3-1978.

mit lists of candidates in the individual Länder, which could be combined to give the total votes for the party from the whole federal territory (combined Länderlists), or else to decide on a single list for the Federal Republic (Bundesliste). In fact, parties were free, too, to put forward candidates in only one Land or combine lists of some Länder. The latter provision was, at the time of the debate, extremely suitable to the CSU, as it left open the decision for the party whether to campaign only in Bavaria or outside as well <sup>64</sup>.

Two other amendments to the government draft were agreed in parliament: *the possibility of substitute candidates* and the provision that *a candidate could appear on more than one Länder list*. While the latter aimed at securing a chance for candidates from the smaller Länder, like Bremen and Saarland <sup>65</sup>, to be elected via their party's list in another Land <sup>66</sup>; the former was specially introduced to guarantee, in the case of a casual vacancy, regional equilibrium on a federal party list <sup>67</sup>. Only where parties refrained from nominating substitute candidates before the elections, would the vacant seat be occupied by the next on the list.

Two further amendments by the opposition parties concerning the *extension of franchise to Germans living outside the European Community* <sup>68</sup> and the *compatibility of the EP-mandate with membership in a Land government* <sup>69</sup> were both rejected by the coalition majority in the Bundestag. A later attempt to introduce the latter provision via the Bundesrat failed, though the opposition held the majority there <sup>70</sup>.

All other electoral provisions correspond to the regulations for elections to the German Bundestag and have caused no controversy. However, two aspects of the German European elections procedure demand more attention:

— For European elections, also, an *electoral threshold of 5%* of the valid votes cast was applied. It provides that a party has to

<sup>64</sup> Cf. the interesting editorial of *Süddeutsche Zeitung*, 20 April 1978, 'CSU-Test mit der Europawahl'.

<sup>65</sup> Cf. page footnote, above.

<sup>66</sup> Krey (CDU), *Verhandlungen des Deutschen Bundestages*, 8. Wahlperiode 81. Sitzung, 16-3-1978, 6424 D.

<sup>67</sup> Wittmann (SPD), *ibid.*, 6427 A.

<sup>68</sup> The amendment concerned "all Germans, who have been living outside the European Community for not more than five years" Bundestagsdrucksache 8/1632, para 1.

<sup>69</sup> Bundestagsdrucksache 8/1632, para 2.

<sup>70</sup> *Süddeutsche Zeitung*, 20 April 1978.



gain a minimum of 5% of the valid votes in order to qualify for seat allocation. This 5%-clause is a specific German device<sup>71</sup>, which was introduced in 1953 to the federal law on elections to the Bundestag in order to avoid too much party fragmentation and, thus, secure viable parliamentary majorities. Its adoption for European elections has not caused any problem, as it clearly favours the established parties. Some objections have been raised, however, by constitutional lawyers concerning the constitutionality of such a threshold for elections to a supranational parliament. It was argued in particular that not only splinter parties are affected by this clause but also small German parties which are members of transnational European party federations and thus may represent some political weight in the European Parliament<sup>72</sup>. Just a few days before the first direct elections, the German Federal Constitutional Court (Bundesverfassungsgericht) published its decision<sup>73</sup> that the application of the 5% threshold for European elections is in conformity with the Constitution and in accordance with previous court decisions. Whether the German parties will continue to insist in future on the maintenance of this threshold, and its possible inclusion in a uniform system, will largely depend on the future development of the German party system<sup>74</sup>.

— The special status of West Berlin did not allow for the election of its three EP-representatives by direct universal suffrage. They were, instead, nominated by the House of Representatives of Land Berlin, just like the West Berlin members of the Bundestag. They are, however, part of the overall German delegation and enjoy exactly the same rights as the directly elected members. This arrangement has been agreed upon by the three Western allies on the

<sup>71</sup> See Grabitz, *op. cit.*, pp. 63-66.

<sup>72</sup> Cf. Grabitz, E. and Meyer, T. U., 'Die Direktwahl zum Europäischen Parlament', *Neue Juristische Wochenschrift*, 31st year, 35, 30 Aug. 1978, p. 1708; taking up this argument and expanding it further is Murswiek, D., 'Die Verfassungswidrigkeit der 5%-Sperrklausel im Europawahlgesetz', *JZ-Juristenzeitung*, 2, 19 Jan. 1979, pp. 48-53; also Hahlen, J., 'Europawahlgesetz verfassungskonform', *Die Öffentliche Verwaltung*, 8 (1979), p. 284ff.; Bleckmann, A., 'Nochmals: Europawahlgesetz verfassungskonform?', *Die Öffentliche Verwaltung*, 13-14 (1979), pp. 503-505.

<sup>73</sup> BVerfGE of 22 May 1979 – 2 BvR 193 and 197/79 – published 7 June 1979; the full text can be found in *Europäische Grundrechts-Zeitung*, 1979, pp. 320-330.

<sup>74</sup> Contrary to this opinion, W. Wagner expects that the German government will insist on its application, see Wagner, W., 'Die europäische Direktwahl als Motor politischen Wandels', *Europa-Archiv*, 24 (1978), p. 735.

basis of the Berlin Four Power Agreement <sup>75</sup>, which acknowledges the full applicability of EC-treaties to West Berlin <sup>76</sup>. This special regulation will still have to be maintained for future European elections.

### *General Conclusions*

In retrospect, the implementation of the first European elections has not shown any deep contrasts between the German parties. General unanimity prevailed that the essential elements of the federal law on elections to the Bundestag should find application. With the adoption of the system of proportional representation with rigid party lists at regional or federal level, and the possibility of combining the Länderlists for overall seat allocation, this has been achieved.

The course is already set; for a uniform system as a subdivision of the country into electoral regions and an overall national calculation of votes and seats corresponds to existing electoral practice for Bundestag and European elections, no problems should arise. To take account of the special position of the CSU (and probably other regionally strong parties) it may be necessary to allow a party not to present candidate lists in all electoral regions. There is much to be said for the abandonment of the Länder as electoral units: smaller electoral units would mean closer contacts between electorate and elected members – an argument, which has been underlined by all parties as essential, and which corresponds to the personal aspect of single-member constituencies in the mixed system for Bundestag elections. The direct application of the Bundestag system, however, does not seem to be possible, because of the small number of seats to be distributed.

To re-emphasize the personal choice element, which has been weakened in the European Elections Act, one could assume a certain flexibility among the parties. The introduction of loose party lists instead of the present rigid party lists would regain for the voter the chance to express his personal preference, as he could do in Bundestag elections.

Regarding the extension of the franchise to citizens of other Member States of the European Community, the memorandum of

<sup>75</sup> Cf. Bangemann, *op. cit.*, p. 326ff.

<sup>76</sup> The Soviet Union considered this arrangement as a contravention of the Four Power Agreement of 1971; cf. *Financial Times*, 14 Dec. 1977.

the government already refers to the possibility of such a provision for the future uniform system. The regulation of typical German provisions – the 5% clause and the ban on unconstitutional parties – will probably have to be left to the German parliament for decision, and may have to be excluded from a uniform system.

All parties are in favour of a uniform system and consider the present European elections procedure as transitional.

### 3.1.4. FRANCE

#### *Background*

It emerged rather early from comments made by the French parties that the implementation of the first direct elections to the European Parliament would raise fundamental problems in France and that the cleavages between the parties would be quite profound.

While, at the beginning of the Seventies one could still find an overall positive attitude towards direct elections in all parties<sup>77</sup>, these attitudes changed in the middle of the decade. The lines of cleavage did not correspond, however, to the more or less distinct left-right division of French party politics, but ran horizontally across party lines in both blocks.

Amongst the parties of the *majorité* the Gaullist objections were already apparent during the consultations about the Patijn report in the European Parliament and their representatives abstained from voting, while the other parties of the *majorité* were for direct elections.

On the side of the left opposition a similar division in opinion emerged. As late as 1968 the Communists (PCF) and Socialists (PS) had included the demand for direct elections in their historic *programme commun*, but now the PCF opted against supranational elections, which would be aimed against the sovereignty of France<sup>78</sup>. Like the Gaullists, the Communist EP-members abstained from vot-

<sup>77</sup> For details on the attitudes of all French parties, see Burban, J. L., *Le Parlement Européen et son élection* (Brussels; 1979), chapter II.

<sup>78</sup> *Le Monde*, 17 Feb. 1975; for a comprehensive analysis of the attitude of the PCF before 1977, see Buck, K. H., 'Die Haltung von KPI und KPF gegenüber Direktwahl und Funktionen des Europa-Parlaments', *ZfParl*, 7 (1976), Heft 2, pp. 209-219.

ing on the Patijn Report. This obviously identical attitude of the two ideologically distinct parties could be noticed throughout the episode.

In the Socialist party, too, there was at least a strong minority (Ceres group) against direct elections. But in the main body of the party the demand for democratisation of the institutions of the European Community was upheld <sup>79</sup>.

The dissent of Gaullists and Communists from the official policy of the French Government grew after 1975. As early as December 1975 – a few days before the European Council summit in Rome – the constitutionality of European elections was called in question <sup>80</sup>. And in spring 1976 the Gaullists set the conditions necessary for their acceptance of direct elections:

- a division of the EP-seats between the Member States on a strictly proportional basis of population;
- a uniform electoral system and a common election day; and
- a restriction of the competence of the Assembly to those functions mentioned in the Rome treaties <sup>81</sup>.

These conditions did not, however, indicate a change in a positive direction within the Gaullists, quite the contrary: well knowing that these conditions could not be met for the time being, or were unrealistic, the party tried to torpedo the plan.

During 1976 a hardening of the party positions occurred and the vehemence of the disputes was reminiscent, in many respects, of the profound cleavages between the parties over the European Defense Community in 1954 <sup>82</sup>. Especially, 'the danger of the dissolution of national unity' and the accusation that the President would put national sovereignty at risk, united the adversaries of European elections from all parties. After the Direct Elections Decision of the EC Council of Ministers, the legal argumentation over the constitutionality of European elections increased rapidly. While a majority of

<sup>79</sup> The French Socialists had demanded direct elections as early as the Hague Congress of 1948.

<sup>80</sup> Debré, M., *Le Monde*, 8 Dec. 1975.

<sup>81</sup> Bussy, M. E. and Smouts, M.-C., 'Frankreich: eine Herausforderung an die Parteien', *Europa Archiv*, 24/1978, p. 789.

<sup>82</sup> Crandall-Hollick, J., 'Direct elections to the European Parliament: the French debate', *The World Today*, Dec. 1977, pp. 472-480.

constitutional experts affirmed their conformity with the constitution, it was challenged by politicians, mainly Gaullists<sup>83</sup>.

To take the wind out of the opponents' sails and clarify the issue straight away, President Giscard d'Estaing, in November 1976, called upon the Conseil Constitutionnel (Constitutional Council) to deliver a clear decision on the constitutionality of the Direct Elections Act<sup>84</sup>. The Constitutional Council was asked to consider three main objections:

- the Direct Elections Act would bring about a transfer of sovereignty to the European Community;
- the principle of the indivisibility of the Republic would be violated;
- the directly-elected French EP-members would exercise French sovereignty.

Without going into the details at this moment, it seems necessary to expand shortly on the main aspects of the decision. The Constitutional Council did not restrict its deliberations only to assessing constitutionality but added to its decision a statement of its reasoning, which was to have implications reaching further than the decision itself and influencing the French European elections legislation. Though the Constitutional Council denied a threat to the constitutional principle of the indivisibility of the Republic (Art. 2), the Council demanded the observance of this principle in the European elections procedure and in any future uniform electoral system.

For many weeks afterwards, the discussion over the interpretation of this clause ran high — it remained unsettled, whether the Constitutional Council intended to block any subdivision of France into electoral regions<sup>85</sup>, or whether only trans-frontier Euro-constituencies were meant<sup>86</sup>.

<sup>83</sup> The discussion was published throughout the period in *Le Monde*; a comprehensive index of the major articles can be found in *Revue du Droit Public*, 1977, pp. 179-180.

<sup>84</sup> For further reference see Favoreu, L. and Philip, L., 'Elections au suffrage universel direct des membres de l'Assemblée Européenne' (Decision du C.C. 30-12-76), *Revue du Droit Public*, 1977, pp. 129-180; Kovar, R. and Simon, D., 'Some Reflections on the Decision of the French Constitutional Council of Dec. 30, 1976' *Common Market Law Review*, vol. 14 (1977), pp. 525-560.

<sup>85</sup> Kovar and Simon, *op. cit.*, p. 540: 'It seems clear that these reservations are intended to exclude any decision based on regional divisions'.

<sup>86</sup> Bieber R., 'Vereinbarkeit des Ratsbeschlusses vom 20-9-76 über die Direktwahl des Europäischen Parlaments mit der französischen Verfassung', *Europarecht*, 1, 1977, p. 58; as well Burban, *op. cit.*, p. 119 note 1.

It is obvious that the politicians on the Gaullist and Communist sides interpreted the clause very restrictively. M. Debré seized upon the interpretation again during the first reading of the European Elections Bill in the form of a *question préalable* <sup>87</sup>. And the Minister for the Interior, C. Bonnet, confirmed that the opinion of the Government was that the decision of the Constitutional Council had to be interpreted in the same restrictive manner <sup>88</sup>.

Other party political factors, of course, also played a role in the controversy over European elections: the cleavage within the *majorité* over the competence of the European Parliament was also an expression of a personal cleavage between J. Chirac and Giscard d'Estaing, and even more part of the electoral campaign already beginning for the March 1978 elections. Both sides intended to polish up their images, even at the cost of European elections.

Electoral considerations also played a role on the opposition side. It was only on the basis of a common electoral platform that the Left saw any chance to win the elections. The re-formulation of the common programme was under discussion and it was necessary to show a common position, too, on the question of European elections. Therefore, the Socialists tried to put pressure on the Communists, and it was not by chance that in April 1977 the leader of the Communist party signalled a possible change of position <sup>89</sup>. The PCF now demanded that in order to get its approval the ratification bill would have to be amended by a clause which would prohibit any future extension of the competence of the Assembly. Additionally, the PCF's approval was linked with the introduction of proportional representation. Similarly the Gaullists demanded guarantees against an increase in the competence of the Assembly, but, unlike the Communists, they also demanded a renegotiation of the Direct Elections Act <sup>90</sup>.

Both parties demanded a postponement of the ratification debate, scheduled for 14-15 June, to the autumn session. Such a step would have resulted inevitably either in a postponement of the ratification

<sup>87</sup> A *question préalable* has priority over all other debate and could, if carried, block any further discussion on the bill.

<sup>88</sup> See below.

<sup>89</sup> Cf. *Le Matin*, 18 May 1977; *Le Monde*, 20 May 1977.

<sup>90</sup> In a speech reported in *Le Monde*, 9 June 1977, J. Chirac explained: 'We are not opposed in principle but further national or international discussions are necessary to give us the guarantees we require'.

indefinitely or, at the least, in a considerable delay into the next parliamentary session<sup>91</sup>. The Government refused these demands and emphasized the non-admissibility of parliamentary amendments to acts of ratification<sup>92</sup>. A trial of strength within the *majorité* was inevitable between Giscard d'Estaing and the RPR. By applying Art. 49 of the Constitution and thus connecting the ratification with a question of confidence, the Government passed the problem to the Gaullists: either they would have to abstain and accept the ratification or they would have to defeat the Government on an issue which was rather marginal in the perception of the electorate, which could result in the dissolution of the *Assemblée Nationale*. Without going further into detail, it remains to be noted that the Direct Elections Act was ratified on 21 June, without a vote<sup>93</sup>.

### *The Government Draft of the European Elections Bill*

Just some weeks after the decision of the Constitutional Council the French Foreign Minister, de Giringaud, announced on 19 January 1977 the Government's intention to introduce a national list system of proportional representation for European elections. It was clear that this decision was taken in line with the view of the Constitutional Council, and corresponded to various considerations; though it was theoretically thinkable to form 81 single-member constituencies and maintain the traditional majority system with two rounds<sup>94</sup>, such a move would have caused strong protests from individual deputies. A sub-division into 81 Euro-constituencies would have only been possible at the expense of the existing constituencies for national elections, and a member of the European Parliament would somehow be superimposed on the deputies of the *Assemblée Nationale*, whose departments would form part of the Euro-constituency. On the other hand, it did not appear feasible to have a sys-

<sup>91</sup> Cf. for example the Socialist deputy P. Mauroy, *Le Monde* 14 June 1977.

<sup>92</sup> For a detailed account of the problem see Jacqué, J. P., 'Das französische Parlament vor den allgemeinen und direkten Wahlen zum Europäischen Parlament', *Integration*, 3/1978, pp. 90-102.

<sup>93</sup> *Ibid.*, *passim*; also Simon, D., 'Preparations for Direct Elections in France', *Common Market Law Review*, vol. 16, no. 1 (1979), pp. 127-138.

<sup>94</sup> Though M. Duverger had put forward the opinion in an early article that only a proportional representation system with national lists was possible (*Le Monde*, 20 July 1976), he indicated in a later article in *Le Monde* (4 Jan. 1977) that the retention of the system in use for national elections was also possible.

tem of proportional representation with multi-member constituencies based on the existing administrative regions. This would have given the regions a representation at European level and could lead to increasing demands for further regionalisation in France: an aspect which, at least in the eyes of Communists and Gaullists, would endanger the unity of the nation, and which by some constitutional experts was judged as contrary to the ruling of the Constitutional Council <sup>95</sup>.

As finally published, the *Projet de Loi* of 25 May 1977 <sup>96</sup> specified in a rather short and concise manner the proposed electoral provisions for European elections. After all, the decision for proportional representation meant a total departure from the electoral practice of the Fifth Republic, and not just a minor adjustment of existing electoral regulations. The explanatory memorandum states that 'though the proposed European elections bill would be based in many aspects on the *Code Electoral*, it would differ profoundly from existing national or local government regulations. These specific provisions were to some extent of a purely technical nature. But they would express the intention to emphasize the specific character of European elections' <sup>97</sup>. The *system of proportional representation* would ensure the widest and most synthetical representation of the different 'families of thought' of the French electorate. In its combination *with rigid national lists*, it would allow the deputies better to represent the French people, as they were elected on a national level.

As vote counting method the Government proposed to apply the *d'Hondt highest average method*, since it was traditionally used in France in connection with proportional representation.

To avoid a multiplication of such lists, which could not secure significant support, a *legal threshold of 5%* was proposed. Thus, those lists which did not gain at least 5% of the valid votes cast would be excluded from seat allocation, and they would lose their *deposit of FF 100,000*.

All other provisions were based either on the *Code Electoral* or – in the case of voting rights for French citizens abroad – on the regulations for presidential elections.

<sup>95</sup> Page 112, n. 85, above.

<sup>96</sup> *Projet de Loi relatif à l'élection des représentants à l'Assemblée des Communautés Européennes*, Ass. National No. 2921, 25 May 1977.

<sup>97</sup> *Ibid.*, p. 3.



*Parliamentary Debate*

Initially the Government had intended to leave the debate on the European Elections Bill until autumn 1977, but the Gaullists insisted on an earlier date before the summer recess. This was rather surprising, as the Gaullists had originally tried to postpone the ratification debate until autumn, but now it seemed that they tried to avoid the forcing of a discussion about regional constituencies<sup>98</sup>. On the other hand, this attitude may have been based on considerations of keeping the debate and parliamentary adoption of the electoral law out of the election campaign, in order to avoid any repercussions on the electoral system for national elections. The debate in the Assemblée Nationale was mainly determined by amendments, which were intended to guarantee a close national control over any future uniform electoral system and over the EP-members<sup>99</sup>. Right at the beginning of the debate M. Debré tried to obtain from the Government, through the technique of the *question préalable*, a clear statement on its position as regards the indivisibility of the Republic and its preservation in any future electoral system<sup>100</sup>. In his immediate response the Minister for the Interior, C. Bonnet, affirmed that the Government would reject any proposal aimed against the unity of the nation<sup>101</sup>. "The French Government no more wants deputies of Brittany, Corsica or Occitania than it wants to see Flemish, Welsh, Bavarian or Sicilian deputies represented in the Assembly".

Furthermore, Bonnet emphasised that the system of proportional representation with national lists would reinforce the principle of the indivisibility of the Republic and would block any centrifugal forces<sup>102</sup>. In spite of this affirmative statement by the Government the Assemblée Nationale adopted an amendment that reserved the introduction of any new electoral system exclusively to the competence of the French parliament<sup>103</sup>.

In contrast to the Assemblée Nationale the debate in the Sénat was less strongly determined by party political arguments. Thus, for

<sup>98</sup> Cf. Burban, *op. cit.*, p. 116.

<sup>99</sup> Cf. Jacqué, *op. cit.*, pp. 99ff.

<sup>100</sup> M. Debré, *Ass. Nat. Compte Rendu Intégral*, 67<sup>o</sup> séance, 21 June 1977, p. 3898.

<sup>101</sup> C. Bonnet, *ibid.*, p. 3990.

<sup>102</sup> *Ibid.*, p. 3988.

<sup>103</sup> See amendment no. 2, report of G. Donnez, *Ass. Nat.* no. 2999.

example, two amendments adopted in the other chamber were somewhat modified. The 'exclusive competence of the French parliament for future changes of the electoral system' originally mentioned in the new Article 1 was deleted. Art. 1 reads now 'The mode of election of the French representatives in the European Assembly can only be changed by law'. Furthermore, Art.14 *bis*, which reserved participation in the electoral campaign to French parties, was changed so that other groups, too, could enter the campaign as long as they put forward a list of candidates of their own<sup>104</sup>.

However, also in this debate, the strong resistance of the senators against any sub-division of France into electoral constituencies prevailed. The amendment by J. Pelletier<sup>105</sup>, to divide France into 22 electoral constituencies, of which none should have less than two EP-representatives, was rejected. Pelletier's reasoning that the European Assembly should take account of each Member State's regions was declined, with reference to the danger of autonomist movements<sup>106</sup>. An amendment to reduce the legal threshold from 5% to 2% of the valid votes cast in order to overcome the bi-polarisation of the French party system<sup>107</sup> was rejected by the Government with the same arguments<sup>108</sup>.

With the abstention of the thirty Communist senators the bill was adopted, without any vote against, by the Sénat on 29 June 1977.

### *General Conclusions*

France was the only Member State of the European Community to introduce an entirely new electoral system for the first direct elections to the European Parliament. Though the double-ballot majority system normally applied for national elections has been considered as one of the pillars of stability in the Fifth Republic<sup>109</sup>, the arguments in favour of a proportional representation system prevailed over the fears of a possible multiplication of parties. To meet those fears,

<sup>104</sup> *Sénat Compte Rendu Intégral*, séance du 29-6-1977, p. 1908, new Art. 15.

<sup>105</sup> *Ibid.*, p. 1903, amendment no. 19.

<sup>106</sup> P. Marclhacy, *ibid.*

<sup>107</sup> J. Pelletier, *ibid.*, p. 1902, amendment no. 18.

<sup>108</sup> C. Bonnet, *ibid.*, p. 1903.

<sup>109</sup> Cf. e.g. Huber C. H., 'Legislation for European elections in the Nine', G. J. Hand *et al.*, *op. cit.*, p. 246.

however, further barriers were introduced: a legal threshold of 5% of the valid votes cast, a deposit of FF 100,000 per list, and, last but not least, the country was to form one single national constituency. Furthermore, the introduction of the national list system not only in general favoured the established parties but also, in combination with the absence of any possibility of expressing a preference vote for an individual candidate, fortified the monopoly of the parties and, especially, the party headquarters in determining the choice of candidates. Again, no chance was given for the expression of preference votes for, for example, candidates with a strong regional orientation on the national lists, or that a party with only local strongholds could gain enough votes to overcome the 5% threshold.

Apart from the still unsettled dispute between the parties over the competence of the European Parliament, the main issues of contention during the implementation phase of the first European elections were the principles of the unity of France and of the retention of its sovereignty. Though the Constitutional Council ruled positively on the constitutionality of direct elections as such, it also set the limits for any future uniform system. Since the preservation of the indivisibility of the Republic was thus made *a conditio sine qua non*, any future electoral system has to take account of this. The French Government had for the legislation of the first European elections interpreted this condition very restrictively and chose a national list system, as did the Communists and Gaullists. It cannot, however, be excluded for the future that the interpretation of this condition will be open to further argument. It is obvious that any system entirely based on regional lists will certainly be unacceptable and be considered unconstitutional. Whether a system based on multi-member constituencies, but in connection with a national aggregation of votes and allocation of seats to the individual lists, could be accepted must be left to future discussions. It is definitely a very political question for the parties in France. Whether the interpretational barrier of the Constitutional Council's decision can be overcome via such a system (as it is used, for example, in Italy) has still to be seen.

Apart from this fundamental question, probably all other provisions may be open for change and this will depend largely on the political situation and party balance when the uniform system has to be debated by the French parliament.

### 3.1.5. IRELAND

#### *Background*

Since entry to the European Community in 1973 all three Irish parties have been in favour of direct elections and greater democratisation of the Community institutions<sup>110</sup>. Consequently no problems were expected for the implementation of the European elections legislation. In fact, when it came to the parliamentary debate of autumn 1977, the direct elections issue was rather remote from the main concerns of the parties. The general elections of June 1977 had just brought a change in government. The National Coalition of Fine Gael and the Labour Party had been heavily defeated by Fianna Fáil, and both parties changed leadership soon after. Thus, at the time of the debate on European elections they were still busy reestablishing themselves in the eyes of the electorate and adjusting themselves to being on the opposition benches.

Traditionally the Irish electoral system is a rather personalised form of proportional representation, since the voter can express his preferences for candidates in multi-member constituencies on a rather personal basis and not within the context of party lists. Though political parties exist and play their normal political role as in other democracies, they are less prominent in the voter's perception in a country where through the socio-economic structures the relations between the voter and 'his' deputy are very close. As the members of the Dail are elected in multi-member constituencies and the notion of a 'safe seat' is rather unusual, they have to compete for votes even against possible candidates from the same party and keep close contacts with the constituents; in fact, each deputy tries to be in his constituency as often as possible to respond to the needs of his voters, who consider him as their natural agent when dealing with the authorities. The Irish electorate rejected by referendum, twice in ten years (1959 and 1968), the attempts of the Fianna Fáil government to abolish the present system and replace it by the 'first-past-the-post' plurality system in single-member constituencies, and it has

<sup>110</sup> Cf. Huber, C. H., *Irland und die Europäische Gemeinschaft* (Bonn; 1981), pp. 70ff.

been argued that the present system of proportional representation by means of the single transferable vote has proved to be imbedded in popular acceptance <sup>111</sup>.

### *Possible Options*

Shortly after the European Parliament's resolution concerning a draft convention on direct elections (Patijn Report) the 'Joint Committee of the Oireachtas <sup>112</sup> on the Secondary Legislation of the European Communities' discussed possible implications for Ireland under three aspects:

- the proposed number of Irish EP-representatives;
- dual membership of the Dáil or Seanad and the European Parliament;
- method of election.

For our purpose we shall only deal with the latter aspect. In its deliberations the Joint Committee proceeded from the assumption 'that the Irish representatives in the European Parliament should have a close relationship with the political structure in this country and that the system of election should facilitate the maintenance of that relationship' <sup>113</sup>.

Another criterion was seen in the fact that in future a uniform system would be introduced; it was therefore judged preferable 'if the system chosen for the first election were to approximate to what is likely to be adopted for subsequent elections'.

Three possible alternative electoral systems were taken into consideration:

- a) *the simple plurality system in single-member constituencies*, as already rejected twice in referenda by the Irish electorate;
- b) *the alternative vote system in single-member constituencies*, as at present in use for by-elections;
- c) *the single transferable vote system in multi-member constituencies*, i.e., the actual system used for Irish general elections.

<sup>111</sup> Hand, G. J., 'Ireland', in Hand et al., *op. cit.*, at p. 122.

<sup>112</sup> Oireachtas is the Irish name for Parliament, consisting of the President of the Republic, the Dáil and the Seanad.

<sup>113</sup> 7th report 'Direct Elections to the European Parliament', 4 June 1975 (Prl. 4595), p.

Though all three systems were known and familiar to the Irish electorate, the Joint Committee did not consider them suitable for European elections because of the small number of fifteen Irish EP-seats and the resulting large constituencies. The first-past-the-post system was also rejected because of 'its inherent tendency to produce disparity between the popular vote and the resultant representation, and to elect members on a minority of votes cast'.

The Committee favoured, instead, the introduction of a *list system of proportional representation*, which would be flexible enough to allow voters the possibility of alteration of the list order <sup>114</sup>. One of the major arguments was the fact that the list system was already applied in various forms by several European states and that it would facilitate the future introduction of a uniform procedure. The report, unanimously adopted, also proposed to allow single-candidate lists, so that independent candidates could stand for European elections. The proposed system of proportional representation with loose lists should be based *on a single national constituency*.

The Irish Council of the European Movement, in which the political parties are prominently represented, criticised this formula, because it would not sufficiently meet the criteria of familiarity, regional links, local personalities, public participation and proportionality <sup>115</sup>. The list system would, in particular, prevent cross-voting between parties and would not allow the voter to rank candidates within a particular party – both of which options were familiar to the electorate under the present STV system. The Irish Council of the European Movement therefore suggested applying for the first European elections the same system as for Dáil elections, and proposed to divide Ireland into four multi-member constituencies: Dublin with four seats; Southern Ireland with five seats; Western Ireland with three seats and Midlands-North-East with three seats <sup>116</sup>.

### *The Government Draft of the European Elections Bill*

In January 1977 the Minister for Local Government, James Tully (Labour Party), informed the public of the government's intention to

<sup>114</sup> *Ibid.*, p. 13.

<sup>115</sup> 'Direct Elections to the European Parliament' Irish Council of the European Movement, Dublin, July 1976, p. 9.

<sup>116</sup> *Ibid.*, p. 10.

use the traditional STV PR system and to divide the country into four constituencies. The leader of the opposition, Jack Lynch, (Fianna Fáil), reacted immediately against this plan and demanded from the National Coalition government the setting-up of an independent body to examine the possible constituency boundaries<sup>117</sup>.

This unprecedented commission would help to avoid any partisan drawing of the Euro-constituency boundaries.

The scene was thus set for the major and only controversy between the parties on European elections.

The calling of general elections, shortly after the European Assembly Elections Bill had received a favourable first reading in the Dáil<sup>118</sup>, caused the bill to lapse by June 1977. A second bill presented to the Dáil<sup>119</sup> came from the new Fianna Fáil government, but differed in only one main point from the previous bill – the size and composition of the Euro-constituencies. Apart from some minor changes the two bills were otherwise almost identical to the letter.

The bill was entirely based on the existing electoral regulations for Dáil elections, as the same system was proposed. The provisions in general were modelled closely on the corresponding provisions of Dáil and local government electoral law. Only on four points were some changes proposed:

— *the extension of voting rights to citizens of other EC Member States resident in Ireland.* The government explained in the memorandum that the franchise would, so far as citizenship is concerned, be wider than at Dáil elections (where the right to vote is confined to residents who are citizens of Ireland) and less wide than at local government elections (where all residents enjoy the right to vote irrespective of their country of origin)<sup>120</sup>;

— *the deposit was raised from £ 100 to £ 1.000 per candidate* and would be refunded if a candidate received more than one-third of the number of votes required for election;

— *casual vacancies would be filled by appointment by the Dáil* on the nomination of the party concerned;

<sup>117</sup> There is a doubtful record of gerrymandering of constituencies by governments; cf. also, Robinson, M. T., 'Preparations for Direct Elections in Ireland', *Common Market Law Review*, no. 2 (1978), p. 192.

<sup>118</sup> 14 April 1977.

<sup>119</sup> European Assembly Elections (No. 2) Bill.

<sup>120</sup> *Ibid.*, p. 3 (section 3).

— a division into four constituencies, returning between 3 and 5 representatives each to the Assembly. Constituencies were defined by reference to counties and county boroughs. To advise the government on the formation of the constituencies, in August 1977 an independent European Assembly Constituency Commission had been set up. The government had given guidelines, according to which the Commission proceeded; amongst others they were: reasonable equality of representation should be achieved as between constituencies; each constituency should be composed of contiguous areas; the breaking of county boundaries should be avoided<sup>121</sup>. By newspaper advertisement, the Commission asked for proposals and submissions from anyone interested, and both Fine Gael and the Labour Party sent their own proposals, differing from their draft bill when previously in office. The report was published on 4 October 1977 and the constituencies proposed were based on the existing provinces and the city of Dublin. The major difference, as against the first government draft, was the inclusion of Dublin County in the same constituency as Dublin. Though the government was not formally bound to accept the report, the Commission's findings were adopted in the European Assembly Elections (No. 2) Bill.

### *Parliamentary Debate*

When the bill was finally discussed in the Dáil, not much attention was paid to it by press and public, or even by the parties. General agreement on the principle of direct elections and the fact that the bill remained — apart from the constituencies — virtually unchanged, led to a certain lack of interest in the matter. Parliamentary scrutiny was reduced to the minimum necessary. Apart from the Second Stage (First Reading), when twenty-five members of the Dáil spoke<sup>122</sup>, there were, in the other three stages, only three deputies involved in the debate — the Minister for the Environment and the respective front-bench spokesmen of the opposition parties.

All parties welcomed the setting-up of an independent boundary commission and saw it as a good precedent for the future re-drawing

<sup>121</sup> Cf. Robinson, *op. cit.*, pp. 193ff.

<sup>122</sup> *Dáil Debates*, vol. 300, col. 1258-1316 (26 Oct. 1977), col. 1350-1402 and col. 1438-1464 (27 Oct. 1977). Cf. vol. 301 (10-17 Nov. 1977) for Committee Stage, and vol. 302 (29-30 Nov. 1977) for Report and Fifth Stage.



of Dáil constituencies. Comments on the details of the bill concerned amongst others: the size of the deposit (which was criticised as too high); the filling of vacancies; voting rights for EC-citizens in Ireland while Irish citizens abroad were not enfranchised and some technical aspects concerning the conduct of elections. The government itself introduced an amendment that the constituencies should be revised at least every twelve years. The bill was adopted by the Dáil without a vote on 30 November 1977.

The Seanad debate of 7 and 8 December 1977 did not bring any changes, though the Minister for the Environment underlined the purpose of the bill as 'to lay down provisions [...] until such time as a uniform electoral procedure comes into force' <sup>123</sup>.

Criticism concentrated primarily on the fact that Irish citizens abroad were not allowed to vote <sup>124</sup>, and the possibility of postal ballot for these citizens was proposed; this, however, was rejected by the Minister, referring to the experience of the postal vote in local elections, which had been 'unsuccessful' <sup>125</sup>. The bill passed unchanged.

### *General Conclusions*

Though no opposition was raised against a future uniform system, it is difficult to assess the attitude of the parties towards such a development. It rather seems that the parties have yet to consider such a development in detail. The main indication of a possible alternative to the present system comes from the Seventh Report of the Joint Committee (June 1975). Here it was clearly stated that with a view to a future uniform system, and taking account of the necessary criteria for acceptance in Ireland, a list system of proportional representation with the possibility for preference voting would be suitable. A division of the country into electoral regions seems necessary to maintain the close voter-deputy relationship and to allow for a relatively personal choice of candidate preference. The extension of franchise to the Irish citizens in other Member States of the European Communities would encounter the problem that there are nearly two million Irish living in Britain. If the franchise were to be

<sup>123</sup> *Seanad debates*, vol. 87, col. 691 (7 Dec. 1977).

<sup>124</sup> Cf. C. McDonald, *ibid.*, col. 728; J. Murphy, *ibid.*, col. 737; M. T. Robinson, *ibid.*, col. 758.

<sup>125</sup> Barrett, *ibid.*, col. 806 (8 Dec. 1977).

extended the major parties fear that a rather different voting pattern would emerge, and that demands would increase for the franchise to be granted for Dáil elections too. The parties would be more inclined to accept a future uniform regulation that all EC-citizens would be able to vote in their place of residence, as they are in Ireland for local government and European elections.

### 3.1.6. ITALY

#### *Background*

Generally speaking, there has been an overall consensus among the Italian parties on the need for European integration. Direct elections have been seen as essential for further progress of the Community. The consensus was profoundly demonstrated by the quasi-unanimous ratification of the Council's Direct Election Act by the Chamber of Deputies and its subsequent unanimous adoption by the Senate in spring 1977. Italy was then the first Member State to have ratified the Act.

In spite of this demonstration of a common political will for European elections, the necessary implementation of national provisions for these elections became a victim of party-political manoeuvrings and especially of the domestic political situation which had emerged after the 1976 general elections. As a result, Italy became the second last country in the European Community to define its electoral procedures for the first direct elections.

Throughout the discussion inside and outside parliament, the issue was closely linked to the question of formation of governments. Here the essential problem lies in the structure of the Italian party system, which is characterised by the existence of the two big parties, Christian Democrats (DC) and Communists (PCI), one medium-sized party, the Socialists (PSI), and several minor parties.

Although the latter command only a limited support from the electorate, at least three of them (PSDI, PRI and PLI) carry a considerable weight in the formation of governments and maintaining them in power. Since after the general elections of June 1976 direct entry of the Communists into government had been denied by the

weakened but still strongest party, the Christian Democrats, the formation of a DC-minority government had been the only solution. But this government could only survive with the indirect and more or less tacit support of the six parties considered to be within the system <sup>126</sup>.

The result was that the legislative process was slowed down considerably, as nearly always a compromise formula had to be worked out to suit all parties involved. The legislative discussions were thus shifted away from the plenary sessions of parliament, or parliamentary committees, to the small circles of intra-party committees and meetings of the party leaderships. The same thing happened on the occasion of passing legislation for the first direct elections to the European Parliament: in order not to endanger its parliamentary basis and not to depend entirely on the goodwill of the Communist party, the DC minority government had to be careful of the problem of ensuring to the small and medium sized parties at least some, if not adequate, representation in the EP.

Furthermore, the minor parties (PSDI, PRI and PLI), have been since their foundations the most ardent supporters of European integration. The choice of the electoral system was of vital importance for their chances at the European elections: it was not unthinkable that because of the voting-system or the size of the constituencies these parties could be excluded altogether or at least be greatly weakened at European level.

The adoption of a single national constituency with preference voting would undoubtedly have enhanced the chances of the minor parties – but the links between electorate and elected members would have been severely reduced. The application of preference voting, which is a traditional exercise in Italian general elections, would also make sense only in smaller constituencies, which would, however, favour the two major parties. These two exigencies had to be accommodated by the Government.

Italy's regionally decentralised structure and the existence of at least two locally strong ethnic and linguistic minorities (French-

<sup>126</sup> The so-called *arco costituzionale* of 'system' parties comprises the Democrazia Cristiana (DC), the Partito Comunista Italiano (PCI), the Partito Socialista Italiano (PSI), and the '*partiti laici*' (i.e., secular parties), Partito Socialdemocratico Italiano (PSDI), Partito Repubblicano Italiano (PRI) and Partito Liberale Italiano (PLI).

speaking in Val d'Aosta, and German-speaking in Alto Adige) posed some further difficulties<sup>127</sup>. And also the two main islands, Sicily and Sardinia, expected to be given adequate consideration.

In addition there was the question of voting rights for Italians living abroad. A large number of Italian workers have found employment throughout the European Community. In order to comply with their civic obligation to vote for general elections in Italy, they have had to return on polling day to the Italian communes in which they were registered. The same applied to Italians living outside the European Community. The problem now was whether the same regulations should be valid for European elections, too, or whether to allow the Italians living in another Member State of the Community to vote *in loco*, i.e. in the country of their residence but at Italian consular offices, for Italian Euro-candidates.

Thus, the number of small parties, whose support was vital for the DC-minority government, the issue of migrant workers' voting rights, and the regional structure of Italy in combination with the existence of not negligible minority groups, were the main hurdles for the adoption of the European election legislation in Italy.

### *Possible Options*

Against the background of these constraints it seemed fairly obvious that any recourse to the application of a majority system in single-member constituencies was outside practical discussion. Apart from locally strong minority candidates, only candidates from the two big parties, DC and PCI, would have a chance of election. The delimitation of these constituencies would have been a further problem, given that Italy has 90 provinces but only 81 seats in the European Parliament.

Nevertheless, the project of dividing Italy into 81 single-member constituencies was amongst the options considered by an expert group from the Ministry of the Interior. In analogy to senate elections (see *supra*, Chapter II) a candidate would need at least 65% of the votes cast in his constituency to be elected directly. As this oc-

<sup>127</sup> Cf. for example the resolution of the ethnic minorities of 27 March 1977, in which with reference to the Charter of Human Rights and Art. 6 of the Italian Constitution ('protection of linguistic minorities') a demand was made for the reservation of at least 13 EP-seats for the minorities: *La Stampa*, 28 March 1977.

curs rather rarely in Senate elections, the same might have been true for European elections. Thus, most of the remaining seats were to be allocated at national level according to the d'Hondt Highest Average method. In fact, what would have looked at first sight a straightforward majority system, would turn out to be instead a d'Hondt system of proportional representation.

Given the number of parties in Italy, the main problem to be settled was the *size and number of electoral constituencies* in which the country had to be divided in order to allow full use of all votes expressed for each party.

The ministerial working group based its considerations<sup>128</sup> on the voting system already in use for elections to the Chamber of Deputies: proportional representation with preference voting, and the application of the Highest Remainder system with Imperiali quota at constituency level. For the sole purpose of taking full account of the remainders at constituency level, all remaining votes were to be counted together in a national college (*collegio unico nazionale*) and the remaining seats allocated accordingly by using the Natural quota (Hare). The quorum normally demanded, of a minimum of one electoral quota per constituency or at least 300,000 votes nationally, was to be abandoned for European elections.

Basically, two kinds of constituency divisions were considered:

- the division of Italy on the basis of its administrative regions into *twenty regional constituencies*, and
- the creation of *three pluri-regional constituencies*.

For the first option three variants were projected:

- To allocate to each of the two smallest regions (Val d'Aosta and Molise) one or two seats in the European Parliament, while the other eighteen regions should each have at least three EP-seats. The remaining twenty-three seats would be allocated to the regions in proportion to their population. All Italians abroad, irrespective of living within the European Community or outside, were to have the right of *postal voting*, and their votes would be counted in the constituency where they were registered.

<sup>128</sup> For more detailed information concerning these options, see Ghini, C., «La partecipazione italiana all'elezione del Parlamento Europeo», *Quaderni dell'Osservatore Elettorale*, no. 2 (Feb. 1978), pp. 115-140.

— Alternatively it was proposed to establish a special three-member constituency abroad, comprising all Italian voters living in other Member States of the Community, who should have the right to vote *in loco*. The number of seats allocated to the Italian *regional* constituencies would be reduced accordingly.

— A third variant provided for the allocation of twenty seats to the national college right from the beginning. These seats were to be distributed on the basis of the remainders from the regional constituencies plus the votes of the Italians living in another Member State of the EC, voting *in loco*. Vote counting and seat allocation to parties would be, at both constituency and national level, according to the Natural quota method (Hare).

As regards the subdivision of Italy into three pluri-regional constituencies the variants concerned the voting rights of Italians abroad. It was proposed either to have a special three-member constituency for all Italians living in other Member States and voting *in loco*, or to create three constituencies abroad, with two seats each (one constituency for France, one for Germany and one for the other six Member States).

Parallel to the deliberations of the Ministry for the Interior an all-party working-group within the Italian Federalist Movement<sup>129</sup> developed proposals on its own. This so-called Commissione Storchi (after its chairman) considered 4 alternatives:

— Italy should form one *single national constituency* and the seats should be allocated according to the Highest Remainder System with Natural quota (Hare).

— *41 seats* should be allocated *within pluri-regional constituencies* and *40 seats* in a *national college* ('collegio unico nazionale'). The parties were only to be allowed to submit *regional lists* of candidates.

— On the basis of the same 41/40 allocation of seats the parties would have to submit lists in each *regional constituency together with a national list*. The difference between the two variants lies in

<sup>129</sup> 'Discussione dei sistemi elettorali e presentazione di schemi di progetti di legge per l'elezione europea in Italia, Movimento Federalista Europeo, Commissione Italiana, Ms. pp. 41 (Milano; 1977). A discussion of both projects can be found in Traversa, S., 'L'elezione del Parlamento Europeo a suffragio universale e la legge elettorale italiana', *Rivista trimestrale di diritto pubblico*, no. 4 (1977), pp. 1577-1604.

the fact that the seats in the *collegio unico nazionale* were either to be distributed to the first of the non-elected candidates within the constituencies, or else to the candidates on (then) rigid national lists.

— Italy should be divided into *regional constituencies* and the seats were only to be distributed within these constituencies. The *collegio unico nazionale* would serve only for the calculation of *remainders*.

The calculations of the Italian Federalist Movement on the basis of the results of the general elections of 20 June 1976 came to the conclusion that all three projects with constituencies would have the same results in seat distribution to parties<sup>130</sup>: DC 32 seats, PCI 28, PSI 8, PSDI 3, PRI 2, PLI 1, MSI 5, DP 1 and the Radicals 1.

### *The Government Draft of the European Elections Bill*

At the end of September 1977 the Government published a first draft proposal (the so-called *Bozza Cossiga*), which provided for a subdivision of Italy into *three pluri-regional electoral colleges*, to which the seats were to be allocated in proportion to their population on the basis of the Natural quota method. The *Bozza* contained a departure from traditional voting provisions as it provided for the application of *proportional representation on 'rigid' party lists*, i.e. without allowing the expression of voters' preferences, according to the *d'Hondt highest average method*. All Italians living in another EC Member State were to have the *right to vote in loco* and their votes would be counted for the constituency where they were registered.

The reaction to the Government draft was predominantly negative. The minor parties (PSDI, PRI and PLI), especially, were disappointed by the draft proposal and accused the Government of favouring the two major parties (DC and PCI) while diminishing the electoral chances of all others<sup>131</sup>. Their main criticism focussed on the application of the d'Hondt highest average method, since they claimed, erroneously in fact, that the electoral threshold in Italy would be raised from 1.2% (Natural quota) to 3.5% of the total votes. The Republicans further criticised the subdivision of the

<sup>130</sup> *Op. cit.*, p. 10. For a comparison with results for a single national constituency, see Table 6, ch. 5, *infra*, pp. 267.

<sup>131</sup> Cf. *Corriere della Sera*, 7 October 1977.

Italian electoral territory into pluri-regional constituencies as contrary to the supranational character of the future European Parliament <sup>132</sup>.

A single national constituency with the highest remainder system (Natural quota) was also favoured by both Socialists and Communists, though the two parties differed in their attitude towards preference voting, which the PCI looked upon as essential. The PCI was at that time the only party which rejected the Government's plan to allow the Italians living within the European Community to vote *in loco* <sup>133</sup>.

After even the secretary of the Christian Democrats, B. Zaccagnini, seemed to favour the adoption of the natural quota method <sup>134</sup>, and after it had been confronted with opposition to the draft, in a special joint meeting, from the six parties supporting the government, the Ministry of the Interior was compelled to withdraw its proposals.

The following months saw the political crisis in Italy grow more severe and work on the European elections legislation suspended. Though every-day business of the executive went on as usual <sup>135</sup>, any political decisions were blocked during this period of institutional uncertainty when the parties were hovering between fears and hopes of anticipated general elections. The terrorist activities of the 'Brigate Rosse', which escalated in the kidnapping and assassination of the leading DC exponent Aldo Moro, contributed further to the paralysis of the Government and the delays in parliamentary business. Nevertheless, though there were no official steps taken by the Ministries involved, the political parties met behind the scenes to come to an agreement on the electoral provisions for European elections <sup>136</sup>.

The minor parties, together with the Socialists, now advocated the adoption of the Natural quota method with 'rigid' party lists in a single national constituency. This plan won the approval of the Communist Party as well. Within the DC, however, strong forces

<sup>132</sup> A. Del Pennino, leader of the PRI-group in the Camera dei Deputati, quoted in *Corriere della Sera*, 7 October 1977.

<sup>133</sup> *Corriere della Sera*, 8 October 1977.

<sup>134</sup> *Ibid.*

<sup>135</sup> *La Repubblica*, 4 April 1978.

<sup>136</sup> *Il Giornale*, 4 April 1978.



were more in favour of regional lists and preference voting, in combination with a *Collegio Unico Nazionale* for the sole purpose of making full use of the remainders at constituency level.

The Government had intended to approve a draft bill on 14 April 1978, capable of meeting the demands of the parties within the *arco costituzionale*, i.e., a single national constituency with the additional provision of two special constituencies for the two ethnic minorities in Val d'Aosta and Alto Adige. Yet, due to strong protests within its own party, voiced mainly by the leader of the Christian Democrats in the Senate, Bartolomei<sup>137</sup>, the Cabinet had to postpone its decision in order to allow for further consultations between the parties and within the DC.

Apparently the controversy was not within the Cabinet or between the minority government and most of the parties supporting it, but within the strongest party itself and between the DC and the other parties<sup>138</sup>.

Eventually, after three months of deadlock within the Christian Democrats and much bargaining, the Cabinet approved on 21 July 1978 a final (second) draft<sup>139</sup>, based on proposals from the Federalist Movement (see *supra*, p. 129) and in response to the demands from within its own party. The draft provided for:

— the subdivision of Italy into *nine pluri-regional constituencies*, to which there would be a notional distribution of seats in advance of the election in proportion to population figures;

— the *allocation of seats* to (party) lists within each pluri-regional constituency on the basis of the natural quota;

— a *single national regrouping* of remaining votes solely in order to take account of *incomplete quotas* and *lists falling short of quota* at constituency level, thus allocating remaining seats to the regional lists;

— *preference voting* within the constituencies (two preferences if more than eight members were to be elected, otherwise only one);

— the *number of candidates* per list to be *limited to a maximum of the number of members to be elected* in that consti-

<sup>137</sup> *La Nazione*, 14 April 1978.

<sup>138</sup> *Il Giornale*, 15 April 1978.

<sup>139</sup> Disegno di legge no. 1340, presented to parliament on 28 July 1978.

tuency (e.g. in Lombardy sixteen and in Tuscany-Umbria six), and a minimum of one-third of that number;

— candidates could only be inscribed on lists (of the same party) in *three constituencies at most*;

— voting rights *in loco* for Italians living in another Member State of the European Community.

Being aware of the points of contention between the parties inherent in the draft, the Government presented its proposal to parliament in a spirit of preparedness to accept amendments from any quarter which might improve it <sup>140</sup>, and as the result of an attempt to find a compromise, between contrasting positions, which might not totally satisfy any group.

### *Parliamentary Debate*

At the end of September 1978, after the summer recess, parliamentary discussion of the European elections bill was due to start with a joint session of the Committees of Foreign Affairs and of Constitutional Affairs in the Senate. However, this was made impossible by the small number of Senators present, and the meeting had to be postponed for two weeks. Whether this was merely because other political business, considered to be more urgent, kept the Senators away, or whether the underlying controversies prevented the meeting from taking place, must remain uncertain.

In fact, the attitude of the minor parties against any subdivision of the electoral area prevailed. Given the relatively even distribution of their electoral support in general elections, it is understandable that these parties feared that they might not gain the necessary quota of votes at sub-national level. With only 81 Italian EP-seats to be allocated, this quota would be in the region of 680,000 votes per seat.

In view of the Senate debate on the Government draft, the Liberal Party (PLI) published, on 4 October 1978, a statement which stressed, as 'indispensable principles', the application of the pure proportional system (i.e. Natural quota) and the right of the voters to have preferential voting. According to the PLI, the Government draft would not correspond to these principles, since the subdivision

<sup>140</sup> *Ibid.*

would influence the quota in a negative way for the smaller parties, and the proposals concerning the use of preferences would be too restrictive and would strengthen the tendency towards rigid lists <sup>141</sup>.

Similarly the Republicans (PRI) contested the creation of electoral constituencies <sup>142</sup>. Senator Venanzetti declared before the joint meeting of the Senate Committees that 'a single national constituency would not only ensure the exact proportional representation of all political forces, but would also prevent the Euro-deputies from promoting regional interests'. After all, European elections were meant to elect the representatives of Italy and not of single areas of the country. For the same reasons the Republicans also endorsed the incompatibility between national and European mandate <sup>143</sup>.

For the PCI, the secretary of the Communist group in the Senate, Pieralli, confirmed in an interview that they too would favour a single national constituency, because 'the European elections bill should receive the fullest consensus from all democratic forces' <sup>144</sup>.

Although in the first joint session of the two Senate Committees on 5 October 1978, the DC rapporteur, Orlando, referred to the draft as a well-balanced project in comparison to regulations already adopted in other Member States <sup>145</sup>, the work in Committee was slowed down by strong differences of opinion, and a wide range of amendments. Therefore, it was decided to nominate a restricted sub-committee of representatives from all parties as a clearing-house to examine all amendments and to draft a modified bill for discussion in a further plenary session of the two Committees <sup>146</sup>.

Amongst the amendments, which tried to overcome the deadlock between the minor parties and the position of the Christian Democrats, was a proposal by the Socialist Party (PSI) to reduce the number of electoral constituencies from nine to three (North, Centre and South) with a national college for the remainders. According to the Socialists this would increase the chances of the minor parties in the constituencies <sup>147</sup>.

<sup>141</sup> Cf. *Il Giornale*, 5 October 1978.

<sup>142</sup> *Il Giornale*, 8 Oct. 1978.

<sup>143</sup> *La Nazione*, 12 Oct. 1978.

<sup>144</sup> *La Stampa*, 12 Oct. 1978.

<sup>145</sup> *Il Giornale*, 6 Oct. 1978.

<sup>146</sup> *Il Giornale*, 12 Oct. 1978.

<sup>147</sup> *Il Giornale*, 25 Oct. 1978.

The compromise presented to the plenary meeting of the two Committees on 23 November 1978 tried to meet the demands of the Christian Democrats for electoral constituencies and, at the same time, accommodate the minor parties, by basing the allocation of seats to (party) lists on a national quota (*quoziente unico nazionale*) of all the votes won by a party in the constituencies divided by the total of Italian seats in the EP <sup>148</sup>.

The final version of the European elections bill as submitted by the two Committees to the plenary session of the Senate and recommended for adoption, contained four major modifications to the original Government draft of July 1978:

— the number of pluri-regional constituencies was reduced from the original nine to five (North-West, North-East, Central, South and Islands);

— depending on the size of the constituencies the voter would be entitled to cast *between one and three preferences*;

— the national quota was to be based on the total of all votes gained by a party in the five constituencies and computed at national level;

— to safeguard the interests of the groups representing minorities, they were to be allowed to associate their lists with another list operating nationwide.

This modified bill was adopted by the Senate after nearly seven hours of discussion on 2 December 1978 <sup>149</sup>.

A last minute attempt by some thirty-five DC-senators to prohibit the dual mandate was rejected <sup>150</sup>.

While nearly all parties welcomed the bill, as presented, as an acceptable compromise, the Liberal Party (PLI) expressed their discontent with certain provisions and announced their abstention from voting on the bill. Although according to the Liberals <sup>151</sup> the bill contained some positive aspects — such as the reduction of the number of constituencies, the granting of the right to vote *in loco* to all Italians living within the Community and the application of pre-

<sup>148</sup> *Il Giornale*, 24 Nov. 1978.

<sup>149</sup> Resoconto Sommario, Senato della Repubblica — VII Legislatura, 341<sup>a</sup> seduta pubblica, 2 Dec. 1978, pp. 3-28.

<sup>150</sup> Cf. senator Mancino (DC), *ibid.*, p. 22.

<sup>151</sup> Cf. senator Balbo (PLI), *ibid.*, pp. 5-6, and senator Bettiza (PLI) *ibid.*, pp. 13-14.

ference voting — they abstained from voting because they disagreed with three provisions of the bill, namely: the subdivision of the territory; the restriction of preference voting in the 'Islands' constituency to one preference, in comparison to the three preferences in the 'North-West' constituency<sup>152</sup>; and the limitation of the right to vote *in loco* to those Italians living within the EC, and its application to European elections only.

The latter aspect had been emphasised by the Communist senator D'Angelosante<sup>153</sup>, who had underlined the firm opinion of the PCI that this provision must remain an exceptional case, not also to be applied to national elections. Similarly, he rejected *a priori* any consideration of introducing postal voting. Indeed, the agreement of the PCI to the granting of voting rights *in loco* came only after the Government had affirmed its intention of negotiating bilateral agreements with the other Member states to secure guarantees for Italian parties to campaign freely for Italian voters in those Member States<sup>154</sup>.

On the issues of the representation of ethnic and linguistic minorities, the senator from the French-speaking Union Valdotaïne (UV), Fosson<sup>155</sup>, tabled an amendment to re-introduce a special single-member constituency for the Val d'Aosta. Such a provision had originally been intended by the Government (see *supra*, p. 132), but had had to be dropped from the draft because of political pressures from the smallest 'national' parties<sup>156</sup>. Although this amendment was rejected, another amendment concerning the minority groups, tabled by the representative of the German-speaking area of Alto-Adige, Brugger (SVP)<sup>157</sup>, met with approval in the final debate. As regards the opportunity for minority groups to link their lists with a national party list, he proposed: 'if no candidate of a minority group list reaches the necessary quota to be among the candidates elected on the list with which the minority group is linked, the last seat gained by this list shall be reserved for the minority candidate

<sup>152</sup> Senator Bettiza (PLI) proposed instead to allow for at least five preference votes per elector, *ibid.*, p. 13.

<sup>153</sup> *Ibid.*, pp. 11-12.

<sup>154</sup> *Corriere della Sera*, 3 Dec. 1978.

<sup>155</sup> Senato della Repubblica, *op. cit.*, pp. 15 and 22.

<sup>156</sup> Minister for the Interior (Rognoni (DC)), *ibid.*, p. 19.

<sup>157</sup> Südtiroler Volkspartei — Partito Sudtirolese.

who has received the highest number of votes, provided it is not inferior to 50,000' <sup>158</sup>.

Quite contrary to all expectation, the European elections bill, which had been approved by a large majority in the Senate, seemed to run into trouble during the subsequent passage through the Camera dei Deputati in January 1979 <sup>159</sup>. From the report of the Committee for Constitutional Affairs by the Communist rapporteur, Jotti <sup>160</sup>, it became evident that the majority of the Committee members were in favour of two modifications. The first concerned the constituency comprising Sicily and Sardinia. Given the big difference in population of the two islands and the limitation of preferences to only one in this constituency, the parties saw the main problem lay in securing adequate representation of candidates from Sardinia. An amendment by the Liberal deputy, Malagodi <sup>161</sup>, provided, therefore, for the abolition of the 'Islands' constituency and for the linkage, instead, of Sardinia with the Central, and Sicily with the Southern, constituency.

The second modification concerned the lowering of the minimum requirement of personal votes to be gained by candidates from the minority groups in order to be elected on combined lists (see above p. 136). The requirement of 50,000 votes, as adopted by the Senate, seemed to some of the parties too high for candidates from the French-speaking minority in Val d'Aosta, and from the Slovenic-speaking minority in Friulia-Venezia-Giulia <sup>162</sup>.

In the wake of a new government crisis and the increased likelihood of a dissolution of parliament, any modification of the bill, already adopted by the Senate, carried the danger of failure for European elections legislation as such. After all, the amended bill would have to be sent back to the Senate for approval, which under the prevailing circumstances could have meant that Italy would not be able to finish the necessary preparations in time to meet the common election date of June 1979.

Therefore, even if the deputies were in favour of amendments,

<sup>158</sup> *Ibid.*, p. 24; (an amendment from the Union Valdotaïne to reduce the minimum requirement from 50,000 votes to 30,000 was rejected).

<sup>159</sup> For details see Resoconto Sommario, Camera dei Deputati, VII Legislatura, 16 Jan. 1979, pp. 7-14; 17 Jan. 1979, pp. 9-18; 18 Jan. 1979, p. 7-40.

<sup>160</sup> *Il Giornale* and *L'Unità*, 17 Jan. 1979.

<sup>161</sup> Resoconto, *op. cit.*, 16 Jan. 1979, pp. 8-9.

<sup>162</sup> Cf. deputy Giadresco (PCI), *ibid.*, p. 10.

the pressure of time and the political situation put constraints on their scope to manoeuvre. And, indeed, after a full day of consultations <sup>163</sup>, a broad majority adopted the European elections bill in the Camera, on 18 January 1979, without any changes,

### *General Conclusions*

The Italian legislation for the first European elections is clearly a product of the situation of internal crisis in the Italian political system. The fragmented party political landscape found its expression in the adoption of an electoral formula which tried to realize, as far as possible, full proportional representation of all political forces. To this end, the original attempt to introduce the d'Hondt highest average method, with its bias in favour of the bigger parties, had to be abandoned under pressure from the medium-sized and minor parties supporting the minority government. For the same reasons the allocation of seats to parties was based on a national quota, instead of distributing the seats purely on sub-national level within the constituencies. On the other hand, by dividing the country into five pluri-regional constituencies some attempt at least was made to assure a certain link between the Euro-deputies and their electorate. By allowing for preference voting, also, a limited choice was left with the voter, who thus could identify himself more easily with 'his' regionally based candidate.

Although at some early stages of the legislative process it was intended to take account of the exigencies of ethnic and linguistic minorities, in fact neither the Government nor the national parties followed this line. The provision that minority lists might be linked with a list proposal of a national party list, and the minimum requirement of only 50,000 preference votes for at least one minority candidate to be elected, was only lip-service and could not really accommodate the demands of these minority groups.

New ground was touched upon by granting the Italians living in another Member State the right to vote *in loco* at Italian consular offices. Here, at least in the long run and in spite of opposition from the PCI, a feedback to national elections seems possible.

For a future uniform electoral system the Italian European Elec-

<sup>163</sup> *La Repubblica*, 18 Jan. 1979.

tions Act contains some interesting aspects: the combination of preference voting in electoral constituencies with the allocation of seats to parties on a national level corresponds to the idea of electing the representatives of the Italian people as a whole. It also meets the demands of involving the electorate more actively. Furthermore the vote counting method adopted (highest remainder with Natural quota at national level) comes close to a fair overall proportional representation of the political parties, who have to face only a very low electoral threshold of about 0.1% of the votes cast to stand a chance of winning a seat. The advance towards a general European franchise, by means of allowing Italian citizens within the European Community to vote at their place of residence, indicates the interest of the Italian parties in a corresponding future solution for all European citizens. Any steps towards postal or proxy voting, however, seem to be excluded from general acceptance by the parties.

### 3.1.7. LUXEMBOURG

#### *Background*

The traditionally European attitude of all Luxembourg parties was reflected in their approach towards direct elections to the European Parliament. Leaving aside the marginal Communist Party (PC), which had only lately declared itself contrary to the concept of European elections<sup>164</sup>, all four parties were in favour. The vote in the Chamber of Deputies on the ratification of the Direct Elections Act showed this unanimity, as fifty-four deputies voted in favour and the five Communist deputies were against<sup>165</sup>.

To implement the necessary legislation an *ad hoc* working group was formed by the leaders of all parliamentary parties and experts from the ministries concerned, which met three times in order to find a common solution. There were few aspects which could have caused controversy. The main questions were, firstly, as in other countries, the likely division of the country into electoral constituencies, and, secondly, how an adequate overall representation of the

<sup>164</sup> As recently as 1969 the Communist Party had tabled a parliamentary motion in favour of direct elections – cf. Rapport de la Commission des affaires étrangères, Chambre des Députés, no. 2062, 7 June 1977, p. 3.

<sup>165</sup> Session Ordinaire de 1976/1977, 66th session, 5 July 1977, Chambre des Députés.



country's political forces could be achieved with only six EP-mandates. To illustrate the underlying difficulties one has to refer to the geographical and demographic structure of Luxembourg.

The vast majority of voters for the 1974 elections were resident in the industrial areas of the South and in the region of the capital<sup>166</sup>, while the rural northern parts of Luxembourg had a rather small electorate. For national elections, the Constitution takes account of this unbalanced demographic structure and provides for the division of the country into four electoral constituencies<sup>167</sup>. Yet, as the division of the four constituencies is based on the size of population (including foreigners living in Luxembourg)<sup>168</sup>, the two more densely populated constituencies in the South and the Centre (metropolitan Luxembourg) gain very considerably more seats. Any decision on electoral constituencies for European elections had to take into consideration these demographic dissimilarities.

### *Possible Options*

It soon became obvious that all parties had already made their own calculations concerning their electoral chances with the various subdivisions in mind.

On the basis of the 1974 general elections one could assume the following outcome of the first European elections if a Highest Average counting system were used<sup>169</sup>:

Constituencies	One single	Three	Four
Parties	Seats	Seats	Seats
PCS	2	3	4
PD	2	1	1
POSL	2	1	1
PSD	—	—	—
PC	—	1	—

<sup>166</sup> Of 205-817 electors in 1974, 149,000 were registered in the two constituencies.

<sup>167</sup> Art. 51 of the Constitution.

<sup>168</sup> Cf. G. Kintzelé, in Hand, Georgel and Sasse, p. 180, for the fact that the foreign element of 23.4% of the population in Luxembourg is chiefly concentrated in these two regions.

<sup>169</sup> Cf. G. Kintzelé, unpublished Ms. Direct Elections Group, European University Institute, 1 March 1977. PCS = Christian Social Party; PD = Liberals; POSL Socialist Party; PSD = Social-democratic Party; PC = Communist Party.

Thus, one single national constituency would divide the six EP-mandates evenly between the three main parties<sup>170</sup>. Any subdivision into constituencies would increase the chances for the main opposition party (PCS) to win more seats than the then Liberal-Socialist coalition government. The two smaller parties in opposition, the Social-Democrats and the Communists, would hardly gain a seat. Only in the case of a subdivision of the country into three constituencies, with one constituency for the industrialized south, could the Communists hope to win a seat.

### *Government Draft of the European Elections Bill*

In its *Projet de loi*<sup>171</sup> the Government based the provisions governing the European elections mainly on the existing national electoral law. Thus, the Luxembourg representatives were to be elected by proportional representation with open lists according to a variant of the d'Hondt Highest Average method, the Hagenbach-Bischoff system<sup>172</sup>. The compulsory character of the right to vote was to be retained for European elections.

Four changes from the national electoral procedure were proposed:

a) The country should form *one single national constituency*, which would

- allow the elector to participate in the designation of all Luxembourg representatives;
- guarantee each list democratic representation appropriate to its relevance at national level;
- take account of all shades of electoral behaviour; and
- correspond to the provisions of other Member States, such as France<sup>173</sup>.

b) In order to avoid a disadvantage for candidates from less densely populated areas, the *number of the voter's preferences for indi-*

<sup>170</sup> The even 2-2-2 division reflects the composition of the Luxembourg delegation before the first direct elections to the European Parliament.

<sup>171</sup> *Projet de loi relatif à l'élection directe des représentants luxembourgeois au Parlement européen*, no. 2163 (1977-1978), 9 February 1978.

<sup>172</sup> Cf. Chapter 2, p. 36, above.

<sup>173</sup> *Projet de loi, op. cit.*, p. 2.

*vidual candidates* were to be reduced to one (unlike the two in national elections). The principle of *panachage*, however, was to be retained. Thus, the elector could give his total of six single-preference votes to candidates who would not necessarily be drawn from the same list. He could also vote for a list as a whole.

c) To guarantee that in the case of casual vacancies the seat would be filled by the next candidate in order on the same list, it was proposed that the *number of possible candidates* contained in the list might be up to double the total number of Luxembourg EP-seats (= 12). It was hoped that supplementary elections could be avoided by this extension of the list of candidates.

d) The *number of necessary signatures* per list was to be increased from the 25 electors for national elections to 100.

The overall design of the draft bill was such that it contained only 26 articles, dealing with matters which had to be different, but otherwise referred to the precise regulations in the national electoral law. In fact, the bill could only be read in connection with the text of the national electoral law <sup>174</sup>.

### *Parliamentary Debate*

Though the main opposition party (PCS) criticised the Government's bill shortly after its publication and proposed instead the introduction of two electoral constituencies <sup>175</sup>, no problems were expected to hinder the smooth passage of the bill. Yet, the adoption by parliament was delayed, both by slow parliamentary action and because of the postponement by the Council of Ministers of the holding of the first European elections to June 1979. For Luxembourg this implied the problem that the voters had to be called to the polling stations twice within two weeks – on 27 May 1979 for national elections and on 10 June for European elections. Government and political parties faced the dilemma that either European affairs would become of secondary importance, although secured a high turn-out, if they were coupled with national elections, or that the rate of abstention would increase rapidly if European elections

<sup>174</sup> For a more comprehensive description of the Government's intentions, cf. Thill, J., 'Preparations for Direct Elections in the Grand-Duchy of Luxembourg', *Common Market Law Review*, vol 15 (1978), no. 4, pp. 473-478.

<sup>175</sup> Wahlen für Europa, *CSV-Profil*, no. 28, 25 April 1978, p. 1.

were held two weeks after national elections. In the end the calculations of campaign costs for the parties overcame the arguments for separate European elections. This meant, however, that, in order to hold the national elections on the date fixed for the European elections, a special parliamentary law was necessary. Its progress through parliament helped to delay the European elections legislation.

A serious problem, causing delay, was *the question whether Luxembourg citizens living abroad should be entitled to vote*. For national elections these citizens can exercise their voting rights neither by proxy nor by postal ballot. Though this situation had been under discussion for some time, the Government had initially adopted the same position in its draft of the European elections bill. Yet, during the committee stage of the bill, the issue became the centre of protracted discussions. While the opposition parties PSC and PSD demanded the possibility of voting by postal ballot for Luxembourg citizens abroad<sup>176</sup>, the government parties rejected the demand, because of the short time available for its implementation. It was, however, agreed to reconsider the question for future European elections<sup>177</sup>. The compromise finally adopted provided the right to vote for Luxembourg citizens living within the European Community if they returned on polling day to Luxembourg and voted personally at a special polling station in the capital. For technical administrative reasons the obligation to vote was suspended for these citizens. The compromise was rejected by the Communists, as favouring the bourgeois parties, whose electors could afford to come home to vote<sup>178</sup>.

Apart from the Communist Party, all the parties voted in favour of the bill, and Luxembourg became the last Member State to complete its European elections legislation.

### *General Conclusions*

From a general point of view the Luxembourg electorate has traditionally a strong influence on the individual candidate to be elected by the provision of *panachage* and *cumul*. For European elections this wide range of voters's choice was cut down to open

<sup>176</sup> Cf. the report of *Tageblatt*, 22 Feb. 1979, on the parliamentary debate.

<sup>177</sup> *Ibid.*

<sup>178</sup> R. Urbany (PC).

lists with the possibility of *panachage*. The expression of more than one preference vote for one candidate (*cumul*) had to be excluded because of the formation of a single national constituency. The discussion in parliament did not show any marked differences between the main political parties – and a general openness towards a future uniform system can be expected. It is interesting to note the intention to introduce a postal ballot in future elections for citizens living in other Member States of the Community.

### 3.1.8. NETHERLANDS

#### *Background*

The introduction of direct elections to the European Parliament has always been advocated by nearly all Dutch political parties as a necessary move towards more democratic structures in the decision-making process of the European Community, and Dutch MEPs have been amongst the Parliament's most ardent supporters. We may also recall that the European Parliament based its resolution concerning direct elections of January 1975 on the report by the Dutch rapporteur to the Political Affairs Committee, Patijn.

Also, at national level, some steps were undertaken to bring about direct elections of, at least, the Dutch members to the EP. In 1970 and 1973 two motions were introduced in the Tweede Kamer by a member of the Catholic People's Party (KVP), Westerterp, but they were never fully discussed on the floor of the house and were finally overtaken by developments at European level<sup>179</sup>.

The smooth passage of the ratification bill concerning the Council's Direct Elections Act in June 1977 through both chambers of the Dutch parliament, in spite of a pending government crisis and anticipated general elections in May 1977, indicated that hardly any problems would arise during the process of implementation of European elections in the Netherlands. Indeed, the delay in the pre-

<sup>179</sup> Cf. Bosscher, R., 'Preparations for Direct Elections in the Netherlands', *Common Market Law Review*, vol. 15, no. 2 (1978), p. 465; see also the reference to the Kiesraad in the Explanatory Memorandum of the Dutch European Elections Bill, 'Regeling voor de verkiezing in Nederland van leden van het Europees Parlement (Wet Europese verkiezingen)', No. 15044.

sentation of the bill to parliament was due to the prolonged negotiations on the formation of a cabinet, which lasted about seven months, and not caused by any problems connected with electoral questions.

### *The Government Draft of the European Elections Bill*

In all electoral matters the Dutch government is advised by an Electoral Council (the Kiesraad), and as early as 1975 the Ministry for the Interior had invited the Kiesraad to make recommendations to the Government on the possible electoral procedure for European elections. In its preliminary recommendation of October 1975<sup>180</sup>, the Kiesraad was of the opinion that, in the European elections the Dutch Electoral Law should be applied in full. After consultations with the Government the Kiesraad moved away from this narrow interpretation, and although the principle of basing the provisions on existing national procedure was upheld the possibility of adaptation in view of the specific character of direct elections to the European Parliament was conceded. Apart from this change of opinion, the draft proposal eventually submitted by the Kiesraad was taken over virtually without any alterations. On 25 May 1978 the European elections bill was presented to parliament together with a separate bill concerning incompatibilities for MEPs<sup>181</sup>. The bills were considered as a single legislative issue and debated jointly.

In the explanatory memorandum to the European elections bill the government underlined that the provisions presented were principally of a temporary nature, awaiting the realisation of a uniform European system. Therefore, the government had presented the electoral regulations for European elections in form of a special bill and had not incorporated these regulations into the Electoral Act for elections to the Tweede Kamer. Nevertheless, the bill was rather concise, as it contained only those special regulations derogating from the existing ones, and art. 2 of the bill stated that, unless otherwise indicated, the provisions of the Electoral Act were to be applied.

The principal derogations from existing electoral practice in the

<sup>180</sup> Bosscher, *op. cit.*

<sup>181</sup> Bepalingen betreffende het verenigen van betrekkingen op nationaal niveau met het lidmaatschap van het Europees Parlement (Wet Incompatibiliteit Europees Parlement) Nr. 15045.

Netherlands concerned *the electoral system, the right to vote, and requirements for list proposals*:

— Traditionally the country forms one single electoral constituency, which is, however, for nomination purposes subdivided into eighteen electoral districts. In general parties present their lists in each of the electoral districts and they are combined at national level for the purpose of seat allocation. For European elections the government argued against such a subdivision because of the small number of Dutch EP-seats and since the decentralising effect on the nomination of candidates was less relevant for European elections, i.e. the government considered the case for regionally based MEPs as negligible.

— As for national elections, the allocation of seats was to be carried out in two stages. In a first stage all votes cast are added up and divided by the total number of seats. A party gains as many seats as this electoral quotient is contained in the total number of votes cast for that party.

According to the government the electoral quotient (Natural quota) for European elections would be six times higher than for national elections (i.e. 4% instead of 0.67%) because the Netherlands have only 25 EP-seats in comparison to the 150 seats of the Tweede Kamer.

The Natural quota is not only used for the first round of seat-distribution to parties, but it acts also as a *legal threshold* for the second stage, the distribution of the remaining seats. Thus, all parties which do not reach at least the electoral quotient are excluded from the second round distribution. For European elections this would in fact raise the electoral threshold to 4%.

The government further proposed that the distribution of the remaining seats was to be determined by the d'Hondt Highest Average method, irrespective of the number of remaining seats to be distributed<sup>182</sup>. Therefore, in consequence of the high electoral quotient and the application of the d'Hondt Highest Average method, the smaller Dutch parties would have difficulty in gaining representation at European level.

— As regards the right to vote, the government proposed *to*

<sup>182</sup> For national elections the Electoral Law provides that the d'Hondt Highest Average method should be applied only if more than nineteen remaining seats have to be distributed.

*extend the franchise to Dutch nationals residing in another Member State of the European Community (to vote in person or by proxy), and further to all nationals of another Member State residing in the Netherlands, unless the country of their nationality would grant them the right to vote.* The government defended this far-reaching European solution by a number of arguments: Firstly, it was argued that the European Parliament was an institution of the European Community, the powers of which would extend over the whole territory and affect all citizens of the Member States equally, wherever they might live in the Community. Secondly, the future directly elected MEPs should not primarily be regarded as representatives of a Member State, but as representatives of the 'Community population' residing in that Member State. And, thirdly, the government saw no reason why nationals of another Member State residing in the Netherlands might possibly have in future the right to vote for municipal elections, but not for European elections. In the long term, however, the Memorandum pointed towards a common regulation in a uniform electoral system.

### *Parliamentary Debate*

As a result of the general agreement of nearly all parties on the principle of direct elections and in the absence of any real controversy over the electoral system, the passage of the two bills through parliament went rather quickly<sup>183</sup>. Critical comments on details of the draft bill came mainly from the small parties and concerned the electoral quotient, the method proposed for the allocation of the remaining seats, the deposit requirements for list proposals from parties already represented in parliament, and the possibility of electoral alliances.

Altogether only nine deputies participated in the debate, and all of them were their parties' representatives in the parliamentary committee concerned (Internal Affairs). Both in plenary debate and in committee<sup>184</sup>, the members from the three major political groups

<sup>183</sup> For details see Tweede Kamer der Staten-Generaal, Handelingen, zitting 1977-1978, 67ste vergadering (29 August 1978), pp. 3200-3234; 69ste vergadering (31 August 1978) pp. 3312-3325; and 70ste vergadering (5 September 1978) pp. 3339-3350.

<sup>184</sup> Cf. the reports of the Committee for Internal Affairs, Wet Europese Verkiezingen, Nr. 15044, Nrs. 5 and 8.



(PvdA - Labour Party; CDA - Christian Democratic Appeal; VVD - Liberals) agreed in general with the government proposals.

Of the ten amendments tabled, five came from the Socialist deputy Patijn<sup>185</sup> and concerned mainly technical details. One amendment was proposed from a member of a government coalition party, Kappeyne van de Copelloe (VVD)<sup>186</sup>, asking for an increase in the quota of signatures required for list proposals from twenty-five to four hundred and fifty. Finally, four amendments were put forward jointly by two deputies of two smaller opposition parties, Abma of the Political Calvinist Party (SGP) and Verbrugh of the Calvinist Political League (GPV), which held three seats and one, respectively.

The amendments of these smaller parties<sup>187</sup> were related primarily to the improvement of their electoral chances *vis-à-vis* the larger parties: thus, they proposed to allow combined lists; to consider cooperating parties as one party; and to substitute for the d'Hondt Highest Average method the Highest Remainder system in use for provincial elections. All three amendments were rejected by the major parties. The only amendment from the smaller parties which was accepted concerned all parties equally, since it asked for the abolition of the deposit requirement for list proposals from parties already represented in parliament. Through acceptance of an amendment from the Socialist member, Patijn, this rule was extended to list proposals from those parties which have at least one seat in the European Parliament.

Against the votes of all seven smaller parties, which together held 8% of the seats (i.e. 12 seats), the two bills were accepted by the Tweede Kamer on 5 September 1978. The negative vote of the smaller parties can mainly be explained by their protest against the high electoral threshold, which would make it virtually impossible for them to gain any seat in the European Parliament.

The two bills were subsequently passed on to the Upper House (Eerste Kamer)<sup>188</sup> which adopted them, unanimously without any alterations, on 12 December 1978.

<sup>185</sup> Cf. amendments Nrs. 12, 13, 14, 16 and 18, *op. cit.*

<sup>186</sup> Cf. amendment Nr. 17, *op. cit.*

<sup>187</sup> Cf. amendments Nrs. 9, 10, 15 and 19, *op. cit.*

<sup>188</sup> See Eerste Kamer der Staten-Generaal, zitting 1978-1979, 8ste vergadering (12 December 1978) pp. 198-215.

### *General Conclusions*

The legislation for direct elections in the Netherlands did not meet any real obstacle. This can largely be explained by the absence of any dispute over either the principle of European elections or the special provisions adopted. Proportional representation in combination with a two-tier system of seat allocation has stood the test of time in the fragmented political system of the Netherlands. However, the number of Dutch EP-seats implied a rather high electoral threshold of 4% in comparison to the normal 0.67% quota. In spite of demands from the seven smaller parties, which would be affected by this threshold, the government and the major parties did not endeavour to make the electoral system for European elections as permissive as the national system.

The extension of the franchise, not only to Dutch nationals living in another Member State, but also to citizens of other Member States living in the Netherlands, indicates the interest of the government and a majority of the parties in the inclusion of a European franchise in a future uniform system.

All parties also accepted the transitional character of the present regulations and seem to be favourable to a uniform system as long as it is based on a system of proportional representation.

#### 3.1.9. UNITED KINGDOM

##### *Background*

Although the question of British membership of the European Community had been answered positively by the 1975 referendum, this did not settle the on-going controversies about costs and benefits of the Common Market for Britain. Indeed, the anti-marketeters (mainly in the Labour Party) showed no sign of fatigue or resignation. The emerging issue of direct elections to the European Parliament, instead, provided them with a new forum to continue their 'battle' against the Community. Thus, the principle of European elections became mixed up with the arguments on Britain remaining in the European Community.

Furthermore, the issue became enmeshed with a large number of different arguments, not all of them directly related to electoral

questions. Altogether one can discern at least five major problems, which the implementation of direct elections had to face<sup>189</sup>. Firstly, as already mentioned there was the continuing opposition to British EC-membership within the Labour Party<sup>190</sup>. This strong internal party opposition became once more manifest at the annual party conference in September 1976. Just a few days after the signing of the Direct Elections Act by the EC-Council of Ministers on 20 September 1976, the Labour Party conference voted on 29 September 1976, by a majority of 4 million to 2.3 million votes, against the principle of direct elections<sup>191</sup>. Although the motion did not receive the two-thirds majority necessary to become binding policy for the Labour government, the rejection of the principle of holding European elections put considerable pressure on the Government. Even more so, since opposition was not only evident in the rank-and-file of the party, but also included members of the Cabinet, some of them in prominent positions, such as Michael Foot and Anthony Benn.

The acceptance of this motion by the annual conference, contrary to the official position of the Labour government, was closely related to the long-standing internal controversy between the Labour Party as a whole and the Labour Government on other, mainly economic, policies, and on the implementation of the party's election manifesto<sup>192</sup>.

Secondly, direct elections got entangled with the legislative process on devolution. Alarmed by the growing support for the two nationalist parties in Scotland and Wales (SNP and Plaid Cymru) amongst its own traditional supporters, the Labour Party had included the promise of granting more autonomy to Scotland and Wales and of introducing devolved assemblies in their election manifesto. Given its small majority in the House of Commons after October 1974, it was strategically important for the Labour government to embark early on the passing of the devolution bill through parliament in order to secure the parliamentary support of both nationalist parties for the government in other respects.

<sup>189</sup> For more detailed discussion see for example Cook, C. and Francis, M., *The First European Elections: A Handbook and Guide*, (London; 1979), pp. 56-74.

<sup>190</sup> Cf. *ibid.*, pp. 62-72.

<sup>191</sup> The text of the motion is reprinted in: Fitzmaurice, J., *The European Parliament*, (London; 1978), pp. 76-79, with further details.

<sup>192</sup> Cf. e.g., the Government's defeat on the question of dock work, and accusations within the party that the government would abandon social and incomes policy.

The Scottish National Party and the Welsh Plaid Cymru demanded a greater share of seats in the European Parliament, pointing out that, by comparison with some smaller Member States of the Community with populations similar to themselves (such as Denmark and Ireland), both Scotland and Wales should have at least an equal number of representatives, instead of being considered only within the British contingent in proportion to England. The unwillingness of the Government to cede to these demands and the failure of the devolution bill in the House of Commons in February 1977, led to the withdrawal of support for the government by these two parties.

Thirdly, the weakness of the Labour government in the House of Commons was further accentuated by defeats in by-elections during 1976, which turned the small majority after the October 1974 elections into a minority of parliamentary support in the winter of 1976. The problem of securing a majority in the House of Commons led to an agreement between the Labour and Liberal parties, the so-called 'Lib-Lab pact'. This pact was formed in March 1977 mainly to prevent an early general election in spring 1977, which did not suit either of the two parties. Amongst other points, the agreement provided for:

- the introduction of direct elections during the 1976/1977 session of parliament;
- consultations between the two parties in the choice of electoral system;
- a recommendation by the Labour government on the electoral system after considering the views of the Liberal Party, and
- a free vote for the Parliamentary Labour Party in the House of Commons on the electoral system <sup>193</sup>.

As it was known that the Liberal Party advocated the introduction of a system of proportional representation for European elections, it became evident that from now on the main problem for the implementation of direct elections was the choice of electoral system and no longer the principle as such.

Fourthly, the discussion on electoral reform, which had been started in connection with the introduction of devolved assemblies in

<sup>193</sup> *The Times*, 23 March 1977.

Scotland and Wales<sup>194</sup>, also became intermingled with the debate on direct elections. The discussion on the choice of electoral system was both highlighted and influenced by the parallel and overlapping discussion on the electoral system for the two devolved assemblies. Many parliamentarians feared that any decision on either of them would trigger off a campaign for changing the electoral system for Westminster elections. Academic forecasts<sup>195</sup> on the possible outcome of European elections on the basis of the 1974 national election results suggested that, if the first-past-the-post system was retained, the Labour Party would suffer great losses in favour of the Conservatives and the SNP, while the Liberal Party would hardly gain a European seat. In fact, the government faced the choice between preserving the existing plurality system, which would almost certainly disadvantage its own party at European elections, and, on the other hand, changing the electoral system and therefore threatening to disadvantage itself later at national level (if the introduction of proportional representation should also spill over to Westminster elections).

The fifth problem in the implementation of direct elections was the packed parliamentary timetable. Under the circumstances that the devolution bill had blocked the legislative timetable for some time, it was a difficult task for the government to pass the European elections bill in time to allow for the necessary technical procedures to be accomplished without endangering the target date of May/June 1978, set by the Council of Ministers. It depended largely on the choice of the electoral system whether this date could be met. It was already the case that for Westminster elections the boundary drawing procedure for the single-member constituencies took normally up to two years. In view of the limited time available, the Government had to think of streamlining the procedure if the first-past-the-post system was to be adopted. With a system of proportional representation, however, the time for agreeing on regional constituencies could be shortened considerably.

Thus, the internal conflict of the Labour Party, the minority position of the Labour government in the House of Commons, the choice of electoral system, and the blocking of the legislative time-

<sup>194</sup> Cf. *The Report of the Hansard Society Commission on Electoral Reform*, (London; June, 1976).

<sup>195</sup> For example, Steed, M., *Fair Elections or Fiasco*, (London; 1977).

table by the controversial devolution bill, threatened severely to block any progress in the process of implementation of direct elections and endangered the adoption of the necessary electoral legislation in time <sup>196</sup>.

### *Possible Options*

All variants of Western liberal parliamentary democracies depend to a certain degree on the type of electoral system applied. As far as Western Europe is concerned, most of the continental states have always applied some form of proportional representation, with the exception of France during the Fifth Republic, where a double-ballot majority system is in use. The United Kingdom, however, has always been considered the stronghold of the 'first-past-the-post' simple majority system, which constitutes one of the pillars of the Westminster model of parliamentary democracy.

Two aspects are of special importance to the British system: the concept of constituency, with close links between elected member of parliament and his constituents, and, secondly, the inherent tendency of the simple-majority system to provide for clear-cut in-and-out patterns of government and opposition, with governments commanding parliamentary majorities of its own supporters. Indeed, generations of constitutional and political experts in Britain have considered the importance of parliamentary majorities for single-party governments greater than the distorting effects of the electoral system on the representation of political parties in parliament.

For elections to the European Parliament, however, it is, at least for the time being, not at all relevant to achieve clear majorities for stable governments. Of much more importance is it to have the spectrum of all political views in a Member State fairly represented. Therefore, in the United Kingdom supporters of proportional representation saw European elections as a testing ground for their arguments in view of possible electoral reform for political elections in Britain <sup>197</sup>.

In June 1976 the Hansard Society for Parliamentary Government

<sup>196</sup> In fact, the delayed implementation process in the United Kingdom was used as an excuse by some other Member States to move themselves forward at a slower pace. Eventually the date of the first European elections had to be postponed by a year, to June 1979.

<sup>197</sup> Cf. e.g., the author's argument in Hand, Georgel and Sasse, *op. cit.*, p. 236.

published a report of its Commission on Electoral Reform<sup>198</sup>, which assessed 'the case for or against electoral reform and its possible impact on the British political system'<sup>199</sup> Apart from criteria for a new electoral system for Westminster elections, the report also considered possible options for the planned devolved assemblies and the European Parliament.

In view of the special character of the European Parliament as a forum of political views, rather than a legislative and government-forming body, and because of the small number of UK representatives to be elected to the European Parliament, the Hansard Society Commission judged the traditional first-past-the-post system as inappropriate for European elections.

Instead, the report proposed 'to conduct elections to the European Parliament on *some basis of proportional representation*'<sup>200</sup> and recommended the application of *either STV* (single transferable vote) in multi-member constituencies, *or the Additional Member system*, whereby 3/4 of the UK-seats were elected in single-member constituencies and the additional seats were to be distributed to the parties at regional or national level according to the d'Hondt Highest Average method. The Additional Member system was proposed to 'combine the advantages of the single-member constituency with an acceptable degree of overall proportionality without incurring the disadvantages of the West German system'<sup>201</sup>.

In contrast to the recommendations of the Hansard Society's Commission, the House of Commons Select Committee on Direct Elections to the European Assembly, set up on 12 May 1976, came, in its second report, to the conclusion that 'the *first-past-the-post system* at present in use for Parliamentary elections *should be used* in the United Kingdom for the first round of elections for the European Assembly'<sup>202</sup>. It became clear from the arguments chosen to support the Committee's choice that the decision was taken mainly in view of the 1978 target date for European elections. The internal debate was chiefly characterised by the common interest of the two major parties, Labour and Conservative, in preserving the traditional simple-majority system, as against the demands by the Liberals for

<sup>198</sup> See p. 152, n. 194, above.

<sup>199</sup> *Op. cit.*, Preface.

<sup>200</sup> *Ibid.*, p. 41.

<sup>201</sup> *Ibid.*, p. 37.

<sup>202</sup> *Second Report*, 3 August 1976, HC 515 75-76, p. 10.

the introduction of proportional representation: "The Committee are of the opinion that it would not be appropriate to bring in what is for most of the United Kingdom an entirely new method of voting at this stage. Elections for the European Assembly are themselves novel enough and the Committee are much impressed by the argument that a later change will in any event be necessary" <sup>203</sup>.

Besides its recommendation to retain the first-past-the-post-system, the Committee proposed to allocate the 81 EP-seats within the United Kingdom in proportion to the population of the four component parts of the United Kingdom as follows: England 66 seats, Scotland 8, Wales 4 and Northern Ireland 3 <sup>204</sup>.

Other parliamentary business and the difficulties of the Government in other legislative areas prevented the report from being debated on the floor of the whole House of Commons. In the meantime, the informal agreement between the Liberal and Labour parties put pressure on the Government not only to introduce legislation on direct elections in time, but also to take at least into consideration the application of proportional representation (see *supra*). One week after the 'Lib-Lab pact', the Government published a White Paper <sup>205</sup>, which contained the first formal indication of its openness towards proportional representation.

The Government's intention was to present to parliament and the public the 'fundamental constitutional issues involved' <sup>206</sup> in order to initiate a debate in and outside parliament on all aspects, before legislation was introduced. According to the White Paper, the electoral system presented 'a most difficult issue'. On the one hand it was argued 'the UK has a distinctive electoral system which has developed gradually over the last one and a half centuries', 'has stood the test of time' and 'is well understood by the electorate at large and by the political Parties' <sup>207</sup>; on the other hand, if this traditional voting system were to be adopted, there would be 'significant differences between our own procedure and that of the other eight countries' <sup>208</sup>.

Moreover, the 'inherent characteristics of the British system'

<sup>203</sup> *Ibid.*, p. 8f.

<sup>204</sup> *Ibid.*, p. 7.

<sup>205</sup> *Direct Elections to the European Assembly*, Cmnd. 6768 (April, 1977).

<sup>206</sup> *Ibid.*,

<sup>207</sup> *Ibid.*, p. 6, section 8.

<sup>208</sup> *Ibid.*, p. 6f, section 13.



might produce some disturbing consequences: swings in electoral opinion tend to be magnified in terms of seats won or lost, and the smaller the number of seats, the greater will be the possible disproportion between seats won and votes cast. Furthermore, if European elections were held mid-way between general elections to the House of Commons 'there could be a wide divergence between the balance of power at Westminster and the Party composition of the UK members of the European Assembly'. This could lead to 'friction between the Government at Westminster and the UK representatives in the Assembly or even between the Government and the Assembly itself' <sup>209</sup>.

The White Paper went on to suggest that some of these problems could be resolved by adopting a system of proportional representation. Since the European Parliament 'does not constitute a legislature or provide a government' proportional representation for European elections might not be exposed to the same objections as for Westminster elections. 'A different institution might warrant a different form of election' <sup>210</sup>.

In essence, the White Paper outlined four possible options:

— *The application of the traditional first-past-the-post system* <sup>211</sup>. England would be divided into 66 single-member constituencies, Scotland into 8 and Wales into 4. Northern Ireland, however, would form because of 'its special circumstances' <sup>212</sup> a single 3-member constituency with the application of the STV-proportional representation system. The Euro-constituencies would be drawn up by the Parliamentary Boundary Commissions following one round only of representations, without local enquiries, to speed up the procedure.

— *Proportional representation with national party lists without preference voting (rigid lists)* <sup>213</sup>.

— *Proportional representation with regional party lists* <sup>214</sup>. The United Kingdom would be divided into eleven electoral areas, Scotland, Wales and Northern Ireland would each constitute a single

<sup>209</sup> *Ibid.*, p. 7, section 14.

<sup>210</sup> *Ibid.*, p. 7, section 15.

<sup>211</sup> *Ibid.*, pp. 10-14, for details.

<sup>212</sup> I.e. to secure the representation of the Catholic minority.

<sup>213</sup> *Ibid.*, annex B, p. 21.

<sup>214</sup> *Ibid.*, annex B, p. 21-24.

electoral area, of 8,4 and 3 members respectively. England would be divided on the basis of the existing economic planning regions into eight electoral areas with five to fourteen members each. Parties would put up lists of the appropriate number of candidates in each area. The voter would be able to express his choice for a candidate on the party list. The seats in each area would be allocated to parties in proportion to their votes, and seats allocated to each party filled according to the number of votes for each individual candidate.

— *Single transferable vote in multi-member constituencies* <sup>215</sup>. The United Kingdom would be divided into about a dozen constituencies, each returning between 3 and 10 members. Wales and Northern Ireland would each form a single constituency of 4 and 3 members. Scotland could comprise one or more constituencies, and the English constituencies would be formed again on the basis of the economic planning regions. Candidates would stand as individuals and be elected according to the preferences of the voters.

In comparison to the simple majority system, a list system would according to the White Paper, 'bring us into line with the majority of our European partners and would ensure that the allocation of seats was more proportional to the votes cast for the competing Parties' <sup>216</sup>. It would also speed up the necessary boundary procedures. On the other hand, the Government warned of the unknown difficulties and consequences a departure from the traditional voting system would bring about; as this would 'be a major constitutional innovation' <sup>217</sup>, which would mean the 'absence of the familiar constituency link and could lead to changes in Party organisations' <sup>218</sup>. And furthermore there might be yet another change if a future uniform system were to be introduced. Similar arguments were used against the introduction of STV, though it was conceded that STV would 'retain the concept of the constituency' and give maximum influence to the elector <sup>219</sup>.

The White Paper discussed also the possibility of combining any of the alternative electoral systems outlined with a *compulsory dual mandate*. Thereby only members of the House of Commons would

<sup>215</sup> *Ibid.*, annex C, p. 25-27.

<sup>216</sup> *Ibid.*, p. 7, section 16.

<sup>217</sup> *Ibid.*, p. 7, section 17.

<sup>218</sup> *Ibid.*

<sup>219</sup> *Ibid.*, p. 8, sections 18 and 19.

be able to stand for European elections. As the main advantages of such a regulation, the Government listed the minimisation of the risk of divergencies between Euro-MPs and Westminster members of the same party and the discouragement of the 'development in Britain of European parties with federalist aims, which might undermine the position of our national parties' <sup>220</sup>. As against these advantages, the White Paper noted that a compulsory dual mandate would impose considerable 'strain on members performing the double task' <sup>221</sup> and would involve proxy voting or automatic pairing at Westminster <sup>222</sup>.

In spite of the normal character of a White Paper, i.e. presenting a clear Government choice to the public, the European elections White Paper carried certain 'green edges'. Thus it did not present any decision on the electoral system, but left this matter open for the bill to be published after a parliamentary debate on the White Paper in the House of Commons <sup>223</sup>. During this debate several speakers, both from the opposition benches and from the parties supporting the Government, complained about the fact that the Government did not allow at this stage a vote on the electoral system instead of a general debate about the White Paper without binding effect on the Government <sup>224</sup>. It also became evident that a large number of MPs expected a uniform system for European elections to be developed in readiness for the second round, and this argument was used, both to block any immediate introduction of a new system <sup>225</sup> as well as to promote an initiative towards proportional representation <sup>226</sup>.

In his concluding remarks at the end of the two-day debate the Secretary of State for Home Affairs, M. Rees, stated that 'the decision is in the nature of an interim arrangement until the uniform procedure envisaged in Article 138 is agreed' <sup>227</sup>.

<sup>220</sup> *Ibid.*, p. 28, annex D.

<sup>221</sup> *Ibid.*, p. 9, section 22.

<sup>222</sup> *Ibid.*, p. 28, annex D.

<sup>223</sup> The debate on the White Paper took place in the House of Commons on 20 and 25 April 1977. Although it preceded the publication of the European Assembly Elections Bill, we shall not go into details.

<sup>224</sup> Cf. e.g., Hurd, D. (Cons.) *House of Commons, Hansard*, vol. 930, col. 752.

<sup>225</sup> Cf. e.g., Heffer, E. (Lab), *ibid.*, col. 261, and Rodgers, J. (Cons), *ibid.* col. 286.

<sup>226</sup> Cf. e.g., Fairgrieve, R. (SNP), *ibid.*, col. 267, and Hunt, J. (Cons), *ibid.*, 316.

<sup>227</sup> *Ibid.*, col 951.

*The Government Draft of the European Elections Bill*

Eventually, on 24 June 1977, the European Assembly Elections Bill <sup>228</sup> was published. Apart from providing for the method of electing the UK-representatives to the European Parliament, it was to give effect to the EC-Council's Direct Elections Act, since, unlike in the continental Member States, ratification took place simultaneously with the passing of the bill.

In a number of aspects, the Bill closely followed the White Paper and confirmed that the 81 UK-seats should be allocated between the component parts of the UK as follows: England 66, Scotland 8, Wales 4, and Northern Ireland 3, seats. In contrast to provisions for Westminster elections, the bill proposed *to extend the franchise* beyond those entitled to vote at House of Commons elections <sup>229</sup> *to peers*. It also proposed *to allow peers and clergymen*, normally disqualified from standing for the House of Commons, *to be candidates for the European Parliament*.

The nomination paper for a candidate for the European Parliament would have *to be signed by 50 electors* and each candidate would have to put down *a deposit of £ 500*.

The main and most complex feature of the bill was, however, *the inclusion of both the first-past-the-post simple majority system and proportional representation system with regional party lists*. The key section <sup>230</sup> provided for elections to be conducted under a regional list system such 'that each elector in an electoral region has a single vote which is cast for a named candidate' and 'the seats to be filled for the region are allocated according to a system of proportional representation' and the d'Hondt Highest Average method. (An outline of the system followed in Part II of the bill). However, this was subject to the following restrictive clause: 'If after the passing of this Act the House of Commons by resolution so directs, Part II of this Act shall not have effect and Assembly elections shall be held and conducted... under the simple majority system (for Great Britain) and the single transferable vote system (for Northern Ireland)' <sup>231</sup>.

<sup>228</sup> Bill 142.

<sup>229</sup> This includes Irish citizens living in the United Kingdom.

<sup>230</sup> Part I, Clause 3.

<sup>231</sup> Part I, Clause 3.2.

Thus the House of Commons could vote in favour of the Regional list system, but would at the same time retain the right later to substitute for it the first-past-the-post system. By this device the Government had given a free vote to its Cabinet members and the parliamentary party, as agreed upon in the 'Lib-Lab pact' (see *supra*).

Were a regional list system finally adopted, *England would be divided into eight electoral regions, and Scotland, Wales and Northern Ireland would each constitute a single electoral region.* Under the first-past-the-post system, however, a further 18 or more weeks would be required for the Boundaries Commissions to delineate single-member constituencies for Great Britain <sup>232</sup>.

The bill provided for two methods of *filling vacancies* between elections. Under the regional list system, the vacancy would *either be filled by the first of the non-elected candidates on the list, or, if no eligible candidate were found, a by-election would be held,* as envisaged also for the first-past-the-post system.

The bill provided *neither for granting the vote to nationals of other Member States* <sup>233</sup> resident in the United Kingdom, *nor to UK-nationals resident abroad.*

All other rules for the conduct of elections were based largely on the parliamentary elections rules in Schedule 2 to the Representation of the People Act 1949 <sup>234</sup>.

### *Parliamentary Debate*

The debate on direct elections in the House of Commons lasted longer than in any other parliament in the Member States of the Community. In fact the discussion on the principle of holding European elections and the details of the electoral law intensified over the years, though the main streams of arguments for and against the issue remained the same.

As early as during the 1974-75 session of parliament, the pre-legislative phase was initiated by parliamentary questions, generally put forward by pro-marketeters and urging the government for positive action.

<sup>232</sup> As already stated, under these circumstances Northern Ireland would form a single three-member constituency and STV to be applied.

<sup>233</sup> Except Irish citizens.

<sup>234</sup> Schedule 4 of the European Assembly Elections Bill.

The publication of a Green Paper in spring 1976, dealing with the more 'external' aspects of the issue (such as size of the British seat contingent, election date and other questions discussed at that time at Community level), led to a first parliamentary debate on the principle of direct elections in the House of Commons in March 1976<sup>235</sup>. It became clear from the interventions by members from all sides that the cleavage ran right across party lines and coincided somewhat with the old pro-and anti-market cleavage within the two major parties. However, the front-bench spokesmen of the Labour, Conservative, and Liberal parties all supported the principle of holding European elections. The choice of the electoral system was not yet at stake and party positions did not yet seem totally developed in this matter (at least in the Labour and Conservative parties).

In order to ease the parliamentary process, the government suggested the setting up of a Select Committee to deal with the more 'internal' aspects of the issue, e.g. the electoral system and the distribution of the British contingent between the component parts of the United Kingdom (see *supra*). Only the first of three reports of the Select Committee was debated in parliament, since the parliamentary timetable was, at that time (summer 1976), already blocked by other domestic issues (e.g. devolution).

Though legislation on direct elections had been included in the Queen's speech at the opening of the 1976-77 session as one of the projects of the government, nothing happened in this respect until March 1977. As we have already seen, the 'Lib-Lab pact' brought the attention of the public back to direct elections, but at the same time shifted it from the principle to the detailed choice of electoral system. It had already earlier become evident that the Liberal Party strongly advocated the introduction of some form of proportional representation, because only under such a system would the party stand a chance of gaining representation in the directly-elected European Parliament.

The White Paper, published shortly afterwards, gave the first detailed account of the pros and cons of four alternative systems, and the following two-day debate on the White Paper in April 1977

<sup>235</sup> Cf. *House of Commons, Hansard*, vol. 908, col. 900-1036 (29 March 1976) and col. 1119-1240 (30 March 1976).

was the first major attempt to deal with the complex issue on the floor of the House of Commons, setting the pace and tone for all future debates during the process of implementation of direct elections<sup>236</sup>.

Apart from the outright rejection of European elections by those opposed to the European Community<sup>237</sup>, the debate centred primarily on the choice between retaining the traditional system or introducing some form of proportional representation (PR). Though no actual vote took place, one could observe that a majority of members on both the Labour and Conservative benches strongly defended the traditional simple-majority system.

The main arguments against proportional representation were that:

— it would “give too much influence to the central party headquarters”<sup>238</sup> and “remove power from the voter”<sup>239</sup>;

— it would be “contrary to the constituency concept with locally based MPs”<sup>240</sup> and “destroy the personal responsibility of MPs to their constituents”<sup>241</sup>;

— it “could endanger the British party system” and “allow minorities (or even extremists) to gain seats”<sup>242</sup>;

— a change of the electoral system for European elections would have “repercussions on the system for Westminster elections”<sup>243</sup> and “other negative domestic implications”<sup>244</sup>;

— the voter would be “more familiar with the first-past-the-post system”<sup>245</sup>

— and in any case “Britain should not rush into a new system”<sup>246</sup> since in five years a change might anyway be necessary under a Community-wide uniform system<sup>247</sup>.

<sup>236</sup> Cf. *House of Commons, Hansard*, vol. 930, col. 200-333 (20 April 1977) and col. 735-960 (25 April 1977).

<sup>237</sup> E.g., Jay, D. (Lab), *House of Commons, Hansard*, vol. 930, col. 221-227, Mendelson, J. (Lab), *ibid.*, col. 775-780, and Hoyle, D. (Lab), *ibid.*, col. 239-244.

<sup>238</sup> Heffer, E. (Lab), *ibid.*, col. 255-263.

<sup>239</sup> Moate, R. (Lab), *ibid.*, col. 319-322.

<sup>240</sup> Shersby, M. (Lab), *ibid.*, col. 312-315.

<sup>241</sup> Rodgers, J. (Cons), *ibid.*, col. 284-288.

<sup>242</sup> Boyson, R. (Cons), *ibid.*, col. 913-917.

<sup>243</sup> Gardiner, G. (Cons), *ibid.*, col. 309-312, and Moate, R. (Lab), *ibid.*, col. 319-322.

<sup>244</sup> Dunwoody, G. (Lab), *ibid.*, col. 894-900.

<sup>245</sup> Shersby, M. (Lab), cf. n. 240, above.

<sup>246</sup> Dunwoody, G., cf. n. 244, above.

<sup>247</sup> Heffer, E., cf. n. 238 and Rodgers, J., cf. n. 241, above.

In a remarkable speech in favour of direct elections the former Prime Minister, E. Heath (Cons), put forward arguments in favour of proportional representation with regional party lists. In fact, he was the most prominent speaker in the House advocating the abandonment of the first-past-the-post system for European elections. According to him, there were several arguments against plurality voting <sup>248</sup>:

- the 78 single-member constituencies would be too big for the individual Euro-MP;
- the winning majority within such a large Euro-constituency would be too small;
- small parties would be prevented from having any chance at all;
- it would lead to widespread distortions;
- the United Kingdom would be the only Member State to use it;
- a change would anyway be necessary in five years, so why not change now;
- and it would not necessarily have direct repercussions on the Westminster system.

Arguments presented by other members concerned “the time-factor of introducing the regional list system” <sup>249</sup>, “the growing importance of regional representation” <sup>250</sup> and the “unrepresentative results of plurality voting in terms of votes cast and MPs elected” <sup>251</sup>.

Against the large majority of Labour and Conservative deputies in favour of the plurality system, and the relatively small number of supporters of the regional list system, it was apparent that the Liberal Party would hardly be supported in its demands for introducing STV. Only a few deputies of the two major parties spoke in support of STV <sup>252</sup>, and the only additional support came from the nationalist parties <sup>253</sup>. For the Liberal Party, J. Thorpe outlined the criteria for the choice of an electoral system <sup>254</sup>:

<sup>248</sup> Heath, E. (Cons), *ibid.*, col. 227-239.

<sup>249</sup> Irving, S. (Lab), *ibid.*, col. 761-765.

<sup>250</sup> Phipps, C. (Lab), *ibid.*, col. 268-273.

<sup>251</sup> Hunt, J. (Cons), *ibid.*, col. 315-319.

<sup>252</sup> E.g., Craigen, J. (Lab), *ibid.*, col. 283, and Morrison, C. (Cons), *ibid.*, col. 922-925.

<sup>253</sup> Reid, G. (SNP), *ibid.*, col. 291-298, and Wigley, D. (Plaid Cymru), *ibid.*, col. 889-894.

<sup>254</sup> *ibid.*, col. 244-255.



- fairness of outcome;
- ease and speed of its introduction;
- avoidance of artificial distortions.

The first-past-the-post system would not, in reference to European elections, correspond to any of these criteria. After all, the "problems in Europe are regional problems and not individual constituency problems". The first choice of the Liberal Party was proportional representation with STV, but the Party would not object to the regional list system. However, in spite of the Party's European conviction, it might be necessary to vote against direct elections altogether if they were to be held under the first-past-the-post system.

As a direct result of the White Paper debate and the apparently limited support for STV, the bill, published in June 1977, offered only the choice between the plurality system and the regional party list system. Just before the summer recess the bill received a favourable Second Reading<sup>255</sup>; the arguments put forward were generally the same as at the White Paper debate. However, it is interesting to note the emphasis with which the Secretary of State for Home Affairs, M. Rees, indicated that "the Government's support for proportional representation can only extend to this particular election to this particular body" and that "this will be a one-off system for the first direct elections" only<sup>256</sup>.

At the beginning of the 1977-78 session the bill was again presented to parliament on 9 November 1977. Still, it needed a protracted three-month period between the Second Reading (24 November 1977) and the final passage through parliament on 16 February 1978 (Third Reading)<sup>257</sup>. The Committee stage, in particular, was prolonged by the anti-marketeers, who tried to obstruct the parliamentary process, so that finally a guillotine-motion had to be introduced in order to limit debate on the individual aspects of the bill and secure its passage in time<sup>258</sup>.

The most important decision taken during the parliamentary debates on the bill was on the choice of the electoral system. On 13 December 1977, during the Committee stage, a majority of 97 mem-

<sup>255</sup> *House of Commons Hansard*, vol. 934, col. 1250-1382 (6 July 1977) and col. 1436-1570 (7 July 1977).

<sup>256</sup> *Ibid.*, col. 1250-1261.

<sup>257</sup> For details see *House of Commons Hansard*, vols. 939-944.

<sup>258</sup> *House of Commons Hansard*, vol. 942, col. 1623-1894.

bers voted in favour of an amendment to retain the first-past-the-post system and against the recommendation of the Government to introduce the regional list system <sup>259</sup>.

Of the many amendments tabled (about 800), only two deserve further mention in this context. One of them was accepted and the other defeated by a small margin. The amendment accepted concerned safeguards against any increase in the powers of the European Parliament and led to the inclusion of a new Clause 8, which requires "parliamentary approval of treaties increasing the powers of the Assembly" <sup>260</sup>.

The other amendment asked "to enfranchise, for European elections only, British nationals and their wives or husbands, who are living and working in the European Community" <sup>261</sup>. In his argumentation in favour of the amendment, the proposer wanted to see it "restricted to nationals resident abroad by virtue of their occupation, service or employment" and not extended to "lotus-eaters" <sup>262</sup>. The amendment was rejected, because of its possible implications for national elections, by a Government majority of eleven votes only.

On 16 February 1978, the House of Commons gave the European Assembly Elections bill a final Third Reading and passed it by 159 votes to 45. It then went to the House of Lords <sup>263</sup>, where some attempts were made by the Liberals to bring back proportional representation. But, by a majority of 55 votes (123 against/68 for), the House of Lords rejected the amendment to reintroduce the regional list system <sup>264</sup> and the bill was passed unchanged on 4 May 1978, thus avoiding a protracted conflict with the Commons.

### *General Conclusions*

The implementation process in the United Kingdom was by far the most controversial of all the Member States. This was due partly to the still unsettled opposition within the Labour Party to British

<sup>259</sup> 321 MPs voted for first-past-the-post and 224 for PR, *The Times*, 15 Dec. 1977, see also *House of Commons Hansard*, vol. 941, col. 298-422.

<sup>260</sup> *House of Commons Hansard*, vol. 943, col. 793-833.

<sup>261</sup> Hurd, D. (Cons), *House of Commons Hansard*, vol. 943, col. 1464-1476.

<sup>262</sup> I.e. people not paying any UK taxes and not working.

<sup>263</sup> For details see *House of Lords, Hansard*, vols. 389-391.

<sup>264</sup> Cf. *ibid.*, vol. 390, col. 791-863.

membership of the European Community, and partly to other domestic issues which interfered with the parliamentary passage of the European elections legislation. The main stumbling point, however, was the adherence of the two major parties and large parts of the public to the traditional British voting system of first-past-the-post. Here the underlying fear that any introduction of a different voting system for secondary elections, such as European elections, would have repercussions on the electoral system for Westminster elections and consequently on the British party system, blocked any steps towards aligning the United Kingdom with its partner countries in the European Community. However, the debate also showed that, for a future uniform system, a change may be possible, especially as in the meantime the controversial devolution issue has been stopped by a negative referendum. In retrospect, and after the long parliamentary discussions on the electoral system, one can assume that the British parties would tend towards a uniform system, if it contained regional party lists with some form of preference voting.

### 3.2. COMMON TRENDS AND TENDENCIES LESSONS FROM THE IMPLEMENTATION OF THE FIRST EUROPEAN ELECTIONS

The implementation of the first direct elections to the European Parliament was characterised in all nine Member States by three common factors:

— in general, the main features of the electoral systems applied nationally were retained for European elections. This held especially true for the more technical aspects of the electoral systems and the polling procedures, and was motivated by the familiarity of the electorate with these provisions, but was also because they have proved to be adequate for the specific national political contexts in which they operate;

— in those cases, where — because of the special nature of European elections and the different number of seats to be filled — changes were necessary, these were adopted by taking account of possible alternative provisions applied in other Member States;

— during the parliamentary debates it was borne in mind that the electoral provisions to be adopted concerned mainly the first round of European elections, and could thus be considered as transitional, awaiting the elaboration of a uniform Community-wide electoral system.

However, in spite of the secondary nature of elections to the European Parliament in comparison to national elections with their direct impact on the distribution of power within the national political system, the style and character of the parliamentary debates on implementation of direct elections were dominated in some Member States more by considerations of party strategy and/or other domestic political concerns than by European considerations.

In assessing the chances of a uniform electoral system, we have to keep in mind at least two aspects of this implementation process:

— in at least six Member States (Denmark, Germany, France, Italy, Netherlands and the United Kingdom) certain electoral provisions bore the mark of bias in favour of preserving the status quo of the existing party system;

— in four Member States (Belgium, France, Italy and the United Kingdom) domestic political issues and to some extent constitutional constraints (e.g. in Belgium and France) overshadowed the implementation process and restricted the choice of possible electoral provisions.

If we look more closely, in a comparative perspective, into the details of how the Member States have implemented direct elections we can discern four major areas which have provoked most of the discussion: the *voting system*, the *size and nature of constituencies*, the *accessibility for parties*, and the *franchise*.

As regards the *voting system*, Table I shows that the main cleavage lies between the United Kingdom and the other eight Member States of the Community. Although for national elections France, and also Germany, apply some form of plurality system (in the case of Germany with an overall proportional outcome), both countries have adopted a list system of proportional representation as have seven of the eight countries with PR. Only Ireland is still applying its traditional system of STV in connection with PR; the same system has been chosen for Northern Ireland. In the preceding country-by-country survey it became evident that where PR had already been applied for national elections, the system was not at all in question. The plurality system, however, was considered as 'unrealistic' in Germany, while in Ireland the system was rejected because of 'its tendency to elect candidates without a majority of votes'. Even in Italy, where the system is applied for Senate elections (though with a local 65% threshold), the system was rejected for European elections. In France, where the parties of the *majorité* normally consider the traditional double-ballot majority system as important for the viability of the political system, its application to European elections was considered as inappropriate because of its implication for the unity of France.

Therefore, the United Kingdom remains the only country which,

TABLE I. — *Voting systems and electoral formulae applied for the first European elections*

12

	Voting system	Electoral formula	Preference Voting	Change from traditional system	Object of parliamentary debate
Belgium	PR	d'Hondt	yes	no	no
Denmark *	PR	d'Hondt	yes	yes: highest remainder	yes: smaller parties wanted to retain traditional system
Germany **	PR	d'Hondt	no	yes: mixed system of plurality and PR with d'Hondt	yes: opposition wanted to retain traditional system
France	PR	d'Hondt	no	yes: double-ballot majority system	yes: some preliminary discussion on applicability of traditional system
Ireland	PR	STV	yes	no	yes: a special committee proposed PR with national lists
Italy	PR	Highest Remainder + Natural Quota (Hare)	yes	yes: Highest Remainder + Imperiali Quota	yes: nearly all parties rejected government proposal of d'Hondt
Luxembourg	PR	Hagenbach-Bischoff	yes + panachage	yes: cumul abandoned	no
Netherlands	PR	1st round: Natural Quota (Hare), 2nd round: d'Hondt	yes	yes: use of d'Hondt irrespective of number of seats	yes: minor parties wanted to substitute 2nd round method by highest remainder
United Kingdom: Great Britain	Plurality	first-past-the-post	no	no	yes: Liberals demanded PR with STV or regional lists; government left choice of PR with regional lists or traditional system
Northern Ireland	PR	STV	yes	yes: plurality	

\* One Danish seat was reserved for Greenland (plurality system).

\*\* Three German seats were reserved for three representatives from West Berlin (upon delegation).

as regards European elections, has to change its system if there is to be conformity to the majority pattern.

More far-reaching differences can be found concerning the *electoral formula*. Here we can see that the divergence is still more distinct and it is not at all immediately obvious which formula could be applied uniformly.

In fact, only Belgium and Germany apply the *d'Hondt Highest Average method* for their national elections. To a certain extent France falls under the same category, since d'Hondt was the method traditionally applied in connection with proportional representation. In all three countries no objections were raised against its adoption for European elections. The fourth Member State applying d'Hondt directly is Denmark, which changed from the Highest Remainder method, thus provoking protest from the smaller parties. The Netherlands, finally, allocates its seats, as in national elections, in two stages, and has fixed the second-round method for European elections as d'Hondt (in national elections d'Hondt is applied in the second round if there are more than nineteen remaining seats. As we may recall, the second-round method determines the overall outcome of the elections, and therefore we can define the Dutch method also as d'Hondt.

Luxembourg and Ireland have retained their traditional formulas of *Hagenbach-Bischoff* and *STV (Droop)* respectively, while Italy paid tribute to its fragmented party system and opted for a more purely proportional system by applying the highest remainder method with *Natural quota (Hare)* instead of the traditional Imperiali quota, which gives a slight advantage to the bigger parties.

In the case of Ireland, not much thought has yet gone to a possible electoral formula under a list system of PR, and any common formula may well find acceptance. If the United Kingdom were to change to PR, the d'Hondt Highest Average method, as already indicated in the Labour government's draft bill, is most likely to be favoured by the parties.

The situation presents itself as follows: six Member States apply a standard Highest Average method while Italy operates a formula more favourable towards small parties. One should not ignore also that in Denmark and the Netherlands objections were raised against d'Hondt; similarly, the initial intention of the Italian government to propose d'Hondt, met the combined protest of all parties in the Italian parliament.

A method which is less biased in favour of the larger parties than d'Hondt, but avoids too much party fragmentation, could find general acceptance.

It was only after protracted discussions that the European Council of Ministers had finally reached an agreement in September 1976 to fix the size of the directly-elected European Parliament at 410 members. Each Member State was allocated a certain number of seats, ranging from 6 for Luxembourg to 81 for each of the 'big four' Member States. In comparison to the size of the national assemblies these seat-contingents are rather small, and the national electoral laws were not quite appropriate to the smaller number of seats and the resulting higher ratio of voters per elected member, while the links between constituents and deputies were also affected. Therefore, the *nature and size of electoral constituencies* became by far the most important issue in most Member States. And in some countries the controversy over the constituencies considerably slowed down the passage of European election laws.

The most striking example was Belgium where (as we have seen above) the legislation for European elections coincided with attempts to settle the long-smouldering and somewhat wearisome quarrel between the two main cultural and linguistic communities by a comprehensive constitutional reform. Any decisions on Euro-constituencies in Belgium run the risk of being either unacceptable to one of the two communities or at least of being considered as favouring the arguments of one side. After it had soon become clear that a single national constituency was ruled out, the country was finally divided into three voting districts but only two electoral colleges. Thus the planned reform of the state structures was anticipated in the legislation for European elections and, although the present Belgian European elections law is valid only for the first European elections, this subdivision of the constituencies will be valid also in future. Any proposal for a uniform system has therefore to take account of the special Belgium situation, which rules out any plan based on national constituencies or overall national allocation of seats to parties.

For the United Kingdom also, a single national constituency comprising all the country will be unacceptable, even now when the legislation on devolution has failed. At most, one could discuss four constituencies, each comprising one of the component parts of the United Kingdom, i.e. England, Scotland, Wales and Northern Ireland. This, however, would result only in the case of England in a



TABLE II. — *Electoral Constituencies*

	National Lists	Regional Lists/Constituencies	Overall national allocation	Change	Object of parl. debate
Belgium	no	3 voting districts but only 2 electoral colleges (=2 lists)	no	yes	yes: number of constituencies
Denmark *	yes	no	yes	yes	no
Germany **	yes	or Länderlists	yes	yes	yes: government wanted only national lists
France	yes	no	yes	yes	yes: to introduce regional lists
Ireland	no	4 multi-member constituencies	no	no	yes: size of constituencies
Italy	no	5 regional lists	yes	yes	yes: national lists vs. regional lists
Luxembourg	yes	no	yes	yes	yes: number of constituencies
Netherlands	yes	no	yes	yes	no
United Kingdom:					
Great Britain	no	78 single-member constituencies	no	no	yes: size; also regional lists vs. constituencies
Northern Ireland	no	1 three-member constituency	no	yes	

\* Greenland formed a special single-member-constituency.

\*\* West Berlin representatives (three) were delegated by the Berlin House of Representatives.

kind of 'national' constituency with 66 EP-seats, while the other three would resemble regional constituencies of eight, four and three EP-seats respectively. Even then, Wales and Northern Ireland already would range at the lowest limit as regards constituency size in a list system of proportional representation. The long-standing British tradition of close relations between constituents and elected member does, at least for England, also speak against single constituencies at this level. The acceptability of a change to proportional representation with party lists will largely depend on the number of regional constituencies which are necessary to bring about at least some direct links between elected members and their voters.

Similarly to the United Kingdom, Ireland is a likely supporter of regional constituencies since also under the STV-system there exists a tradition of close links with the constituents in multi-member constituencies. However, in 1975 the all-party committee of the Oireachtas proposed a change to proportional representation with national party lists.

Italy decided, for the first European elections, to subdivide the country into five pluri-regional constituencies and thus followed its national tradition. However, upon demands from the smaller parties, the allocation of seats to party lists was based on a national quota (consisting of the combined regional results) in order to achieve a maximum of proportionality. Attempts by the government and the two major parties to have only regional constituencies instead were blocked, and will also have no chance in the future.

Similarly to Italy, the Federal Republic of Germany has an overall national allocation of seats to party lists, although it leaves (for the moment) the parties a free choice whether they compete on the basis of national lists, regional (Länder) lists, or combined Länder lists. In any case, the results are computed first at national level, in order, as in national elections, to achieve an overall proportionality.

In this respect, both countries' results have the same degree of proportionality as those in Member States applying a straightforward national lists system, such as Denmark, France, Luxembourg and the Netherlands. But while in the cases of the three smaller countries the size of their national constituencies come close to the size of regional constituencies in Italy or Länderlists in Germany, and the voter-deputy relationship is still relatively close, the situation of France and Germany (in the case of federal lists) is rather different. Here the voter is faced with party lists of 81 candidates and can consequently,

vote only for the party as such. Any expression of a preference would, because of the sheer length of the list, be of rather marginal influence.

One may therefore examine the situation carefully and avoid concluding, from the fact that four countries apply a national list system and two other Member States apply at least an overall national calculation, that the tendency is in favour of a national list system. The perspective is rather different if one reckons that, of the 'big four' Member States, only France applies a pure national lists system, while Germany might, in future, accept only regional lists with national allocation as Italy does already. From what has been said in the cases of the UK and Ireland we may rather conclude, therefore, that a future European system would *oscillate between purely regional lists on the one hand and regional lists with national allocation on the other*. Thus, in fact, the choice between the two may have to be left to each Member State individually.

Electoral laws are not only characterised by the voting system or the constituency structure, but also by the way they regulate the access and chances of competing parties. To a certain extent provisions on electoral thresholds and candidature requirements can also predetermine the outcome of elections, or at least discourage new or small parties from competing.

Although there exist system-inherent mathematical thresholds, which competing parties or candidates must overcome to be successful, three Member States have in addition introduced legal thresholds to prevent a splintering of parties and to minimise the electoral chances of minor parties. France and Germany have fixed this legal threshold at 5% of the valid votes and the Netherlands at 4%. Quite to the contrary, Italy, with an already highly fragmented party system at national level, opted for the most liberal regulation in terms of accessibility, since the Natural quota system with allocation of seats at national level lowers the necessary margin of votes to under 1% of the votes cast. As the results of the first direct elections to the European Parliament show, parties in France and Germany with more than 3.2% ('Die Grünen') and 4.4% of the votes cast ('Ecologistes') were excluded from seat distribution, while in Italy (with a comparable number of EP-seats and population) three parties won seats with less than 3% of votes.

Neither in France nor in Germany was the legal threshold the subject of parliamentary discussion, since the parties already rep-

TABLE III. — *Accessibility for parties*

	Legal electoral threshold	Signatures	Deposits	Party bans	Special regulations for minorities	Change	Object of parliamentary debate
Belgium	no	5,000 or 5 deputies	no	no	no	yes	yes: number of signatures
Denmark	no	2% of valid votes *	no	no	electoral alliances	yes	yes: number of signatures
Germany	5%	2,000 (Land) * 4,000 (federal) *	no	yes	no	no	no
France	5%	no	FF 100,000	no	no	yes	no
Ireland	no	no	£ 1,000	no	no	yes	yes: amount of deposit
Italy	no	30,000 *	no	yes	electoral alliances (minimum quota of 50,000 votes)	yes	yes: amount of signatures and of minorities' quota
Luxembourg	no	100	no	no	no	yes	no
Netherlands	4%	25	HfI 18,000 *	no	no	yes	yes: requirements for parties already in parliament
United Kingdom	no	30	£ 600	no	Northern Ireland: PR+STV for Catholic minority	yes	no

\* Only demanded for list proposals from parties not already in parliament.

resented in parliament which thus decided the question, all expected to overcome this margin easily. Given the relative high system-inherent thresholds in the smaller Member States operating proportional representation, and in view of the illiberal results of the British first-past-the-post system, the thresholds legally set by Germany, France and the Netherlands may not be considered too high. But the restriction of the electoral chances of competing parties by law has no tradition in the other Member States, and also in Germany the constitutionality of a legal threshold for European elections was put in question by some constitutional experts (see above). In view of the likelihood of a future intensification of the cooperation of trans-national party groups and the political groupings of nationally elected MEPs in the European Parliament, the arguments put forward in France and Germany against party-fragmentation may not any longer hold true: a party, minor nationally, may form part of a major political grouping at European level. Political development within the European Community may speak against including a legal threshold in a uniform electoral system.

More widely accepted throughout the Community are electoral provisions which try to discourage small and new parties from participating in elections by demanding additional requirements such as signature requirements or deposits. Here two 'schools of thought' can be discerned among the nine Member States over the argument that it may be easier for candidates to pay a deposit than to find sufficient support through signatures. France, Ireland, the Netherlands and the United Kingdom prefer to demand, from candidates or parties, deposits which are forfeited if a certain proportion of votes is not reached. Belgium, Denmark, Germany, Italy and Luxembourg, however, accept candidacies only if they are supported by a certain quorum of signatures, which range from 100 in Luxembourg to 62,000 in Denmark. The Netherlands and the United Kingdom also demand a small quorum of signatures (25 and 30 respectively) in addition to the deposits. In four of the Member States these requirements concern only new parties, not yet represented in parliament, and thus amount to a privilege for the political forces already established. In the majority of Member States, however, these requirements are demanded from all parties.

Although Table III shows that there exists a certain degree of divergence, we may recall from the cross-country survey that generally the tendency was to raise these requirements for European elections

and make access even more difficult for parties than in national elections. This tendency is clearly a reflection of the fears of the traditional parties that the composition of the national delegation to the European Parliament may differ from the composition of the national parliaments. Similar fears were also raised in connection with earlier discussions on the need for an obligatory dual mandate.

Given the differences in emphasis on this aspect, these regulations may be left, in the future, to the individual Member States' discretion.

Direct elections to the parliament of the European Community are intended, ideally, to involve all citizens of the Member States and thus create a link between these European citizens and 'their' Community. Likewise, the European Parliament should secure the representation of all 250 million citizens. On the other hand, art.1 of the Direct Elections Act states that these elections concern the 'representatives of the people of the Member States'. How to take account of the special character of European elections and to involve the widest number of Community citizens gave rise to some discussion during the debates on implementation and the *extent of the franchise* was the subject of change in several Member States.

In fact, legislation for direct elections has initiated a development towards a reconsideration of the extension of voting rights. Besides France and Italy, whose nationals living abroad were already entitled to vote in national elections, four other Member States have decided to allow their nationals abroad to vote in European elections. However, Denmark, Germany, Luxembourg and the Netherlands restricted this right to their nationals living in another Member State of the Community, while France and Italy make no distinction between their nationals within the European Community and elsewhere abroad. Similar proposals from the opposition parties in Germany were rejected because of possible repercussions on the franchise for national elections, and it was argued that nationals living outside the Community would lack the necessary affinity to its institutions and policies.

Ireland and the United Kingdom retained their limitation, on the right of nationals to vote, to those actually resident. Only two Member States, Ireland and the Netherlands, have taken a clear step towards a European citizenship and accorded the right to vote in European elections also to nationals of other Member States resident within their territories (but the United Kingdom applied to Euro-

TABLE IV. - *Franchise*

	Resident nationals	Nationals resident in another Member State	Nationals resident outside EC	Citizens of other Member States	Change	Object of parl. debate
Belgium	yes	only if also with domicile in B	no	no	yes	yes: principle
Denmark	yes	yes (postal vote)	no	no	yes	no
Germany	yes	yes (postal vote)	no	no	yes	yes: to enfranchise also Germans outside EC
France	yes	yes (at consulates)	yes (proxy)	no	no	no
Ireland	yes	no	no	yes	yes	no
Italy	yes	yes (at consulates)	yes (in person)	no	yes	yes: voting right in loco within EC
Luxembourg	yes	yes (in person)	no	no	yes	yes: postal vote
Netherlands	yes	yes (proxy or in person)	no	yes (but only if no voting right at home)	yes	no
United Kingdom	yes	no	no	only Irish citizens re- sident	no	yes: to enfranchise UK- nationals abroad

pean elections a longstanding anomaly in national electoral law by which Irish nationals resident in the United Kingdom have voting rights). However, this possibility was discussed for the future in other Member States also, and it was generally argued that a future uniform system should regulate the franchise so that European citizens, wherever they may live in the European Community, will be entitled to vote, at least *in loco*, for the European deputies of their own nationality.

The basic intention of this chapter was to describe and analyse the process of implementation of the first direct elections to the European Parliament with a view to the future elaboration of a common uniform electoral system. We have thus tried to trace the chances and limitations of such a European system which already came to the fore during the parliamentary debates and political discussions on the electoral regulations for the first round of elections to the European Parliament. We have seen that the wide general framework left to be filled by the electoral laws of the Member States did not induce the national parliaments simply to insist on already well-established electoral traditions. Quite to the contrary, the European election laws already reflect a certain trend towards more harmonised electoral provisions than could have been expected at the outset, considering the nine differing laws for national elections and the varying political contexts.

However, the debates on implementation have clearly shown that there also exist certain limitations on a fully uniform system.

*Firstly*, a basic question still relates to the attitude of the United Kingdom towards a change to proportional representation for European elections. Although the debates in the House of Commons have clearly shown that there is potential support for the acceptance of proportional representation, they have also revealed that the opposition to such a 'non-British' system is still deeply rooted. Therefore, in spite of a clear trend towards proportional representation in all other Member States (with France and Germany now also being aligned to it) it will depend on the political situation of the day whether a majority of MPs in Westminster can accept it.

*Secondly*, closely related to the basic question of the voting system is the problem of constituencies and the form of list system to be adopted. France, on the one side, and Belgium and the United Kingdom, on the other, form the probably irreconcilable juxtapositions. France, on the one hand, will not accept any form of purely



regional constituencies, since this is considered by the majority of parties as contrary to the constitutional dogma of the unity and indivisibility of the country. Whereas, on the other, Belgium will not be able to adopt a national list system, since it would be blocked by the two linguistic communities and probably also by the militant supporters of a special status for Brussels. Similarly, the United Kingdom's experience of the demands from Wales and Scotland for devolution, as well as the underlying antipathy against centralising measures, indicate that the UK would only accept a change to proportional representation if it were combined with a regional list system.

*Thirdly*, though there has been a tendency in most of the Member States to adopt an electoral formula which is more favourable towards larger parties, the national relevance of some smaller parties, at least in Italy, will tend to block any system with such a strong bias against smaller parties. The same argument would apply against the acceptance of a purely regional list system without any national allocation of seats.

We may therefore conclude that, in spite of the desirability of a uniform electoral system for elections to the European Parliament, the existing national constraints in some Member States will be a high hurdle to overcome. It may therefore be advisable not to superimpose an electoral system which in all important aspects is uniform, but instead to narrow the scope of possible alternative provisions and to give some binding guidelines, at least, in those areas where uniformity cannot be achieved.

*Guido van den Berghe*

4. ELECTORAL LAW AND DIRECT ELECTIONS



#### 4.1. COMPARISON OF THE NATIONAL ELECTORAL PROCEDURES IN NINE MEMBER STATES OF THE EUROPEAN COMMUNITIES <sup>1</sup>

##### FOOTNOTES TO THE TABLES

- <sup>1</sup> BWG Bundeswahlgesetz (Federal Electoral Law).
- <sup>2</sup> TU Testo Unico delle Leggi recanti norme per la elezione della Camera dei Deputati, no. 361, 30 March 1957.
- <sup>3</sup> RPA Representation of the People Act.
- <sup>4</sup> PER Parliamentary Election Rules, Sch. 2, RPA 1949.
- <sup>5</sup> GG Grundgesetz für die Bundesrepublik Deutschland (Basic Law of the Federal Republic of Germany).
- <sup>6</sup> TU Testo Unico delle Leggi recanti norme per la disciplina dell'elettorato attivo e per la tenuta e la revisione delle liste elettorali, no. 223, 20 March 1967.
- <sup>7</sup> The electoral divisor is the sum of all valid votes cast in the arrondissement divided by the number of seats in the Chamber to which the arrondissement is entitled. For the Senate this quorum is 33%.
- <sup>8</sup> BVerfGE Entscheidungen des Bundesverfassungsgerichts (Decisions of the Federal Constitutional Court).
- <sup>9</sup> BWO Bundeswahlordnung (Federal Electoral Code).
- <sup>10</sup> PG Parteiengesetz (Law on Political Parties).

<sup>1</sup> See also, Hand, G., Georgel, I. and Sasse, C., *op. cit.*, p. 4, n. 3, *supra*.

#### 4.1.1. GENERAL PRINCIPLES

##### 4.1.1.1. *Electoral System*

###### a) *Proportional or by majority?*

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BELGIUM	Direct election	List system with proportional representation.	Constitution Art. 48.2
DENMARK	Direct election	List system with proportional representation.	Electoral Law Art. 42
F.R.G.	Direct election	— Simple majority system in single member constituencies to fill 248 constituency seats. — List system on the Land level with distribution of seats by proportional representation.	BWG <sup>1</sup> § 5 BWG <sup>1</sup> § 6
	Indirect election (for Berlin members of the Bundestag)		BWG <sup>1</sup> § 53
FRANCE	Direct election (for National Assembly) Indirect election (for Senate)	National Assembly: Absolute majority system on first ballot, simple majority system on second ballot in single member constituencies. In the overseas territories single-ballot elections are held.	L. 123, Code Electoral
IRELAND	Direct election (for Dáil) Indirect election (for Seanad)	Proportional representation with single transferable vote. Proportional representation with single transferable vote.	Constitution Art. 16.2.5 Constitution Art. 18.5
ITALY	Direct election	List system with proportional representation.	Arts. 1, 77 TU <sup>2</sup> no. 361
LUXEMBOURG	Direct election	List system with proportional representation.	Constitution Art. 51
NETHERLANDS	Direct election (for Tweede Kamer) Indirect election (for Eerste Kamer)	List system with proportional representation. List system with proportional representation.	Constitution Art. 91
UNITED KINGDOM	Direct election	Simple majority system in single member constituencies (one ballot)	RPA <sup>3</sup> 1948, s. 1.1

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b) *Voting procedure*


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BELGIUM	The elector has one vote which can be given either to a list or to one candidate on the list.	Constitution Art. 47.2 Electoral Law Art. 144
DENMARK	The elector has one vote which can be given either to a list or to one candidate on the list.	Electoral Law Art. 35.5
F.R.G.	Each elector has two votes: a 'first vote' for the direct election of a constituency candidate and a 'second vote' for the party list, on the Land level, of his choice.	BWG § 4
FRANCE	The elector has one vote which can be given to a candidate of his/her choice.	R * 104-105 Code Electoral
IRELAND	The elector has a single transferable vote. The elector votes by numbering, in order of his preference, as many candidates as he pleases by marking '1', '2', '3', etc., opposite the name of the candidates.	Electoral Act, 1923, Schedule III; Electoral Act, 1963, s. 36
ITALY	The elector has one vote which can be given to a list. He may also record personal votes for up to three of the candidates on that list if there are 15 or fewer seats to be filled, or four if there are more than 15.	Art. 59 TU <sup>2</sup> no. 361
LUXEMBOURG	The elector has the same number of votes as the number of representatives to be elected in a constituency. The voter may either mark the square at the head of a list, so giving one vote to each candidate on that list or give one or two votes to individual candidates, up to a total of votes equal to the number of seats to be filled.	Electoral Law Art. 114
NETHERLANDS	The elector has one vote which can be given to a candidate on the list.	Constitution Art. 90.1 Electoral Law Art. 1.32
UNITED KINGDOM	The elector has one vote which can be given to one candidate.	PER 4, Appendix

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c) *Seat allocation*

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BELGIUM	First, seats are allocated within each electoral arrondissement. The residual seats of the different arrondissements are then distributed at the provincial level (grouping 2-5 arrondissements) according to the d'Hondt System.	Electoral Law Arts. 167 & 176
DENMARK	135 'constituency seats' are filled by dividing the party polls in the respective constituency by 1.4-3-5-7 etc. (a modified form of St. Lagüe's Method). 40 supplementary seats are allocated among parties entitled to receive them. The national sum of votes of these parties is divided by the total number of seats (175). The number of seats of a party is calculated by dividing its number of votes by this quotient. The number of supplementary seats of a party is the difference between the total number of seats thus allocated to that party and the number of constituency seats already allocated to the party. Supplementary seats are then geographically distributed for each party, i.e., among regions and constituencies.	Constitution Art. 31.3 Electoral Law Art. 42 <i>et seq.</i>
F.R.G.	(Bundestag). The second votes ( <i>Zweitstimmen</i> ) cast for the Land lists of each party are added together, unless a declaration to the contrary has been made. Party Land lists thus automatically form a kind of federal list. From the totals of votes cast for each Land list or combined list the total number of seats to be allocated to a party is then calculated by the d'Hondt highest average method. From this total is subtracted the number of constituency seats that party has won and the difference is the number of list seats which it is awarded, filled by candidates in the order in which they appear on the party list. <i>Überhangmandat</i> : if a party has won more constituency seats than those to which it is by virtue entitled at the second vote, it is allowed to keep its extra seat or seats, and the total number of members of the Bundestag is increased by that number above the standard 496.	BWG <sup>1</sup> §§ 6 & 7
FRANCE	(National Assembly). To be elected on the first ballot, one candidate must receive more votes than all his opponents combined (i.e., an absolute majority) and must have obtained the votes of at least one quarter of the electorate in that constituency. If not, at the second ballot the following week, a simple majority is sufficient. (Only candidates whose votes in the first ballot were equal to at least 12.5% of the electorate may stand in the second ballot).	L. 123-126, Code Electoral

IRELAND	The 166 seats (Dáil) are distributed between 41 constituencies, the permissible minimum of seats being 3 and the maximum at present in practice being 5. A candidate who achieves the Droop quota is declared elected on the first count. The number and nature of subsequent counts depends on the situation in each individual case. In order to ensure that as many candidates as there are seats to be filled are each credited with a quota, votes are transferred to other candidates on the basis of their next preference.	Electoral Act, 1923, Schedule III and subsequent amendments
ITALY	Seats are allocated to parties within each constituency by dividing the total number of valid votes within that constituency by the number of seats to be filled plus two. Each party is allotted one seat for each such quota it polls. The remaining seats are then distributed at the national level according to the method of the Highest Remainder among those party lists which have won at least one seat and 300,000 valid votes cast.	Art. 77 TU <sup>2</sup> no. 361
LUXEMBOURG	Seats are allocated to parties in proportion to their total of list votes and of votes for their individual candidates (Hagenbach-Bischoff Method). These seats are awarded to the candidates having the highest personal votes. The constituencies are defined in the Constitution.	Electoral Law Arts. 136-137
NETHERLANDS	The total number of valid votes in the country divided by the total number of seats (150) gives the electoral quotient. Each list is awarded as many seats as the total number of votes given to the individual candidates contains the electoral quotient. The remaining seats are filled by the d'Hondt method of the Highest Average. A calculation is made for each list of how much the average number of votes per seat would be, if an extra seat were to be added. The list with the highest average is allocated an additional seat. This procedure is applied until all the seats have been allocated.	Electoral Law Arts. N. 4-20
UNITED KINGDOM	The candidate with the majority of the votes wins. (The elector votes by marking an 'X' against the name of one candidate).	PER 51 <sup>4</sup>

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#### 4.1.1.2. *Obligation to vote?*

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BELGIUM	Yes. Abstaining from voting without a justifiable reason results in: the first time, a reprimand or a small fine; the second time (within 6 years), the fine is increased; the third time (within 10 years), the same fine, and the elector has his name mentioned on a list in his commune: the fourth time (within 15 years), the same fine, removal from the electoral list, and suspension of certain civic benefits for a 10-year period.	Constitution Art. 48.3 Electoral Law Art. 210
DENMARK	No.	
F.R.G.	No.	
FRANCE	No, for Assembly elections. Yes, for each member of the 'electoral college', which elects the Senators. Abstaining from voting without a justifiable reason results in a fine.	L. 318, Code Electoral
IRELAND	No.	
ITALY	The Constitution states that 'to vote is a civic duty'. Abstaining from voting without a justifiable reason results in a mention in the public record for five years that 'he/she did not vote'.	Constitution Art. 48.2
LUXEMBOURG	Yes. Electors over 70 years of age are exempted, as well as those who at the time of the election live in a commune other than that in which they are called to vote. Electors who cannot vote must communicate their reasons for abstention to the Justice of the Peace. Abstention from voting without a justifiable reason results in: the first time, a fine (between 1,000 and 2,000 FL); the second time (within 6 years after the condemnation) a fine (between 5,000 and 10,000 FL).	Electoral Law Art. 64 & Art. 260 and Art. 262
NETHERLANDS	No.	
UNITED KINGDOM	No.	

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## 4.1.2. RIGHT TO VOTE

### 4.1.2.1. *Minimum Age*

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BELGIUM	18	Constitution Art. 47.1
DENMARK	18	Electoral Law Art. 1.1
F.R.G.	18	BWG <sup>1</sup> § 12.1.1, Art. 38 GG <sup>5</sup>
FRANCE	18	L. 2 Code Electoral
IRELAND	18 (Dáil)	Constitution Art. 16.1.2
ITALY	18 (Chamber of Deputies) 25 (Senate)	Constitution Art. 48.1 (Law of 8.3.1975 no. 39) Constitution Art. 58.1
LUXEMBOURG	18	Constitution Art. 52.3
NETHERLANDS	18	Electoral Law Art. B 1.1
UNITED KINGDOM	18	RPA <sup>3</sup> 1949, s. 1.1 RPA <sup>3</sup> 1969, s. 1.1

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#### 4.1.2.2. *Citizenship*

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BELGIUM	Belgian	Constitution Art. 47.1
DENMARK	Danish	Constitution Art. 29.1
F.R.G.	German (within the meaning of Art. 116.1 GG)	BWG <sup>1</sup> § 12.1
FRANCE	French	L. 2, Code Electoral
IRELAND	Irish (Dáil)	Constitution Art. 16.1.2
ITALY	Italian	Constitution Art. 48.1
LUXEMBOURG	Luxembourger	Constitution Art. 52.1
NETHERLANDS	Dutch	Constitution Art. 90.1
UNITED KINGDOM	British subjects or citizens of the Republic of Ireland	RPA <sup>3</sup> 1949, s. 1.1 RPA <sup>3</sup> 1969, s. 1.1

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#### 4.1.2.3. *Residence Obligation*

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BELGIUM	6 months in the same 'commune', but one remains on the electoral register of the former commune until registered in the new commune, in order not to lose voting rights during that 6 month period.	Constitution Art. 47.1
DENMARK	Permanent residence in country (special electoral laws are set up for Greenland and the Faroe Islands).	Constitution Art. 29.1
F.R.G.	Domicile or permanent residence for at least three months.	BWG <sup>1</sup> § 12.1.2
FRANCE	6 months in the same 'commune'.	L 11 Code Electoral
IRELAND	In the constituency.	Constitution Art. 16 Electoral Act, 1963, s. 5

ITALY	In the constituency.	Law of 22.1.66, no. 1
LUXEMBOURG	In the country.	Constitution Art. 52 Electoral Law Art. 1
NETHERLANDS	In the country on the day of the establishment of the list of candidates. Residence: where one is registered unless proven otherwise.	Electoral Law Art. B 1.1
UNITED KINGDOM	In the constituency on the qualifying date (10 October of each year). (3 months prior to the qualifying date of 15 September, in Northern Ireland).	RPA <sup>3</sup> 1949, s. 1, 4 RPA <sup>3</sup> 1969, s. 1

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#### 4.1.2.4. Special Voting Procedures: Absentee voting

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BELGIUM	<i>Proxy voting</i> : for citizens and members of their families living with them, who are abroad on professional business, such as diplomatic staff or members of the armed forces. The proxy voter must reside in the same constituency as the citizen for whom he is casting a ballot.	Law 5.7.1976
DENMARK	<i>Postal voting</i> : is permitted for citizens (and their families) who are abroad on diplomatic service or out of the country on sea duty. The ballot papers are sent by post to the polling station, where the voter is included in the electoral register.	Electoral Law Art. 1.2
F.R.G.	Of the persons resident abroad, only officials, employees or workers in the German civil service or members of the armed forces stationed there (and their families) can vote (usually by postal voting).	BWG <sup>1</sup> § 12.2
FRANCE	<i>Proxy voting</i> : is allowed for citizens who are out of the country on election day (civil servants, sailors, certain members of the armed forces). The proxy voter must reside in the same constituency as the citizen for whom he is casting the vote. <i>At the Consulate</i> : for presidential elections and referenda. French citizens living abroad can be enrolled on an electoral list of a commune (proxy voting).	L. 71, Code Electoral  L.O. no. 76-91, 31.1.1976 L. 12, Code Electoral, see also Law of 19.7.1977

IRELAND	<i>Postal voting:</i> members of the Defence Forces.	Electoral Act, 1923, s. 21; 1963, s. 7 (4)
ITALY	<i>No proxy</i> , no postal voting is allowed. The Italian citizens abroad keep their right to vote; special travel facilities to Italy are provided.	Art. 11 TU <sup>2</sup> no. 223
LUXEMBOURG	No provisions.	
NETHERLANDS	<i>Proxy voting:</i> On request, those Dutch citizens who work in public service outside the Netherlands, and their spouses if they are Dutch, and if they are living as a family.	Electoral Law Art. B 13
UNITED KINGDOM	<i>Proxy voting:</i> is permitted for 'service voters', i.e. members of the armed forces, crown servants employed abroad, British Council staff abroad and electors who are outside the U.K. on polling day because of their employment, and the husbands or wives of any of these, on application to the Electoral Registration Officer. They may vote by post if they are within the U.K. (see also 4.1.5.2.).	RPA <sup>3</sup> 1949, s. 10, 12 (2) RPA <sup>3</sup> 1969, s. 2 RP (Armed Forces) A 1976

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#### 4.1.2.5. *Disqualifications*

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BELGIUM	There are two categories: those excluded permanently from the electorate because of conviction of a crime and those whose electoral rights are only temporarily suspended, e.g., deprivation of rights, isolation on grounds of mental illness, mental retardation and confinement, etc.	Electoral Law art. 6 Electoral Law art. 7
DENMARK	Formally being declared incapable of managing his own affairs.	Constitution Art. 29.1
F.R.G.	Mental disability. Loss of right to vote by judicial decision. Being placed in a psychiatric clinic for reasons of mental illness or incapacity.	BWG <sup>1</sup> § 13
FRANCE	Permanent disqualification: — conviction for a crime — loss of right to vote by judicial decision — undischarged bankruptcy, etc. Temporary disqualification (5 years): conviction for smaller offences, etc.	L. 5 Code Electoral  L. 6 & L. 7 Code Electoral

IRELAND	No special regulations, but the Constitution expressly contemplates the possibility.	Constitution art. 16.2
ITALY	Legal incapacity, bankrupt traders, imprisonment for five years or more, convicted of specific crimes, moral unworthiness established by the law.	Constitution art. 48.3 and art. 2 TU <sup>6</sup> no. 223
LUXEMBOURG	Loss of citizenship. Criminal offence, bankruptcy, deprivation of civil rights, confined lunatics, etc.	Electoral Law art. 4
NETHERLANDS	Loss of civil rights. Irrevocable sentence of a court of law. In legal custody, including people awaiting trial. Loss of custody of property, for insanity or loss of custody of children, declared by court. Sentence of more than 1 year (first sentence: loss of right to vote for 3 years; more convictions - 8 years); etc.	Constitution art. 90.3 Electoral Law arts B3-B4
UNITED KINGDOM	Subject to any legal incapacity; Peer or Peeress in her own right (other than Irish Peers); persons under 18 years of age; aliens; convicted persons during the period of their detention; persons suffering from severe mental illness; persons convicted of a corrupt or illegal election practice.	RPA <sup>3</sup> 1949, s. 171.1 Peerage Act 1963, s. 5 RPA <sup>3</sup> 1969, s. 4 RPA <sup>3</sup> 1949, s. 140.3

#### 4.1.2.6. *Registration*

BELGIUM	Formerly, the capacity of elector resulted from inscription in electoral register, but this has been repealed.	Law of 5.7.1976
DENMARK	Inscription in electoral register is required.	Electoral Law Art. 1.3
F.R.G.	Only persons who have been entered in the electoral register or who are in possession of a special election certificate may vote.	BWG <sup>1</sup> § 14.1 BWG <sup>1</sup> § 14.3
FRANCE	Inscription in electoral register is required.	L. 9 Code Electoral
IRELAND	Inscription in electoral register is required.	Electoral Act, 1963, s. 26 (1)

ITALY	Inscription in electoral register is required.	Art. 4 TU <sup>6</sup> no. 233
LUXEMBOURG	Inscription in electoral register is required.	Electoral Law Art. 2
NETHERLANDS	Inscription in electoral register is necessary in order to get an election certificate which allows the citizen to vote.	Electoral Law Art. J 6 & 7
UNITED KINGDOM	Inscription in electoral register is required.	RPA <sup>3</sup> 1949, s. 1, 8

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### 4.1.3. ELIGIBILITY

#### 4.1.3.1. *Minimum Age*

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BELGIUM	25 (Chamber of Representatives)	40 (Senate)	Constitution Arts. 50.3 & 56.4
DENMARK	18		Electoral Law Art. 2
F.R.G.	18		BWG <sup>1</sup> § 15.1.2
FRANCE	23 (National Assembly)	35 (Senate)	L. 44 Code Electoral, L.O. 296 Code Electoral
IRELAND	21		Constitution Art. 16.1.1 & 18.2
ITALY	25 (Chamber of Deputies)	40 (Senate)	Constitution Art. 56.2 and Art. 58.2
LUXEMBOURG	21		Constitution Art. 52.3
NETHERLANDS	25		Constitution Art. 94
UNITED KINGDOM	21		Parliamentary Elections Act 1695 s. 7

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4.1.3.2. *Citizenship: Limitations on naturalized citizens (See also 4.1.2.2.)*

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BELGIUM	Belgian by birth or having been granted full naturalization.	Constitution Art. 50
DENMARK	No extra provisions.	
F.R.G.	Citizenship for minimum of 1 year.	BWG <sup>1</sup> § 15.1.1
FRANCE	Naturalised foreigners only have the possibility of being elected 10 years after naturalization by decree.	L.O. 128, Code Electoral
IRELAND	No extra provisions.	
ITALY	No extra provisions.	
LUXEMBOURG	No extra provisions.	
NETHERLANDS	No extra provisions.	
UNITED KINGDOM	No extra provisions, but Irish citizens are also eligible.	

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### 4.1.3.3. Incompatibility

a) Possible grounds of exclusion

b) Decision-making bodies

	Possible grounds of exclusion	Decision-making bodies
BELGIUM	<ul style="list-style-type: none"> <li>— Loss of civil and political rights (Constitution Arts. 50, 56)</li> <li>— Loss of right to vote or eligibility by judicial decision (Code Electoral Art. 227)</li> <li>— Incompatibility: see Constitution Arts. 36, 56 ter, law of 6.8.1931</li> </ul>	Courts (Electoral Law Art. 125)
DENMARK	Persons convicted of an act which in the eyes of the public makes them unworthy of being members of the <i>Folketing</i> (Constitution Art. 30.1).	The <i>Folketing</i> (Constitution Art. 33)
F.R.G.	<ul style="list-style-type: none"> <li>— Loss of right to vote (BWG <sup>1</sup> § 13).</li> <li>— Incompatibility:               <ul style="list-style-type: none"> <li>— Federal President (Art. 55 GG <sup>5</sup>).</li> <li>— Member of the Federal Constitutional Court (Art. 94 GG <sup>5</sup>).</li> <li>— Civil servants, judges, professional soldiers, etc. (Art. 137.1 GG <sup>5</sup>).</li> </ul> </li> </ul>	Courts
FRANCE	<ul style="list-style-type: none"> <li>— Ineligibility (see 4.1.2.5).</li> <li>— Incompatibility: Holding of any government post (Constitution Art. 23), simultaneous membership of both chambers (L.O. 137 Code Electoral), etc.</li> </ul>	Conseil Constitutionnel (L.O. 151 Code Electoral)
IRELAND	<ul style="list-style-type: none"> <li>— Sentenced by an Irish court to more than 6 months hard labour or sentenced to a house of correction.</li> <li>— An undischarged bankrupt.</li> <li>— Persons suffering from mental illness.</li> <li>— Incompatibility:               <ul style="list-style-type: none"> <li>— President of the Republic (Constitution Art. 12.6.1)</li> <li>— Comptroller and Auditor General (the constitutional auditor of public accounts) (Constitution Art. 33.3).</li> <li>— Judges (Constitution Art. 35.3).</li> <li>— Civil servants (unless permitted), etc.</li> </ul> </li> </ul>	Courts

ITALY

- Loss of right to vote (Constitution Art. 65, I)
  - Diplomats, etc. (Art. 9 TU<sup>6</sup> no. 361), police officials, mayors of communes of over 20,000 inhabitants, senior officers of the armed forces, prefects, etc. (Art. 8 TU<sup>6</sup> no. 361).
- Incompatibility: Simultaneous membership of both chambers (Constitution Art. 65), Membership of the Constitutional court or the Supreme Council of the Judiciary, etc.

LUXEMBOURG

- Loss of right to vote (Electoral Law Art. 4)
- Loss of eligibility (Electoral Law Art. 99)
- Incompatibility:
  - Member of the government.
  - Member of the Council of State, professional soldier on active service, deputy government councillor, etc. (Constitution Art. 54, Electoral Law Art. 100).

NETHERLANDS

- Loss of right to vote (Constitution art. 94 & 90.3).
- Incompatibility:
  - Minister, Vice-President or member of the Council of State.
  - President or member of the General Auditing Court.
  - King's commissioner in a province, Member of the High Court (Constitution art. 106.1).

UNITED KINGDOM

- Persons under 21 years of age.
- Suffering from severe mental illness (Mental Health Act 1959).
- Peers and peeresses in their own right other than peers of Ireland.
- Undischarged bankrupts.
- Persons convicted of corrupt or illegal practices at elections.
- Persons serving sentences for treason.
- Incompatibility:
  - Holders of non-political office: full-time judges, civil servants, members of the regular armed forces, full-time policemen, certain clergymen, foreign legislators (House of Commons Disqualifications Act, 1975, s. 1)
- Prisoners serving more than one year in goal (RPA<sup>3</sup> 1981).

Candidates may appeal to:

1. the electoral commission of the constituency (art. 20 TU<sup>6</sup> no. 223)
2. Tribunale d'Appello (art. 42 TU<sup>6</sup> no. 223)
3. Corte di Cassazione (art. 45 TU<sup>6</sup> no. 223)

For elected candidate: each chamber (Const. art. 66)

Courts

*Kamer van de Staten-Generaal*  
(Electoral Law Art. W1)

Courts

The Returning Officer of the constituency (in general) (PER<sup>4</sup> 13)

The House of Commons may refuse to allow a member to take his/her seat or may expel a member on whatever ground it sees fit

#### 4.1.3.4. Legal Thresholds

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BELGIUM	After the first allocation, of seats on the arrondissement level, the lists have to obtain 66% of the electoral divisor <sup>7</sup> in order to be able to participate in the distribution of the remaining seats on the provincial level (for the Chamber of Representatives).	Electoral Law art. 176
DENMARK	To receive supplementary seats, a party must meet one of the following conditions: 1. have obtained one constituency seat; 2. have obtained at least 2% of all valid votes in the country as a whole ( $\pm 60,000$ ); 3. have in each of two of the three regions (Greater Copenhagen, Islands, Jutland) obtained at least as many votes as on average were cast per constituency seat ( $\pm 20,000$ ). Parties not represented in the Folketing have, before the election, to collect a number of signatures ( $1/175$ of the valid votes cast at the last election = $\pm 18,000$ signatures) to qualify for participation in the election.	Electoral Law Art. 43.1
F.R.G.	To be taken into account for the proportional distribution of seats, a party must: 1. have more than 5% of the total second votes on the federal level (5% clause), or 2. have won at least three direct mandates.	BWG <sup>1</sup> § 6.4
FRANCE	For the National Assembly elections, the candidates, in order to be elected in the first round, must secure the votes of at least a quarter of the electors registered in the constituency. Candidates are not permitted to stand in the second round unless they obtain 12.5% of the votes of registered electors in the first.	L. 126 Code Electoral Law of 19.7.1976
IRELAND	Do not exist.	
ITALY	Only those lists which have obtained at least one full quota in one constituency and at least 300,000 votes in the whole country are admitted to the distribution at national level.	Art. 83 TU <sup>6</sup> no. 361
LUXEMBOURG	Do not exist.	
NETHERLANDS	A party that does not reach the electoral quotient cannot be allocated any of the remaining seats.	Electoral Law Art. N 6.2
UNITED KINGDOM	Do not exist.	

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#### 4.1.3.5. Party bans

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BELGIUM	Do not exist.	
DENMARK	Do not exist.	
F.R.G.	Parties which seek to impair or abolish the free and democratic basic order or to jeopardize the existence of the Federal Republic of Germany are unconstitutional. Both the SRP ( <i>Sozialistische Reichspartei</i> ) and the KPD ( <i>Kommunistische Partei Deutschlands</i> ) are forbidden.	Art. 21.2 GG <sup>5</sup> BVerfGE <sup>8</sup> vol. 2, pp. 1 ff. BVerfGE vol. 5, pp. 85 ff.
FRANCE	Do not exist.	
IRELAND	Do not exist.	
ITALY	— Secret associations and those which pursue political aims, even indirectly, by means of organizations of a military character, are forbidden. — Reorganization of the former Fascist Party, under any form whatsoever, is prohibited.	Constitution art. 18 Law 14.2.1948, no. 43 Constitution (Transitory and Final Provisions, no. XII); Law 20.6.1952, no. 645
LUXEMBOURG	Do not exist.	
NETHERLANDS	Do not exist.	
UNITED KINGDOM	Do not exist.	

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#### 4.1.4. PREPARATIONS FOR ELECTIONS

##### 4.1.4.1. a) *Constituency boundaries*

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BELGIUM	The drawing up of the 30 electoral arrondissements (Chamber) is governed by law (Senate: 21 electoral arrondissements).	Royal Decree of 1.12.1972
DENMARK	The drawing up of the constituencies is governed by law: there are 3 electoral regions: Greater Copenhagen, the Islands and Jutland, which are divided into 17 electoral constituencies: 3, 7 and 7 respectively. (Greenland and the Faroe Islands constitute separate electoral units regulated by special electoral laws).	Electoral Law Art. 17
F.R.G.	The drawing up of the 248 constituencies results from proposals of the permanent <i>Wahlkreis Kommission</i> (Boundary Commission) appointed by the Federal President, and is governed by law.	BWG <sup>1</sup> §§ 2 & 3
FRANCE	Are drawn up by the Ministry of the Interior; for the Assembly, in 1978, 491 seats had to be filled. The <i>circonscriptions électorales</i> have not been redrawn since 1958 (except in <i>la région parisienne</i> 1965 (+5) and <i>la région lyonnaise</i> 1972 (+3)).	L.O. of 31.1.1976 and 28.12.1976 (L.O. 119 Code Electoral)
IRELAND	The drawing up of the constituencies is governed by law. The re-drawing was formerly done by the Department for the Environment under political direction. Since 1979 the task has been given to an independent commission.	Constitution Art. 16.2.1
ITALY	By decree of the president, 32 constituency divisions were created.	Art. 2 TU <sup>6</sup> no. 361
LUXEMBOURG	The country is divided into 4 constituencies defined by the Constitution.	Constitution Art. 51
NETHERLANDS	There is only one constituency ( <i>Kiesdistrict</i> ), the whole country; but there are 18 <i>kieskringen</i> .	Electoral Law Art. E 1
UNITED KINGDOM	The constituencies are enumerated in the RPA <sup>3</sup> 1948, Sch. 1, but may be varied by Orders in Council on the recommendation of the four independent Boundary Commissions. Each Commission is chaired by the Speaker of the House of Commons and must report its recommendations to the Home Secretary at intervals of not less than 10 and not more than 15 years.	House of Commons (Redistribution of Seats) Act. 1949, s. 1 and s. 3 ( <i>et seq.</i> ), House of Commons (Redistribution of Seats) Act 1958, s. 1

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b) *Criteria*

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BELGIUM	The boundaries of the electoral arrondissements cannot go beyond the limits of each province. The 212 seats of the Chamber of Representatives are distributed over the electoral arrondissements in relation to their population (2-34 seats per constituency)	Constitution Arts. 48.1, 53.1
DENMARK	The distribution of seats among regions and constituencies must take into account the size of the population, the number of electors and the density of population of the region or constituency concerned.	Constitution Art. 31.3 Electoral Law Art. 17
F.R.G.	Every constituency should be a coherent unit, within the Land boundaries. Differences between the average number of inhabitants should not be greater than 25%. If the variation is greater than 33 1/3%, the boundaries must be redrawn. District and commune boundaries should, if possible, be respected.	BWG <sup>1</sup> § 3
FRANCE	The number of inhabitants per department determines the number of constituencies (But see 4.1.4.1.a).	
IRELAND	A ratio of not less than one member for every 30,000 inhabitants and not more than one for 20,000 has to be kept. The ratio inhabitants/seats should be the same in the whole country. The minimum number of seats per constituency = 3 (for the Dáil).	Constitution Art. 16.2.2 Constitution Art. 16.2.3 Constitution Art. 16.2.6
ITALY	Their boundaries coincide with those of a province or of several provinces grouped together.	Decreto no. 361a of 30.3.1957
LUXEMBOURG	The number of deputies admitted to the Chamber is determined on the basis of the population of the Grand-Duchy in the proportion of one deputy for every 5,500 inhabitants.	Law of 24.6.1971
NETHERLANDS	Parties can only collect votes in <i>kieskringen</i> where they have entered a list. The practice is for lists of the different <i>kieskringen</i> to be linked with each other so that they are considered as one list when establishing the final result.	Electoral Law Art. E1
UNITED KINGDOM	There are 635 constituencies divided into set allocations: England: 516; Scotland: 71; Wales: 36; Northern Ireland: 12. Criteria are: administrative boundaries (respect of), and size, in terms of population.	House of Commons (Redistribution of the Seats) Act, 1949, Sch. 2, s. 2

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#### 4.1.4.2. Date of Elections

a) *Who decides?*

b) *Is there a set day of the week?*

	Who decides?	Is there a set day of the week?	
BELGIUM	The Council of Ministers (formally the King). The elections must be held within 40 days after a dissolution.	Yes, on a Sunday.	Art. 71 Constitution Electoral Law arts. 105 & 106
DENMARK	The Prime Minister (formally the King).	No, but usually on a Tuesday.	Constitution art. 32.2
F.R.G.	The Government (formally the Federal President). The elections take place in the last three months of the parliamentary term or within 60 days after a dissolution.	Yes, on a Sunday or a public holiday.	BWG <sup>1</sup> § 16 GG <sup>5</sup> Art. 39 I, 2
FRANCE	The Government (formally the President). The elections (for National Assembly) take place 20 days at least and 40 days at most after the act of dissolution.	Yes, on a Sunday.	Art. 12 Constitution L. 55 Code Electoral
IRELAND	The Taoiseach (Prime Minister), who advises the President to dissolve the Dáil. The elections must be held within 30 days of the dissolution.	No, but by tradition on a Tuesday, Wednesday or Thursday.	Constitution art. 13.2
ITALY	The Council of Ministers (formally the President). The elections take place within 70 days of the dissolution.	No, but usually on a Sunday and a Monday morning.	Constitution art. 61, art. 11 TU <sup>6</sup> no. 361, art. 4 Law of 6 February 1948, n. 29
LUXEMBOURG	The Government (formally the Grand-Duke). The elections must be held within 3 months after a dissolution.	Yes, on a Sunday.	Constitution art. 74
NETHERLANDS	The Government (formally the Queen). The elections must be held within 40 days after a dissolution.	Never on a Sunday, usually on a Wednesday.	Constitution art. 82.1 Electoral Law arts. F.2 & I.1

UNITED KINGDOM The Prime Minister, who asks the Monarch to dissolve Parliament. The elections must be held 17 days after a dissolution.

By tradition on a Thursday.

Longstanding constitutional practice, details governed by PER<sup>4</sup> 1

#### 4.1.4.3. Control of Electoral Registers

- a) *Whose job is it?*
- b) *Who is on them?*

	Whose job is it?	Who is on them?	
BELGIUM	Council of Burgomaster and Aldermen	All citizens who have the right to vote and who are resident in the commune for at least 6 months.	Electoral Law art. 13
DENMARK	Municipal Council	All citizens who have the right to vote and are resident in the commune.	Electoral Law Art. 3.1
F.R.G.	Local communal authorities	All citizens who have the right to vote, resident in a commune for at least 35 days before the election. Exceptions: those who change their place of residence within that period of 35 days; diplomatic staff on duty abroad who have no residence in the F.R.G.	BWG <sup>1</sup> §§ 15 & 17.1 BWO <sup>9</sup> §§ 15 & 16
FRANCE	<i>Commissions administratives communales</i>	All citizens who have the right to vote, who are resident in the commune for 6 months minimum or who have their domicile there; people who for the fifth time without interruption are placed on one of the four lists of direct taxation; people who do not live in the commune, but who want to vote there.	L. 11, L. 16, R. 5-R. 22 Code Electoral



	Whose job is it?	Who is on them?	
IRELAND	County (Borough) Council	All citizens who are resident in the constituency (by 15 September) and who will have reached the age of 18 by 15 April following.	Electoral Act, 1963, s. 7
ITALY	Local election commission	All citizens who have the right to vote and who are registered in the commune.	Art. 5 TU <sup>6</sup> no. 361
LUXEMBOURG	Council of Burgomaster and aldermen	All citizens who have the right to vote and who are resident in the commune.	Electoral Law art. 6
NETHERLANDS	Council of Burgomaster and aldermen	All citizens who have the right to vote and who are resident in the commune.	Elect. Law Arts. D1 & B2
UNITED KINGDOM	The electoral registration officer	All citizens who have the right to vote, who are resident in the constituency on 10 October. In Northern Ireland, the relevant date is 15 September. Registers come into force for 1 year from 16 February. Minors attaining the age of 18 before the following 15 February are included and may vote after their birthday.	RPA <sup>3</sup> 1949, ss. 6-8

c) *Do possibilities of appeal exist?*

BELGIUM	A provisional list is drawn up, by the Council of Burgomaster and Aldermen, objections to it are received, and finally a definitive register is published. Appeal against that decision is possible to the Court of Appeal and the Supreme Court of Appeal.	Electoral Law arts. 18-44
DENMARK	Questions related to the inclusion in or exclusion from the electoral register can be raised before the courts.	Electoral Law Art. 15

F.R.G.	The electoral list must be on display from 20th to 15th day before the election. Objections can be raised within that period by the communal authorities. Against the decision of the communal authorities appeal is possible to the constituency returning officer ( <i>Kreiswahlleiter</i> ). His decision is final.	BWG <sup>1</sup> § 17.1 BWO <sup>9</sup> § 19
FRANCE	Objections to the electoral list can be raised to the <i>commission administrative communale</i> . Appeal against that decision is possible to the <i>tribunaux judiciaires</i> or the <i>tribunaux administratifs</i> depending on the case, and also the <i>Cour de Cassation</i> .	L. 25-27, Code Electoral
IRELAND	The Registration Authority (the Registrar) decides on proposals for inscription or deletion in the electoral list at a public hearing. Appeal is possible by way of the Circuit Court and the Supreme Court.	Electoral Act, 1963, s. 8, ss. 7-8
ITALY	Appeal is possible by the constituency electoral commission, to a <i>corte d'appello</i> and ultimately to the <i>Corte di Cassazione</i> .	Arts. 20, 42 & 45 TU <sup>6</sup> no. 223
LUXEMBOURG	The Council of Burgomaster and Aldermen decide on a provisional electoral list by 30 April. Objections are possible from 1-10 May. By 20 May, the Council decides on all objections. Appeal is possible to the justice of the peace and by the Supreme Court of Appeal.	Electoral Law arts. 6-40
NETHERLANDS	Applications for correction of the electoral register may be submitted in writing to the Council of Burgomaster and Aldermen. An appeal may be made against their decision to the cantonal court with right of appeal to the Supreme Council (Court).	Electoral Law arts. D6-21
UNITED KINGDOM	Appeal against the decision of the Registration Officer may be made, before 16 December, to the county court and ultimately to the Court of Appeal.	RPA <sup>3</sup> 1949, s. 45

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#### 4.1.4.4. *Nomination of Candidates*

- a) *The manner in which candidates are presented*
- b) *The support of a given number of electors*
- c) *Amount of any deposit*

	Manner in which candidates are presented	Support of a given number of electors	Amount of any deposit
BELGIUM	List candidature (Electoral Law Art. 115)	(For Chamber): Between 200-500 depending on size of arrondissement (Electoral Law Art. 116).	—
DENMARK	List or individual candidature (Electoral Law Arts. 24 & 25)	Between 25-50 in the nomination district, for individual candidature. (Electoral Law Art. 24). A new party needs signatures equal to 1/175 of votes cast at the last election to participate. A party already in Parliament qualifies automatically (Electoral Law Art. 23).	—
F.R.G.	— Candidates may be nominated by a political party or a group of electors (BWG <sup>1</sup> § 18.1) — Independents may stand in direct constituency elections (BWG <sup>1</sup> §§ 18.1 & 20)	Land lists may be submitted only by political parties (BWG <sup>1</sup> § 27.1). Nominations must be signed by the Land executive committee of the party (BWG <sup>1</sup> § 20.2). In the case of 'new' parties (BWG <sup>1</sup> § 20.2) and independent candidates (BWG <sup>1</sup> § 20.3) signatures of a minimum of 200 electors are required. For 'new' parties entering Land lists, signatures of 0.1% of the electorate up to a maximum of 2,000 are required (BWG <sup>1</sup> § 27.1).	—

FRANCE	Individual candidature (L. 123 Code Electoral)	—	F 1,000 (for Assembly). Returned to candidate if he/she received more than 5% of votes cast in either ballot (L. 158 Code Electoral)
IRELAND	Individual candidature	A person may nominate him-/herself or may be nominated, with his/her consent, by any registered Dáil elector for the constituency.	£ 100, returned at any time during the count if the votes cast for the candidate exceed 1/3 of the quota
ITALY	List candidature (Art. 1 TU <sup>6</sup> no. 361)	(Chamber of Deputies): Between 500-1,000 depending on size of constituency (Art. 18 TU <sup>6</sup> no. 361). A list needs at least 3 candidates but not more than the number of seats conferred on the constituency (Art. 18 TU <sup>6</sup> no. 361). No candidate may stand for election in more than 3 constituencies (Art. 19 TU <sup>6</sup> no. 361).	—
LUXEMBOURG	List candidature (Constitution Art. 51)	A list may not contain more candidates than the number of seats to be filled in the constituency (Electoral Law Art. 106). 25 electors of the constituency (Code Electoral Art. 106).	—
NETHERLANDS	List candidature (Electoral Law Art. G5)	25 electors must support a party list in every <i>kieskring</i> (Electoral Law Art. G.6). A list may not contain more than 30 names (Electoral Law Art. G8.3). A political group may apply to the Electoral Board for its name or its symbol to be entered on a register so it can be protected (Electoral Law Art. G1).	FL 1,000 per list. Returned if on polling day the list obtained at least 3/4 of the electoral quota (Electoral Law G14)
UNITED KINGDOM	Individual candidature	10 electors of the constituency (PER <sup>4</sup> 8).	£ 150, returned if candidate obtains on polling day more than 1/8 of the votes cast (PER <sup>4</sup> 10 and 54)

#### 4.1.4.5. Campaign Rules

##### a) Financing of campaign

##### b) Duration of campaign

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	Financing	Duration of Campaign
BELGIUM	No regulation. Explicit recognition of political parties in the Constitution or in legislation does not exist.	No regulation.
DENMARK	No regulation. A general financing of the parliamentary groups exists. Although given in order to improve their working conditions, nothing prevents them from using it on campaign activities.	No regulation.
F.R.G.	( <i>Bundestag</i> election) DM 3.50/vote given by the state to: political parties which obtained 0.5% or more of the <i>Zweitstimmen</i> ; political parties which obtained 10% of the <i>Erststimmen</i> of a constituency when they did not present Land-lists (PG <sup>10</sup> §§ 18.1 & 18.2).	No regulation.
FRANCE	The state reimburses candidates who receive a minimum of 5% of votes cast, for expenses, paper, printing of ballot papers and posters, circular letters and expenses for putting up posters (L. 167 Code Electoral).	The election campaign starts 20 days before the election (L. 164 Code Electoral)
IRELAND	The state guarantees: free use of class-rooms in schools in between the time of a call for an election and the day of the election. The candidate may send one dispatch of letters to the electorate post-free.	No regulation.
ITALY	The state pays for the expenses of the election campaign (Art. 120 TU <sup>6</sup> No. 361). Law of 2.5.1974 no. 195 on the financing of political parties, provides for the allocation of funds to parties represented in Parliament.	30 days (Law 24.4.1975, no. 130)
LUXEMBOURG	Political parties are not financed out of public funds.	No regulation.
NETHERLANDS	No regulation: parties possess no legal status.	No regulation.
UNITED KINGDOM	The candidate has the use of public buildings for the purposes of election meetings. S/he may send one dispatch of letters to the electorate post-free.	No regulation.

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c) *Regulation of election campaign expenses*

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BELGIUM	No regulation.	
DENMARK	No regulation.	
F.R.G.	The parties are free to determine the amount of their expenses themselves, and they may receive an advance payment in proportion to their last election results, but not more than 35% of the previous payment.	PG <sup>10</sup> , § 20 (1)
FRANCE	No regulation.	
IRELAND	No regulation.	
ITALY	The expenses of the election campaign are kept within set limits by law.	Law of 4.4.1956, no. 212
LUXEMBOURG	No regulation.	
NETHERLANDS	No regulation.	
UNITED KINGDOM	The amount each candidate is allowed to spend is limited by law to: — £ 1,075 plus 6p for every 6th inscription in the electoral list (county constituency). — £ 1,075 plus 6p for every 8th inscription in the electoral list (borough constituency). Personal expenses are not taken into account in calculating the maximum. Electoral expenses may only be paid by the candidate or his election agent (see 4.1.4.5. e). The expenses have to be recorded. Conscious falsification of the settlement of accounts will be punished.	RPA <sup>3</sup> 1969, s. 8 RPA <sup>3</sup> 1974, s. 1 RPA <sup>3</sup> 1949, s. 61-63, s. 69, s. 82 & s. 85

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d) *Access to media and firms*

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BELGIUM	Time on TV (BRT-RTBF) is made available to the competing political parties, more or less in accordance with their importance. This is done free of charge.	
DENMARK	Political parties receive time on radio and TV in accordance with a decision made before the start of each election campaign by the national TV station and radio. Every contesting party must be treated equally.	
F.R.G.	Public broadcasting corporations may not exclude, at their own discretion, political parties who participate in the election for the Bundestag. They may however take their importance into consideration while distributing the time available. Employers and work councils are required to abstain from party-political activity on industrial premises.	Decision of Federal Constitutional Court - 14.3.1978, BVerfGE <sup>8</sup> Vol 47, p. 198. Law of the Constitution of Enterprises, § 74 (2)
FRANCE	Time on ORTF is made available to political parties and political groups during the election campaign (to those parties who have a parliamentary group). For the first ballot: 3 hours, divided equally between government and opposition. To the other political parties and groups not covered by this, but who nominate at least 75 candidates, 7 minutes are allotted for the first ballot (on ORTF) and 5 minutes for the second ballot.	L. 167-1 Code Electoral
IRELAND	There is an agreement between the political parties and the state broadcasting authorities giving them access to the radio and television.	
ITALY	Radio and TV (a single public corporation) are subject to the control of a parliamentary watchdog committee, which shares out radio and TV time among the parliamentary groups and even prescribes the form of the broadcasts.	
LUXEMBOURG	Time on the 'Radio Télévision Luxembourg' is made available to the political parties in proportion to their strength in the Chamber of Deputies.	
NETHERLANDS	Parties are awarded time on TV in all circumstances, not only during election campaigns; the 'columnified' (verzuilde) broadcasting corporations have links with the parties. The same applies to newspapers.	

UNITED KINGDOM From the day Parliament is dissolved onwards, no programme on the radio or TV can be broadcast by a candidate unless all the other candidates in the constituency have agreed. No other regulations. TV companies, in consultation with the political parties, normally arrive at a 'gentleman's agreement' to determine how much time will be used by each of them.

RPA<sup>3</sup> 1969, § 9

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e) *Other regulations*

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BELGIUM	None	
DENMARK	For the maintenance of law and order on the public roads and other public places, the Minister of Justice can enact regulations.	Electoral Law Art 82a
F.R.G.	All parties shall receive equal treatment if an organ of the sovereign power makes facilities available to them or grants them other public benefits. The principle of 'graduated' equality of opportunity shall apply.	PG § 5.1
FRANCE	Candidates have, during the election campaign, in every constituency, the same amount of space available to put up their election posters. The number and the size of those is determined by law. No election posters may be put up: 2 days before the first ballot, and 1 day before the second ballot. The colours of the Republic: red, white and blue, are not allowed to be used on election posters. Each candidate may only send one circular letter per ballot to the electorate (the size of which is determined by law). During the campaign all commercial advertising is forbidden.	L. 51, Code Electoral R. 26-30, Code Electoral
IRELAND	A candidate must recruit an election agent who authenticates, e.g., the free election letters.	
ITALY	The number and the size of the election posters is regulated by law.	Law of 4.4.1956, no. 212
LUXEMBOURG	None	
NETHERLANDS	None.	
UNITED KINGDOM	A candidate must recruit an election agent, who takes care of the administrative side of the campaign and who, after the elections, must submit a detailed statement of expenses. It is forbidden to recruit people who, against payment, engage in door to door propaganda.	RPA <sup>3</sup> 1949, s. 55 & s. 96

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#### 4.1.5. ELECTORAL PROCEDURE

##### 4.1.5.1. Polling Stations: Opening Times and Periods

Hour	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23		
BELGIUM			—	—	—	—	—													Electoral Law Art. 142
DENMARK			—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		Electoral Law Art. 34
F.R.G.			—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			BWO <sup>9</sup> § 43
FRANCE			—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			R. 41 Code Electoral
IRELAND			—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		Electoral Act, 1963, s. 24 (b)
ITALY			—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—		First day. Second day.
LUXEMBOURG			—	—	—	—	—													Arts. 46, 64, 65 TU <sup>6</sup> no. 361
NETHERLANDS			—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			Electoral Law Art. 68
UNITED KINGDOM			—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			Electoral Law Art. 15
			—	—	—	—	—	—	—	—	—	—	—	—	—	—	—			PER <sup>4</sup> 1, RPA <sup>3</sup> 1969, s. 14. Sch. 1, Part II, para 2

#### 4.1.5.2. Organisation of voting

- a) *Postal voting*
- b) *Proxy voting*

	Postal voting	Proxy voting
BELGIUM	Does not exist.	Exists mainly for the sick and physically disabled who cannot go to the polling station, as well as for those who, for professional reasons, are not in Belgium on polling day (Electoral Law Art. 147 bis).
DENMARK	Limited postal voting. Electors living abroad must go to their embassy or consulate, electors living in Denmark to the Residents Registration Office (Electoral Law Art. 56, 1 & 5).	Does not exist. Physically disabled and blind electors may be assisted when casting their vote (Electoral Law Art. 35.10).
F.R.G.	Is permitted (BWG <sup>1</sup> § 14.3.b, see also § 36). The voter must apply to his commune for an electoral certificate, etc., and must provide evidence that s/he is prevented from coming to the polling station on polling day (BWO <sup>9</sup> §§ 22.1, 24 & 25).	Illiterate electors or for those who through bodily weakness cannot mark the ballot papers may be assisted by another person. The fulfilment of the wish of the voter is the only criterium (BWG <sup>1</sup> § 33.2, BWO <sup>9</sup> § 53).
FRANCE	Does not exist.	Exists for electors who are abroad, for those who cannot because of professional reasons and for certain other categories of electors (sailors, civil servants, certain members of the armed forces) (L 71 Code Electoral).

	Postal voting	Proxy voting
IRELAND	Exists for members of the Defence Forces and the <i>Garda Síochána</i> (Electoral Act, 1963, s. 7 (4)). Is also employed for the <i>Seanad</i> electorate.	Exists for blind, illiterate and incapacitated electors who are physically present at the polling station (Electoral Act, 1963, s. 27).
ITALY	Does not exist.	Does not exist.
LUXEMBOURG	Does not exist.	Does not exist.
NETHERLANDS	Does not exist.	Exists within strict limits (Electoral Law Arts. K 1-22).
UNITED KINGDOM	Electors who cannot for specific reasons, e.g., one's occupation, physical incapacity or blindness, religious observance, move to another constituency, etc., go to the poll or vote unaided, are called 'absent voters'. Absent voters may vote by post if they are within the UK (RPA <sup>3</sup> 1949, s. 12-13).	Absent voters may vote by proxy if they are not in the UK on polling day (RPA <sup>3</sup> 1949, s. 12-13). See also 4.1.2.4.

c) *Regulations for hospitals, prisons, etc.*

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BELGIUM	Patients can vote by proxy. Prisoners are not allowed to vote.	Electoral Law Art. 147 bis Electoral Law Arts. 6-7
DENMARK	Patients in hospitals can vote by postal voting. Postal voting is permitted for prisoners, electors residing on isolated small islands, on ships and on lighthouses.	Electoral Law Art. 56.2, 56.3, 56.4 and 56.6
F.R.G.	Special polling stations are established in hospitals, prisons, harbours, ships and in convents.	BWO <sup>9</sup> § 57 ff.
FRANCE	Patients can vote by proxy. Prisoners are not allowed to vote.	L. 71, Code Electoral L. 5, Code Electoral
IRELAND	No further regulations: see proxy and postal voting. Arrangements for advance polling on islands exist.	Electoral Act, 1963, s. 34.
ITALY	In hospitals with a minimum of 200 beds a special polling station is established; in hospitals with less beds, the president of the nearest polling station collects the ballot papers. Sailors can vote in the ports. Members of the military forces can vote in the constituency where they are on duty.	Arts. 49, 50, 52 & 53 TU <sup>6</sup> no. 361
LUXEMBOURG	Patients in hospitals have to notify the Justice of the Peace. Prisoners are not allowed to vote.	Electoral Law Arts. 259 & 4
NETHERLANDS	Patients in hospitals can vote by proxy. Prisoners are not allowed to vote.	Electoral Law Arts. B4, K1-22
UNITED KINGDOM	Patients in hospitals may vote by postal vote if they have applied to be treated as 'absent voters' (see 4.1.5.2. a). Prisoners are not allowed to vote.	RPA <sup>3</sup> 1949, s. 12 RPA <sup>3</sup> 1969, s. 4

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#### 4.1.6. ELECTION RESULTS

##### 4.1.6.1. *Proclamation of the election results: by whom?*

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BELGIUM	The central electoral office of each electoral arrondissement makes a public announcement of the results. The central provincial office proclaims the names of the elected candidates if a grouping of lists of more than one electoral arrondissement has been allowed.	Electoral Law Arts. 174-179
DENMARK	The electoral committee of each polling station. The total results for each constituency are submitted to the Ministry of the Interior which calculates the overall results.	Electoral Law Arts 39, 42-49
F.R.G.	The electoral committee in each constituency establishes the results in that constituency. The electoral committee of the district ( <i>Kreiswahlausschuss</i> ) establishes the number of votes the candidates obtained in the constituency and how many votes for the Land list were cast. The <i>Landeswahlausschuss</i> establishes the number of votes for the Land list and which candidates are elected. There is a federal election supervisor.	BWG <sup>1</sup> §§ 40, 41, 42.1 and 42.2
FRANCE	The president of each polling station. The prefect for each constituency communicates the results to the Minister of the Interior.	R 67-69, Code Electoral
IRELAND	The returning officer of each constituency.	Electoral Act, 1923, 5th Schedule, rule 43; 1963, s. 12
ITALY	The president of the central election committee.	Art. 78 TU <sup>6</sup> no. 361.
LUXEMBOURG	The president of the central election bureau proclaims the results of the election and the names of the elected candidates.	Electoral Law Arts. 125 & 142
NETHERLANDS	The president of the central polling office.	Electoral Law Art. N. 21
UNITED KINGDOM	The returning officer of each constituency by declaration.	PER <sup>4</sup> 51

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#### 4.1.6.2. *Validation of the Elections*

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#### 4.1.6.3. *Settling of Disputed Elections*

	Validation of the Elections	Settling of Disputed Elections
BELGIUM	Parliament validates the election of each member. By invalidation of an election, all formalities must be repeated. Electoral Law Art. 231.	Parliament. Constitution Art. 34. Objections must be presented before a decision on the credentials has been taken. Electoral Law Art. 232.
DENMARK	The Folketing on the recommendation of its Committee of Scrutineers. Constitution Art. 33.	The Folketing (complaints must be submitted a week after the elections at the latest). The Folketing decides whether or not a re-count or new elections should take place. Electoral Law Arts. 53, 54 & 75.
F.R.G.	The Bundestag is responsible for the validation (GG <sup>5</sup> Art. 41.1). A complaint against the decision can be addressed to the Federal Constitutional Court (GG <sup>5</sup> Art. 41.2).	Each elector has the right to contest the results. Such a challenge has to be addressed in writing to the Bundestag. (Law on the Validation of Elections § 2). A new election takes place when the election as a whole or part of it is declared invalid (BWG <sup>1</sup> § 44).
FRANCE	The Conseil constitutionnel. Constitution Art. 59.	The Conseil constitutionnel. L.O. 180. An objection can be brought by each elector or candidate until 10 days after the election. It has to be addressed to the General Secretariat of the Conseil constitutionnel or to the Prefect.
IRELAND	The Dáil. The returning officer in each constituency formally notifies the Clerk of the Dáil of the result.	The Election Court (2 judges from the High Court). The Dáil either validates the election or declares new elections in that constituency. Each elector and candidate may contest an election by an election petition. Court of Justice Act 1924.
ITALY	Parliament - the decision is final. Constitution Art. 66.	The election committee in each constituency; the central office of the electoral constituency. An objection can also be brought directly to Parliament. Art. 87 TU <sup>6</sup> no. 361.
LUXEMBOURG	The Chamber of Deputies. Constitution art. 57.	The Chamber of Deputies. All objections have to be presented before a decision on the credentials has been taken. Electoral Law Art. 89.

	Validation of Elections	Settling of Disputed Elections
NETHERLANDS	Each chamber on the recommendation of the central polling office. When the election is invalidated, a new election takes place. Constitution Art. 108; Electoral Law Arts. U5 and U7.	Objections to the counting can be brought by those present at the principal polling office (Electoral Law Art. M4 (3) ) and the central polling office (Electoral Law Art. N 21 (6) ). There is no right of appeal.
UNITED KINGDOM	Two judges of the High Court decide as Election Court RPA <sup>3</sup> 1949, s. 108 ff.	They decide on the objections made to the election(s). The House of Commons is free to follow (or not) the view of the High Court. Objections have to be made in the form of a petition (a guarantee of £ 1,000 is to be deposited) RPA <sup>3</sup> 1949, s. 107-111, s. 119-159.

#### 4.1.6.4. *Casual Vacancies*

- a) *By-elections*
- b) *Substitutes*

	By-elections	Substitutes
BELGIUM	Not provided for.	Substitutes from a separate list of substitute candidates Electoral Law Art. 171
DENMARK	Not provided for.	Next in line of party which formerly held the seat. Electoral Law arts. 50-52
F.R.G.	Provided for when a candidate dies after being officially proposed, but before the elections take place. The possibility of <i>Ersatzwahlen</i> (by-elections) also exists if the previous deputy was elected without list.	Next in line from the Land list of the former member's party BWG <sup>1</sup> § 43 BWG <sup>1</sup> §§ 48.1 & 48.2

FRANCE	If no substitute is available or if election results are invalidated in a constituency (within a time limit of three months)	Substitutes	L.O. 176, 178, 319, 320 and 322 Code Electoral
IRELAND	By-elections are called by the chairman of the Dáil directing the clerk to issue a writ. By-election: 'to fill a vacancy occasioned by a person having ceased to be a member of the Dáil otherwise than in consequence of a dissolution'. Is conducted as an alternative vote in a single member constituency.	—	Electoral Act, 1963, s. 9.1
ITALY	Not provided for.	Next in line of party which formerly held the seat	Art. 86 TU <sup>6</sup> no. 361
LUXEMBOURG	Not provided for.	Next in line of party which formerly held the seat	Electoral Law Art. 144
NETHERLANDS	Not provided for.	Next in line of party which formerly held the seat. If an MP accepts a seat in the government, he must resign within three months. Should he lose office, he becomes eligible to become an MP again should a vacancy arise.	Electoral Law Art. V1 Constitution Art. 106.2
UNITED KINGDOM	By-elections.	—	May's Parliamentary Practice, 19th edition, p. 25

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#### 4.1.6.5. *Maximum Duration of Legislative Term*

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BELGIUM	4 years	Constitution Art. 51
DENMARK	4 years	Constitution Art. 32.1
F.R.G.	4 years	GG <sup>5</sup> Art. 39.1
FRANCE	5 years (National Assembly) 9 years (Senate) - One-third of the membership is renewed every three years	L.O. 121, Code Electoral L.O. 275, Code Electoral L.O. 276, Code Electoral
IRELAND	7 years, but a shorter maximum can be fixed by ordinary law. 5 years has been so fixed.	Constitution Art. 16.5 Electoral Law, 1963, s. 10
ITALY	5 years	Constitution Art. 60
LUXEMBOURG	5 years	Constitution Art. 56
NETHERLANDS	4 years	Constitution Art. 95
UNITED KINGDOM	5 years	Parliament Act 1911, s. 7

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## 4.2. FROM NATIONAL ELECTORAL LAWS FOR THE FIRST DIRECT ELECTIONS TO A FRAMEWORK FOR UNIFORMITY

During the colloquium held at the European University Institute in Florence from 18-20 May 1978 on 'A Uniform Procedure for Direct Elections to the European Parliament', the author of this chapter was asked to clarify and develop the list which he had originally proposed of those elements of the electoral law for which a common approach would be desirable for direct elections in accordance with a uniform procedure in all the Member States <sup>2</sup>.

All the items of the original list were brought together in a commentary under three separate headings: firstly, elements of the electoral law which had already been standardised for the first direct elections to the European Parliament; secondly, elements of the electoral law for which a common approach was thought both desirable and feasible in time for the second direct elections to the European Parliament; and thirdly, elements of the electoral law which could, or had to, be left to the discretion of each Member State.

This initial framework has been retained here. As will be seen, most, if not all, of the elements of the national electoral laws for the first direct elections <sup>3</sup> are covered by questions coming under one of the three main headings.

Respondents <sup>4</sup> were asked to express their opinion by distinguishing between the reasons given for what they believed desirable,

<sup>2</sup> Van den Berghe, G., 'The concept of a "uniform procedure"'; EUI (European University Institute) 112 (Col. 19), 16 May 1978.

<sup>3</sup> See Van den Berghe, G., 'De nationale kieswetten voor de Europese verkiezingen', *Res Publica*, Volume-Bundel XXI, no. 1 (1979), pp. 3-28.

<sup>4</sup> The author is indebted to all those specialists of the institutions of the European Communities, representatives of the main European party groups, specialists of the Ministries of the Interior of the Member States, as well as those professors in the Member States and applicant states, some thirty in all, who cooperated by returning the questionnaire.

what ought to be, and what, in their view, they thought possible in practice under a uniform procedure.

One of the aims of the questions posed was to locate obstacles of a technical, political or constitutional nature. In this respect, it was suggested to the recipients that the exercise was not technical in character, but that they were being asked to attempt to link their comments with the goal they envisaged for direct elections, bearing in mind the nature of the parliament which would emerge after direct elections. This meant that when completing the questionnaire they should consider a definition of the future function of a directly elected parliament and take account of the new political arena the direct elections would create. They were asked to comment on the statements made in the questionnaire and were given some guidance to assist in its completion. It was suggested that such questions as easy access to the system, the grip of the political parties and the 'fairness' of the electoral system, were but some of the most obvious and significant aspects of direct elections held in accordance with a uniform procedure in all Member States.

Furthermore, the following questions were asked.

Should a maximum of uniformity in the electoral law, which then could act as a motor for a 'better' parliament, be achieved, or should a well-defined set of common minimum requirements suffice?

Should the electoral system assure that the main political forces are represented in the European Parliament? Related to this question is the problem of finding a way to install a certain degree of democracy in the process of nominating candidates and assuring that new political forces can gain representation in the European Parliament.

Should the building of a 'European citizenship' be one of the goals of a directly-elected parliament in accordance with a uniform procedure? Can institutional integration be aimed at through the European Court of Justice?

On the basis of the answers received during a period spanning from autumn 1978 to spring 1979, an attempt will now be made, to bring to the fore the most important observations on each question. Points of agreement and disagreement will be emphasised. Such an analysis of the responses will test the reliability of this questionnaire as a framework for uniformity. At the same time, it will highlight those elements of the electoral law which could be set into such a framework. In the remainder of the chapter, in order to assist the reader, extracts from the questionnaire will be indented in the text.

4.2.1. "ELEMENTS OF THE ELECTORAL LAW WHICH, FOR THE FIRST DIRECT ELECTIONS TO THE EUROPEAN PARLIAMENT, ARE ALREADY STANDARDIZED

1. *The duration of the mandate*: Article 3(1) of the Council Act of September 1976 states: 'The representatives shall be elected for a term of five years'.
2. *No double voting is allowed*: Article 8 of the Council Act states: 'No one may vote more than once in any election of representatives to the Assembly'.
3. *Scrutiny*: Article 11 of the Council Act states in its first sentence: 'The Assembly shall verify the credentials of representatives'".

*Comments*

For the first direct elections in June 1979, some elements of the electoral law had already been standardized in all the Member States on the basis of the Act annexed to the Council Decision on direct elections of 20 September 1976. Furthermore, the Act gives some indications in this direction relating to other elements of the electoral law<sup>5</sup>. Three of these elements were selected and put into the questionnaire. Can it be said that these three elements are only general principles, which do not require harmonization? Most commentators were of the opinion that all three points should be included in a uniform electoral procedure, although perhaps in a somewhat different form from that presented in the Council Act of 1976.

The duration of the mandate was generally seen as a very important element of uniformity with a massive potential for both integrative and disintegrative effects, as direct elections fall due at times which may be extremely inconvenient for national governments. Some commentators felt that in the long run a shorter term (four years) would be desirable, especially since the European Parliament cannot be dissolved.

As far as scrutiny is concerned, it was said that the situation, as

<sup>5</sup> See Van den Berghe, G., 'Direct elections in accordance with a uniform procedure', *European Law Review*, vol. 4, no. 5 (October, 1979), p. 338.

described under art. 11 of the Council Act, leaves only a rather limited role for the European Parliament with regard to the checking of the results of direct elections. At present, the European Parliament only takes note of the results declared officially by the Member States and will only rule on any disputes which may arise out of the provisions of the Council Act, other than those arising out of the national provisions to which the Act refers.

Nevertheless, opinions seemed to differ as to the role which the European Parliament should be given under a uniform procedure, as far as the validation of the elections and the settling of disputes are concerned<sup>6</sup>. Based on national experience and on the existing national electoral law<sup>7</sup>, some underlined the virtue of conferring all these matters on the European Parliament. Others wanted to see a certain involvement of the European Court of Justice. In this respect, it was remarked that the Court could act as an appellate body against a decision taken by the European Parliament on disputes arising from provisions of the uniform procedure.

#### 4.2.2. "ELEMENTS OF THE ELECTORAL LAW FOR WHICH A COMMON APPROACH IS DESIRABLE AND POSSIBLE IN TIME FOR THE SECOND DIRECT ELECTIONS TO THE EUROPEAN PARLIAMENT"

*Right to vote* (see also 4.2.3. Right to vote, 1. Disqualifications)

1. *Voting age*: For the first direct elections, eight of the Member States have already adopted the minimum voting age of 18 years. Only Denmark is the exception, with 20 years of age. There seems to be no problem of arriving at a common approach".

#### *Comments*

There was unanimous agreement among the respondents that 18 years of age was a desirable common minimum age for direct elec-

<sup>6</sup> See *infra*, pp. 234-5 (Election Results, 1. Declaration and validation of the results – Settling of disputed elections).

<sup>7</sup> See Chapter 4.1., pp. 217-18, *supra*.

tions in accordance with a uniform procedure. It was underlined that the whole European integration process needed the collaboration and the effective participation of as large a number of people as possible. Fixing the minimum age for the right to vote at 18 was seen as a move in that direction.

In fact Denmark, which was the only exception, with a minimum voting age of 20 years, lowered it to 18 (for national as well as European elections) in a referendum held in September 1978. The minimum voting age in all the Member States was thus already brought into alignment for the first direct elections. This is a further element of the electoral law for which a common approach exists.

"2. *Residence obligation*: A term of residence in a constituency or in a country ensures that a strict check is kept on the regularity of elections by taking into account the geographical movements of citizens without a subsequent loss of their civic rights.

Should one take the point of view that no residence requirements should apply other than that of being resident in one of the Member States of the EEC?"

### *Comments*

The majority of the commentators affirmed that residence will have to be established in a single Member State. They stressed that it is essential to clarify and specify the notion of 'residence', if only to avoid problems concerning double-voting. In this regard, it was said that there should be no provisions for dual residence qualifications in more than one Member State.

Some respondents declared that the voter should only be allowed to exercise his right to vote where he is ordinarily resident. In this respect, it was argued that a period of prior residence is likely to be required before the right to vote in direct elections in accordance with a uniform procedure will be conferred<sup>8</sup>.

Taking the existing national electoral law of France as an example<sup>9</sup> one commentator said that he saw no reason to exclude citizens

<sup>8</sup> See *infra*, p. 226 (Right to vote, 3. Regulations for citizens living abroad).

<sup>9</sup> See Chapter 4.1., p. 191 *supra*.

of the Member States, resident outside the European Community, from the right to vote. The only problem would be, he said, to find for them a constituency in one of the Member States in which they would be able to cast their vote <sup>10</sup>.

"3. *Regulations for citizens living abroad* <sup>11</sup>: Article 8 of the Council Act states only: 'No-one may vote more than once in any election of representatives to the Assembly'. This article does not solve the problem of whether citizens of one Member State, resident in another Member State, can vote, and if so, where...

For the first direct election, Denmark, the FRG, France, Italy and the Netherlands will give their citizens resident in one of the Member States of the EEC the possibility of participating in the elections. Ireland and the Netherlands even allow citizens of the other Member States, resident there, to vote for their representatives. But the latter applies only to citizens of the other Member States who are not entitled to vote in their home state. Thus, for the first direct elections, a confused picture is drawn.

Should a common approach not be worked out? And if so, which one?

Should not the citizens of the Member States, resident outside the EEC, be excluded from voting?"

### *Comments*

While the commentators agreed that a common approach is indeed desirable under a uniform procedure for this element of the electoral law in order, for example, to avoid confusion and discrimination, it might prove quite difficult to bring it about. What it really boils down to is that a choice must be made between the principle of nationality and the principle of territoriality. If one is of the opinion, as some respondents were, that citizenship of one of the Member States should be the main criterion, residence within the EEC would then become a subsidiary criterion. Thus, those who

<sup>10</sup> See *infra*, pp. 226-228 (Right to vote, 3. Regulations for citizens living abroad).

<sup>11</sup> See also Van den Berghe, G., 'Les systèmes électoraux et l'Assemblée européenne', *La Revue Administrative*, no. 191 (September-October 1979), pp. 495-501.

defend this point of view see voting rights for citizens of the Member States independently from their place of residence. Others defended the rule that everyone votes where he resides.

A first point deals with the citizens of one of the Member States resident in another Member State.

The basic aim as regards the elections to the European Parliament is that everybody in this position should be able to vote. This was recognised by the respondents. Therefore, they were in favour of giving, for the second direct elections, the right to vote to any citizen of one of the Member States resident in another Member State. However, views differed on the question whether this right should be exercisable only in the Member State in which the citizen resides or only in the citizens' country of origin. Or, as some commented, should citizens not be left the choice of voting either in the Member State in which they reside or in their country of origin?

The right to vote for the representative to the European Parliament of the Member State in which one resides is often projected as the truly 'European' solution, but it might in reality be difficult to achieve. In any event, such a solution could only gradually be realized. In fact, it was asserted that if such an option were to be chosen under a uniform electoral procedure, the question of the allocation of seats between the different Member States would again be raised. The solution which embodies an element of choice for the elector would offer maximum flexibility without unduly infringing upon the character of uniformity, its supporters claimed. There are sufficient citizens of the different Member States, they said, who, variously, wish to vote either in the Member State in which they reside or in their country of origin. This situation makes it impossible to offer only one method of voting. Nevertheless, such a solution would need an arrangement at the level of the European Community in order to avoid the problem of double voting<sup>12</sup>.

A second point deals with citizens of the Member States resident outside the European Communities.

Some commentators held that citizens of the Member States resident outside the European Community should be excluded from voting. Enfranchising them, they argued, would be unnecessary, complicated, expensive and unjust. The number involved would be too great and often their links with the Community are rather re-

<sup>12</sup> See 4.2.1.2., *supra*, p. 223.



mote. Furthermore, it was pointed out that to give them the right to vote would be unacceptable to many Member States. (Ireland is often mentioned as an example). Other commentators expressed the view that all citizens of the Member States living anywhere in the world should have the right to vote in direct elections in accordance with a uniform procedure. In this respect, existing national practices could be followed. Citizens of the Member States resident in a third country should be allowed to vote in their country of origin, they contended. Furthermore, these commentators underlined that a system should be developed which would allow all citizens of one of the Member States living in a third country to exercise their voting rights without necessarily making them return to the country of origin.

*“Eligibility* (See also 4.2.3. Eligibility, 1. Incompatibility; 2. Dual mandate; 3. Electoral thresholds)

1. *Minimum age*: The age requirements for eligibility will vary greatly for the first direct elections: 18 (FRG), 20<sup>13</sup> (Denmark), 21 (Belgium, Ireland, Luxembourg and the UK), 23 (France), 25 (Italy and the Netherlands). Even though this element of the electoral law may not be as important as some of the other elements, can an identical age qualification be reached? And if so, will it be 18 years of age as is already the case in the FRG?”

### *Comments*

The views of the commentators differed widely on this point. Some felt that a common minimum age could and should be agreed upon under a uniform procedure. Others were very doubtful. Did it really matter, some respondents asked? They emphasized that they saw no special need for formal harmonization.

Those who pronounced themselves in favour of a common minimum age used the argumentation that the right to vote and the right to stand in direct elections has to be given to as large a number

<sup>13</sup> The minimum age in Denmark was lowered to 18 after the referendum held in September 1978.

of citizens of the Member States as possible. The minimum age of eligibility had to correspond to the minimum age for the right to vote, they said. Furthermore, they observed that in recent years the general movement in the Member States, concerning the right to vote and the right to stand in national elections, has been one of reducing the ages of enfranchisement and of candidature. The most optimistic commentators declared that they saw no problem in 18 years of age emerging as the common minimum age. Others agreed on the principle but stressed that this figure is rather low. It would not be acceptable to certain Member States (Belgium, for example). Nevertheless, one should try, they remarked, under a uniform procedure, to draw as near as possible to 18 years of age. Other commentators said that it will be possible to reach a common minimum age for eligibility, but that 21 years of age might be a reasonable compromise. They argued that, anyway, the minimum age for eligibility should be slightly higher than the minimum age for the right to vote.

Some respondents, on the other hand, stated that, taking into account the differences which exist on this point in the different Member States, it would be extremely difficult to achieve a common minimum age. In fact, they were of the opinion that it was of no great importance whether or not a common approach could be adopted. In all likelihood, it was observed by one commentator, the age requirements will gradually come closer together by a process of harmonization.

“2. *Party bans*: Can a common approach on this question, allowing all political parties to participate in the second direct elections, not be made? In this respect, how can the constitutional problem in the FRG and Italy be solved?”<sup>14</sup>

### *Comments*

Two schools of thought came to the fore. Some commentators expressed the opinion that, for the sake of the credibility of the European Community in the world, it is necessary to allow all political parties and organizations to participate in the second direct elec-

<sup>14</sup> See Chapter 4.1., p. 199 *supra*.

tions to the European Parliament. Such a common position is indispensable, they said, and could not depend on the constitutional approach in one or other of the Member States. The problem of party bans is often exaggerated, they declared, and is now more of an historical problem. Furthermore, they remarked that the existing constitutional provisions in the FRG and Italy are either largely ineffective or are simply not operated and that no new constitutional provisions in this sense have been added. The European Parliament, they continued, has to be open to all political orientations. It would be very dangerous if one or another political party or organization would be banned in one or another Member State, especially if such an action were to be taken against a political party which had a large representation in the other Member States.

Other commentators argued that the imposition of uniformity might not be altogether desirable or possible. Therefore, this element of the electoral law should stay outside the harmonization under a uniform electoral procedure. At present, they stated, the political parties remain national parties and therefore the question of 'public order' arises, which is a national problem. In addition, they stressed that besides being a sensitive matter, the role of political parties in the different Member States under different electoral systems varies significantly, and because of this it would be very difficult to find a uniform solution.

Nevertheless, one commentator pointed out that as far as the FRG is concerned it is possible to argue that in the European context and for European elections the constitution might be interpreted in a different way from that applied in national elections. Following this way of reasoning, a uniform solution could thus be arrived at, which would permit the German and Italian authorities to comply with their constitutions.

*"Preparations for elections* (See also 4.2.3. Preparations for elections: 1 Electoral constituencies; 2. Electoral register; 3. Nomination of candidates)

1. *Date of elections*: The Council Act of September 1976 in article 9(1) states: '...; for all Member States this date shall fall within the same period starting on a Thursday morning

and ending on the following Sunday'. Should this period, for the second direct elections, be reduced to two days or to one single day? If so, which day(s)?"

### *Comments*

Denmark, Ireland, the Netherlands and the United Kingdom voted on Thursday, 7 June 1979. Belgium, the Federal Republic of Germany, France, Italy and Luxembourg voted on Sunday, 10 June 1979. For Denmark and the Netherlands this represented a different day from that on which national elections are normally held, respectively a Tuesday and a Wednesday.

Some commentators stressed that the present arrangement allows the traditional pattern in each Member State to be observed without hindering voluntary harmonization. This, they declared, would be preferable to the imposition of artificial uniformity. Recalling the difficulties which arose during the drafting of the Council Act on direct elections, they said that it would be very difficult, if not impossible, to solve this problem, which, anyway, they believed to be accessory.

Many Member States, they pointed out, conceive no other day but a Sunday for the election. If another day of the week were chosen, this would raise enormous problems with employers and would considerably increase abstentionism. For other Member States, on the other hand, voting on Sundays is not at all possible<sup>15</sup>.

Other commentators stated that it seems preferable that the elections should be held on the same day throughout the European Communities. The importance of voting on one day (some suggested a Sunday, others a weekday), they stressed, is that it would be a factor which would increase the feeling of unity among the citizens of the different Member States.

However, the majority of the commentators, while underlining the fact that it would be impossible to fix the direct elections of 1984 on one single day, said that a reduction of the actual period for the election would be desirable. A shortening to a two-day period, they observed, would be possible and might for the time being be sufficient. To confine the elections to Sunday and Monday got the most support, closely followed by the suggestion to hold the elec-

<sup>15</sup> See Chapter 4.1., pp. 202-3 *supra*.

tions on Saturday and Sunday. In this respect it was mentioned that, for example, in the United Kingdom there would be no valid argument against a Monday, despite the usual choice of a Thursday. Even more to the point, some internal elections in the United Kingdom used to be held on a Monday. The experience of the first direct elections, namely that under the present arrangements quite a number of difficulties arose concerning safeguarding the secrecy of the polls, can be held as another argument in favour of shortening the period for direct elections as far as possible. The main reason for the problems was that four Member States voted on Thursday, 7 June 1979, but had to wait to start counting until late on Sunday, 10 June 1979, when the polling had finished in all the other Member States.

*"2. Campaign rules:*

- a) Financing of the electoral campaign.*
- b) Duration of the campaign.*
- c) Regulation on the election campaign expenses.*
- d) Access to the media (radio and television).*

Should some kind of public funding of the electoral campaign be provided? If so, how should the allocation of funds be arranged?

Should only those political parties already represented in the European Parliament or in the national parliaments be the beneficiaries? Or should the funds be given directly to the candidates themselves? According to what scale?

Should there be set limits on the electoral expenses of a candidate?

A common approach on these questions in time for the second direct elections seems to be necessary".

*Comments*

A minority of the commentators expressed the view that no attempt should be made at all to harmonize the items mentioned above under the heading of campaign rules. Such an attempt, they said, would only complicate the functioning of the European Parliament as such, certainly in the 'running in' period.

However, the vast majority of the commentators declared that a common approach and a regulation are necessary and desirable for certain elements of this field.

*a) Financing of the electoral campaign*

Most of the respondents agreed that, for direct elections in accordance with a uniform procedure, some kind of public funding should be provided. The Community budget, they felt, could, together with the national institutions, contribute to the financial expenses of the campaign. Nevertheless, views differed widely as to how these funds should be made available and to whom. Some preferred the system used in the first direct elections (funding through the political groups in proportion to their size and a lump sum payment to the independent members of the European Parliament); others favoured a system of direct payment to all national parties who have obtained a certain minimum percentage of the votes. The former system, they claimed, gave the political groups in the European Parliament, as well as the European party groupings, too much weight in the distribution of the money. Furthermore, they underlined that such a system is rather unfair, since it omits national parties not represented in the European Parliament. The question of whether these funds should be given directly to the candidates themselves is a point of contention amongst the commentators. A majority rejected this possibility, mainly because that would, according to them, give rise to a large number of frivolous candidates.

Some commentators, on the other hand, defended funding of individuals, if their candidature had not been presented by a political organization and if they obtained a certain minimal percentage of the vote. In order to determine the amount of money which should go to the individuals, they stated that one could, for example, take into account the general scale of expenses in the particular Member States, as well as the number of constituents concerned.

*b) Duration of the campaign*

A small number of commentators were of the opinion that the duration of the campaign should be the same in all Member States, (four weeks prior to the last day of polling, which, it was said, is

about the average for national election campaigns). Nevertheless, most commentators saw no need for harmonization of the duration of the campaign among the Member States under a uniform procedure.

c) Regulation of election campaign expenses

Some commentators felt that the election campaign expenses should be regulated for future direct elections in order to ensure a limitation of these expenses. It was also suggested that the accounts should be published, and, furthermore, that the European Court of Auditors could play a role in this field. However, even those who favoured a regulation of the election campaign expenses realised that imposing limits on these expenses is an extremely difficult task, and nearly impossible to control.

d) Access to the media (radio and television)

It is in the Community's interest that access to the national media should be as easy as possible, some respondents pointed out. They said that it did not seem necessary to them to try to harmonize the national rules unless it appears that access in certain Member States is inadequate and that, therefore, in the interest of the Community a certain harmonization should be sought. Other respondents remarked that guidelines should be laid down under the uniform procedure for access to the broadcasting media. Access to the media, they stated, should be agreed upon on European Community level. This was necessary because of the transnational effects of the media. However, they realised that, because the relationship between governments and media are so disparate in the Member States<sup>16</sup>, total uniformity would not be possible by 1984.

*"Election results* (See also 4.2.3. Election Results, 1. Filling of vacant seats)

1. *Declaration and validation of the results – Settling of disputed elections*: The whole organization of the declaration of the election results, the validation of the elections and the

<sup>16</sup> See Chapter 4.1., pp. 210-11 *supra*.

settling of disputed elections has to be worked out. Article 11 of the Council Act of September 1976 already determines that it is up to the Assembly to verify the credentials of representatives. For that purpose, it shall take note of the results declared by the Member States and shall rule on any disputes which may arise out of the provisions of the Council Act other than those arising out of the national provisions to which the Act refers.

With regard to scrutiny, judicial control at the Community level has not been introduced. Should the Court of Justice not be brought in to verify the lawfulness of the election?"

*Comments* (see also 4.2.1.3. Scrutiny, *supra*)

The majority of the commentators felt that for the moment common rules do not seem essential in this field. For the second direct elections, they said, one could stay within the spirit of art. 11 of the Council Act on direct elections of September 1976. If, however, common rules were adopted for these elements of the electoral law, most of the commentators had no doubt that the Court of Justice should have a role to play. They saw this role as basically confined to the settlement of electoral disputes. Some commentators emphasized that recourse to the European Court of Justice in these matters should be open to every individual of the Member States, which would do no more than affirm the democratic nature of the European Community. In this respect, it was remarked that the procedure in force in France for national elections, concerning the settlement of disputed elections, could be a source of inspiration<sup>17</sup>.

One commentator made an interesting suggestion on how to deal with this area of the electoral law under a uniform procedure. He came out in favour of a three-stage formula, namely a 'technical' verification at national level followed by a 'political' verification by a joint body of national and European members of parliament, which should verify the credentials on appeal against the 'technical' verification, with, finally, a 'legal' verification by the European Court of Justice on appeal against the 'political' verification.

<sup>17</sup> See Chapter 4.1., p. 217 *supra*.



4.2.3. "ELEMENTS OF THE ELECTORAL LAW WHICH CAN, OR HAVE TO BE LEFT TO THE DISCRETION OF EACH MEMBER STATE

*General principles*

1. *Electoral System:*

a) Proportional or majority voting: For the first direct elections 8 of the Member States have chosen proportional representation. Only the UK chose majority voting (except in Northern Ireland, where the proportion system of single transferable votes (STV) will be used).

b) Voting procedure: For the first direct elections, votes are cast on 'rigid' lists in the FRG and France, and on 'loose' lists in Belgium, Denmark, Italy and the Netherlands. 'Open' lists are used in Luxembourg. Votes for individuals are cast in Ireland (and Northern Ireland) <sup>18</sup>.

c) Counting procedure: For the first direct elections, d'Hondt will be used in Belgium, Denmark, the FRG, France and Luxembourg. The natural quota will be used in Italy. Ireland (and Northern Ireland) will use STV.

In the light of what is mentioned above, should the electoral system not be left to the individual Member States? Should there not be room for variation within the framework of proportional representation? Or can some elements which point in the direction of a common approach be traced?"

*Comments*

The question of the electoral system is one of the, if not indeed the most, delicate points if one envisages a uniform procedure for direct elections to the European Parliament. In order to ensure that significant minorities are not denied representation and in order not to end up with a distorted result, all the commentators emphasized that *some* form of proportional representation in all Member States should be a prerequisite for future direct elections.

<sup>18</sup> The voting procedure used in Ireland and Northern Ireland is equivalent to a totally 'open' list system. The single-member constituency system in use in the United Kingdom is *in effect* a 'closed' one-name list system.

They stressed that it was fundamental and vital that the United Kingdom should align itself with the other Member States. They saw some reason for optimism in the fact that on 13 December 1977, 222 members of the House of Commons had voted for the 'regional list' system of voting and also because, they said, there was now active support for electoral reform in the three largest national parties.

The results of the first direct elections in the United Kingdom, where the Liberal Party gained 13.1% of the votes but no seats and where the Labour Party with 33% of the votes gained only a disproportionately small number (17) of the seats, merely underlines even further the need to lay down the principle of proportional representation in all Member States for the coming direct elections.

Having said this, nearly all the respondents stated that the electoral system should be sufficiently flexible to reflect the individuality of the different Member States. Therefore, they were of the opinion that no attempt should be made to try to harmonize the voting procedure or the counting procedure. In this respect it was said that such an attempt at creating a fully identical electoral system might even prevent any progress being made in the United Kingdom, given the existing problems with the electoral constituencies<sup>19</sup>.

Nevertheless, some commentators felt that efforts should continue to introduce in the proportional system and under a uniform procedure as much flexibility as possible, in order to give the voter as wide a choice as possible. They attacked the 'rigid' list system, because it gives too much power to the political parties. They opted for proportional voting with a personalised element and thought that 'loose' lists (on the regional level) could provide a good compromise<sup>20</sup>.

A few commentators were also of the opinion that the counting procedures could be aligned under a uniform procedure for direct elections. They thought that the best solution would be for the d'Hondt system to be suggested and adopted as a common counting procedure (except where STV is being used).

"2. *Obligatory or optional voting*: The answer to this question depends on how one looks at the franchise. Is it conceived as a right or as a duty? If franchise is a right, voting

<sup>19</sup> See *infra*, pp. 243-244. (Preparations for elections, 1. Electoral constituencies).

<sup>20</sup> *Ibid.*

should be optional because no one can be forced to exercise a right. If it is a duty, voting may be compulsory. There seems to be no reason to believe that Belgium and Luxembourg or Italy (where voting is a civic duty) will change their position on obligatory voting. This makes a common approach on the issue impossible”.

### *Comments*

A large majority of the commentators voiced the opinion that a common approach on non-obligatory voting would be desirable under a uniform procedure. However, nearly all of them realised that such a solution could not be achieved in the near future, and anyway they did not consider this to be an important matter. Nevertheless, some of their more optimistic colleagues maintained that, for direct elections, Belgium and Luxembourg would in 1984 (or 1989) change their position on obligatory voting and join the other Member States. They pointed out that voting in European elections is primarily a European question, not a national one. Since it was now up to the European Parliament to draft a uniform electoral procedure, the word ‘impossible’ should not apply.

A few commentators defended maintaining the obligatory voting in Belgium and Luxembourg for future direct elections. The risk exists, they said, that if obligatory voting were to be changed to optional voting for direct elections, the election result would have a less representative character. This risk would be even greater, they observed, if the change were to be introduced for direct elections to the European Parliament, rather than for national elections. Furthermore, they contended that such a change would be resisted in the national parliaments of these countries since the ‘national’ politicians would fear very much a ‘spill-over’ of such a change into national elections.

The fact that voting in national elections is obligatory in Greece and that for national elections in Portugal voting is a duty, only renders it more unlikely that a common approach will be achieved under a uniform procedure for this element of the electoral law.

*“Right to vote* (See also 4.2.2. Right to vote, 1. Voting age, 2. Residence obligation, 3. Regulations for citizens living abroad)

1. *Disqualifications*: For the first direct elections, these vary considerably in the different Member States. As a result of this, and because this element of the electoral law has a limited influence, should this question not be left to the individual Member State?"

### *Comments*

Nearly all the commentators voiced the opinion that this element of the electoral law could for future direct elections be left to the discretion of the Member States. They thought that this was a typically marginal area of limited influence, where harmonization is desirable if easy, but not worth fighting for if not.

A few commentators, however, felt that some common minimum criteria concerning the problem of disqualification from the right to vote in direct elections under a uniform procedure, should be drawn up. If the individual Member States then want to add extra qualifications, they could do so, they pointed out. They, therefore, declared that attempts should be made to move towards uniformity by stages. Furthermore, these commentators remarked that this element of the electoral law is one of the 'special rights' dealt with in the European Parliament's Resolution of 16 November 1977 on the granting of special rights to Community citizens <sup>21</sup>.

*"Eligibility* (See also 4.2.2. Eligibility, 1. Minimum age, 2. Party bans)

1. *Incompatibility*: Rules relating to incompatibility with the office of representative in the Assembly, in addition to the ones already envisaged in article 6(1) of the Council Act, have to be left to the discretion of each Member State. Article 6(2) of the Council Act already allows this for the first direct elections".

### *Comments*

The question of incompatibility with the office of Member of the European Parliament depends on, and may vary according to, different national situations. Therefore, nearly all the commentators said

<sup>21</sup> O. J., 1977, C 299/26.

that for this element of the electoral law the actual system was adequate for direct elections under a uniform procedure. There is here, they pointed out, a case for some national discretion.

A few commentators were of the opinion that uniformity could be achieved in this field without too much difficulty, as incompatibilities in the electoral laws of the Member States already overlap. However, if the Member States were allowed under a uniform procedure to enact incompatibilities, they felt that the European Parliament should then keep a close watch that these incompatibilities were not directed only against one particular group of people. If this were the case, it could falsify the meaning of the elections, they said.

“2. *Dual mandate*: The whole problem of the retention of the dual mandate and the way of finding the most suitable manner of preserving links with the national parliaments should be looked at in depth after the first direct elections.

Should it be left entirely up to the individual Member States to decide on this question, or can the principle of the elimination of the dual mandate already be achieved in time for the second direct elections?”

### *Comments*

The vast majority of the commentators saw no sufficient reason to amend, for future direct elections, the terms of art. 5 of the Council Act on direct elections of September 1976. As one will recall, art. 5 stated that ‘Membership of the European Parliament shall be compatible with membership of a Parliament of a Member State’. Although they thought that it would be desirable to eliminate the dual mandate (this whole question is of course closely linked to the previous question: see 4.2.3. Eligibility, 1. Incompatibility), they claimed that it would be wrong to try to eliminate it altogether for future direct elections. Instead, they believed that the end of the dual mandate would come about much more quickly if the decisions were left to the national parliaments. Some of them believed that it should be left to the voters to decide in each individual Member State whether the dual mandate could be accepted in individual cases. Others declared that the elimination of the dual mandate should be left to the individual political parties. All these commen-

tators agreed that a move towards the elimination of the dual mandate could only come progressively and only after a transitional period. The experience of the first-directly elected Parliament would be a valuable guide to indicate how quickly this process could be achieved, they said.

The respondents pointed out that if the European Parliament were to succeed in building up enough appeal, then the question of the dual mandate would soon disappear by itself. In this respect, the example of the relationship between the *Bundestag* and the *Landtag* in the Federal Republic of Germany was mentioned. In some Länder, dual mandate is possible, but it is no longer practised.

However, some commentators underlined that they were not quite sure if the end of the dual mandate would be all that desirable for direct elections in accordance with a uniform procedure. They made it clear that the link between common membership and national parliaments may still be very important for the European Parliament, even after 1984.

Fears were expressed that only 'second class' deputies would sit in the European Parliament if the possibility of a dual mandate were to be relinquished under a uniform procedure for direct elections. The possibility of holding a dual mandate should be kept intact, they said, in view of the necessity to preserve links with and establish a useful collaboration with the national parliaments.

"3. *Electoral thresholds*: The question of the possibility of political parties gaining representation in the European Parliament has to be left to the discretion of each Member State. If one looks at the first direct elections and sees that France and the FRG have introduced a legal threshold of 5% and that the other Member States have different system-inherent thresholds, and if one takes into account the deeply entrenched feelings about it, it does not seem possible to arrive at a common threshold in time for the second direct elections, if at all..."

### *Comments*

All the commentators were of the opinion that to work out a common approach on the question of electoral thresholds would be extremely difficult, if not impossible, in time for the next direct

elections. However, opinions were divided as to the desirability of the setting, in the long run, of a common legal threshold under a uniform electoral procedure and, if so, how high this threshold should be.

About a third of the commentators pointed out that it was indeed desirable and necessary to have a common legal threshold. One should not allow a fragmentation of the political parties represented in the European Parliament to take place as this would render the European Parliament ineffective, they said. They spoke in favour of setting a common maximum limit to this threshold for future direct elections. This would reinforce the cohesion of the bigger political parties. In general they agreed that a maximum legal threshold of 5% is sufficient. Such a threshold had the further advantage, they underlined, of not impeding the representation of new political forces.

Nevertheless, this whole approach was rejected by two-thirds of the commentators. Recalling that the question had to be seen together with the problem of the allocation of seats as well as with the conditions concerning the nomination of candidates, they stressed that they saw no justification for imposing a legal threshold for direct elections in accordance with a uniform procedure. Taking into account the present role of the European Parliament, i.e., that it does not participate in the formation of a European Government, they declared that they were in favour of as large a representation as possible in the Parliament of public opinion of the different Member States. They stated, therefore, that there was no need for a legal threshold to be imposed. Furthermore, they pointed out that the system-inherent thresholds were already substantial. In the Member States with single national constituencies, the percentage of the valid votes required to be certain of gaining a seat in the first direct elections was 1.22% in France, 3.85% in the Netherlands and as high as 14.29% in Luxembourg.

The imposition or not of a common legal threshold for direct elections in accordance with a uniform electoral procedure is of course very closely related to the choice of the future electoral system. If, for example, single national constituencies in each Member State were to exist in future direct elections the above-mentioned figures underline that, because of the number of seats allocated to them, this question would have a particular relevance in the FRG, France, Italy and the UK.

*"Preparations for elections* (See also 4.2.2. Preparations for elections, 1. Date of elections, 2. Campaign rules)

1. *Electoral constituencies*<sup>22</sup>: The contrast between the Member States which opted for a national constituency and the ones which chose smaller constituencies is very visible in the first direct elections. Denmark<sup>23</sup>, France, Luxembourg and the Netherlands have chosen a single national constituency. Belgium, Ireland, Italy, and the UK have opted for smaller constituencies, and the FRG<sup>24</sup> has left the choice up to the political parties. The deep-rooted differences of opinion on this question, which are very apparent when comparing the situation in France and the UK, rule out the possibility of a common approach".

### *Comments*

All the commentators agreed that a common approach on this question under a uniform procedure was not possible in the near future (1984, 1989). Some even pointed out that it was not even worth considering such an approach because of the deeply entrenched feelings about this question in the different Member States. This was also not so very important, they said, if only a common system of proportional representation could be arrived at under a uniform procedure. Thereby, they underlined the interdependence between the type of proportional representation which is chosen and the question of electoral constituencies.

Fears were expressed that if a single national constituency were to be chosen as a common approach, this would make the elections a more remote event for the electors, which could in turn produce a lower participation in the elections. Furthermore, that such a choice would not allow for an adequate representation of specific regional, linguistic or minority interests. Anyway, it was underlined that the potential effect of each individual vote on the composition of the European Parliament was already so different because of the varying sizes of the national delegations.

<sup>22</sup> For the purpose of the questionnaire, no distinction was made between 'constituencies', 'nomination districts' and 'district magnitudes'. See ch. pp. 39-43, *supra*.

<sup>23</sup> A separate single-member constituency was created for Greenland.

<sup>24</sup> A three-member constituency was created for the Land Berlin. These members of the European Parliament were elected by the Berlin House of Representatives.



The only possibility for a common approach under a uniform procedure, one commentator pointed out, is that the Member States are left the option between national and regional constituencies.

Nevertheless, one optimistic commentator declared that there was some flexibility visible in the matter among the Member States since, for example, Belgium, the Federal Republic of Germany, France and Luxembourg introduced a system of constituencies for the first direct elections which was different from the system used for national elections. Facing up to the impossibility of achieving a common approach, he felt that it would be desirable under a uniform electoral procedure to establish criteria under which constituencies should be permitted. For example, they should only be allowed if a proportional system is used. Furthermore, constituencies should, he said, be drawn up by an independent body (Boundary Commission) or by a genuine agreement between a large majority of the parties (for example, the Egmont Agreement in Belgium for the first direct elections).

“2. *Electoral register*: This serves the purpose of pointing out which electors are to be called upon to take part in the voting. It also gives an indication of where they are entitled to vote. It allows the qualified voter to vote. It also ensures that those who are not qualified as electors do not take part in the elections.

Should the drawing up of the electoral register be left to the Member States? Or should some common approach be worked out in the future? Should the inclusions of the electors in the register be automatic, annual or specific? Should the voters have to make a special application to be put on the register?

Is a card-register of the whole EEC population, providing an up-to-date electoral register on a day-to-day basis, feasible?

Could a special electoral register for citizens of the Member States ‘living abroad’ be drawn up?”

### *Comments*

Since national practices vary considerably, following very different traditions and relationships, nearly all commentators thought that

the Member States should continue to draw up (and revise) the register for the next direct elections. A certain freedom should be given to the Member States, they said. Such a deconcentration would be even more necessary, they stated, in an enlarged Community. Furthermore, it was remarked that leaving this role to the individual Member States was the best guarantee against electoral fraud.

In fact, it was pointed out that the question of the electoral register is very much linked to the answers given to the question of where people ought to vote<sup>25</sup>.

Nevertheless, a majority of the respondents thought that under a uniform procedure for direct elections, a common approach should later on be worked out. What this common approach should consist of was not quite clear. Some said that the only thing which such a common approach should comprise should be the ruling out of the possibility of double voting. Others believed that one should work out a system in which the drawing up (and the revision) of the electoral register should be left to the Member States, but under the supervision of the European Communities. Others underlined that certain joint criteria should apply to this register, for example, the electoral register should allow everyone to vote who has the right to vote, exclude double voting, enable swift communication of the results of the voting and it should protect the secrecy of the voting.

A majority of the commentators observed that it would be desirable that the inclusion of the electors in the electoral register should be automatic. No special application to be put on the register should have to be made, they believed, as it would be likely to lead to a very incomplete and biased register. The inclusion, some said, should be automatically linked to the place of residence.

Although it was believed that the drawing up of a card index of the whole EEC population (or an even more technically advanced system), providing an up-to-date electoral register, was technically possible, such a proposal was rejected by the commentators. It would be unnecessary, too expensive and would raise a great many problems concerning data protection.

Opinions differed on the question of whether a special register for citizens living 'abroad' could and should be drawn up. Some felt that as these nationals should be able to vote in their country of

<sup>25</sup> See *supra*, pp. 225-228 (Right to vote, 2. Residence obligation, 3. Regulations for citizens living 'abroad').

origin or in the country in which they are resident, such a register would be the best guarantee of their voting rights. In this respect, it was pointed out that, for example, in Portugal there exists for national elections a special electoral register for Portuguese citizens living abroad. Other commentators disagreed. They saw no necessity for such a special register, since nationals of the Member States living outside the European Community should not be able to vote. As regards such persons ordinarily resident in one of the other Member States, they considered that they should be allowed to vote in the Member State in which they are resident, so there was no need for such a special electoral register.

“3. *Nominations of candidates*: The emphasis can be put on individual candidacies, on the support of a few electors or on the requirement of a small deposit (or none at all). Or, it can be required that a candidate can only be nominated for election if presented on a party list, if he/she has the support of a large number of electors, or if he/she pays a sizeable deposit.

Looking at the preparations for the first direct elections, one can see that there is a tendency to restrict the right to put forward candidates or lists of candidates in a way which favours the existing political parties.

The number of signatures required varies from one Member State to another and can be sometimes quite high. In Denmark, signatures amounting to at least 2% of the valid votes at the last general election are necessary in order to be able to present candidates of a party which is not represented in the Folketing. Deposits are required in France (FF 100,000 per list), Ireland (£ 1,000), the Netherlands (FL 18,000 per list) and the UK (£ 600).

As this important element of the electoral law covers the whole question of easy access to the system, should it be left entirely to the discretion of the Member States? Or can some common approach be worked out?”

### *Comments*

Since the question of the nomination of candidates is subsidiary to the question of the electoral system, it was affirmed by the com-

mentators that the achievement of a common approach on this element of the electoral law will be very difficult to attain as long as there is no common approach on the electoral system itself, or as it was stated, as long as there exist no real transnational parties. Nevertheless, it was generally believed that it would be desirable to have under a uniform electoral procedure for direct election some common elements in the nomination procedure of candidates to the European Parliament.

The objective should be, some underlined, to strike a balance between facilitating the participation of genuine candidates and discouraging frivolous candidates. Others said that the aim should be that all major political forces should have an equal chance to be represented in the European Parliament, while new political forces should not be excluded from that chance.

Nearly all commentators expressed the opinion that nominations should not just be restricted to the existing political parties. A few commentators underlined that the ideal solution for the question of the nomination of candidates in future direct elections would be a low number of signatures to support a candidate, and a reasonably high deposit to discourage frivolous candidatures. The uniform procedure could possibly lay down guidelines in this direction for the 1984 elections, they thought, and they could then become mandatory for the 1989 elections.

Nevertheless, this approach was rejected by a large majority of the commentators. A deposit is neither necessary nor desirable, they said. The deposit requirement, they believed, was neither an adequate nor a democratic means to discourage frivolous candidatures. For future direct elections, they preferred the requirement that nominations should be supported by a specific number of signatures. This number, they thought, should be kept as low as possible, since otherwise the verification of large numbers of signatures could create serious difficulties.

*Election results* (See also 4.2.2. Election results, 1. Declaration and validation of the results – Settling of disputed elections)

“1. *Filling of vacant seats*: Does a common replacement procedure for seats which have fallen vacant seem possible? A survey of what has been provided for the first direct elec-

tions gives the following results. In Denmark, France, Italy, Luxembourg and the Netherlands it is the next candidate on the list who will fill the vacant seat. In Belgium the vacant seat will be filled by a substitute candidate. The same is true for the FRG, but if a substitute candidate fails, the next candidate on the list will fill the seat. In Ireland it will be the Irish Parliament (Dáil) which will fill the vacancy, acting on a proposal of the party concerned. Finally, a by-election is envisaged in the UK for filling a vacant seat.

Taking into account this variety of solutions, can a common approach be worked out in time for the second direct elections? How?"

### *Comments*

In general, it was stated that it is highly improbable that a common approach can be worked out in time for the next direct elections. Such a common approach, the commentators underlined, could only be worked out if the same, or a basically similar, electoral system for direct elections is in operation in all the nine Member States.

Nevertheless, they thought that under a uniform electoral procedure for direct elections efforts should be undertaken to achieve, in the long run, a common approach. These efforts had to be oriented at eliminating by-elections, adopted for the first direct elections, for filling a vacant seat. By-elections were too expensive, it was argued, and would unnecessarily increase the frequency of elections in the Member States. The filling of vacant seats by substitutes was also not retained. All commentators were of the opinion that the best basis for a common approach on this question was the one on which the next non-elected candidate on the list filled the vacant seat. This approach would also be acceptable in Belgium, it was said, as such a system is already in use there in local elections.

### *Closing Remarks*

The questions raised in the questionnaire relating to a uniform procedure for direct elections to the European Parliament are, at a first glance, all of a very technical nature. Nevertheless, many have far-reaching political implications.

It must be remembered that the electoral laws of the different Member States evolved over many years in response to the particular needs of the Member States in question. In this respect, it should be recalled that one of the underlying thoughts in the mind of many commentators was precisely the fact that it would not be wise for the European Parliament to push ahead too fast, under a uniform procedure for direct elections, in seeking to harmonize the differing national rules. This is an important consideration. Trying to precipitate matters might even put into question *l'acquis* of these last years on the European level, i.e., the direct elections themselves.

There could indeed be advantages in the long run if, apart from the fact that future direct elections should be held according to some system of proportional representation (not necessarily identical in all areas), a policy of *petits pas* were to be followed<sup>26</sup>. However, such an approach should not content itself with just waiting until common approaches emerge. On the contrary, under such an approach, an assessment should be made of whether, and at what stage, identical procedural rules could be introduced and applied in all the Member States for each element of the electoral law, starting from the lowest possible common denominator. These elements could then progressively be added to those for which a common approach is possible among the Member States in readiness for the 1984 direct elections.

<sup>26</sup> See also, Chapter 1.2., *supra*, pp. 18-19.



*David A. Brew*

5. OPTIONS FOR A UNIFORM VOTING SYSTEM





The purpose of the present chapter is to examine the sort of results in terms of seats per party which might be produced in the Member States of the Nine under different systems of voting and to go on to set out the type of uniform system which could be adopted at some stage in the future. We saw earlier how the different countries reacted to the need to legislate to provide for the first direct elections to the European Parliament. One of the crucial factors affecting that reaction will no doubt have been each party's assessment of its likely performance under different 'operating conditions'. As well as assisting in the examination of possible options for a uniform system of voting, the examples we introduce below may cast some light on that assessment.

## 5.1. POSSIBLE RESULTS OF DIFFERENT VOTING SYSTEMS

The following results were prepared on the basis of computer calculations using a data set consisting of the results of a given general election held in each Member State of the Community. The latest election included took place in early 1978. While more recent elections might have been used, they would not have been any more valid from an illustrative point of view. Voting figures were aggregated to the level of the appropriate constituencies and calculations were then carried out for each system.

We considered at some length whether results might be simulated for plurality and majority systems. This would involve dividing each country of the Nine into the appropriate number of single-member constituencies, in a similar manner to the approach adopted

by Rattinger, Zängle & Zintl in their simulation study<sup>1</sup>. In the absence of any administrative units which would adequately serve our purpose, we concluded that the drawing of constituency boundaries would be so arbitrary as to make sensible comparison with other systems virtually impossible. Results for a plurality system are consequently included only for the United Kingdom, where constituency boundaries had already been established.

Among the different systems of proportional representation, we have included results for the following: d'Hondt and Hagenbach-Bischoff (identical), modified highest average, St Lagüe, Modified St Lagüe and highest remainder with both the natural and the Droop quota. In the absence of the appropriate data on preferences among different parties, it was not possible to simulate an STV election, except in the case of Ireland. Because of its ability to allocate more seats than are available, it was felt that the Imperiali system as such was a non-starter. Nevertheless, results for that system are given in the case of Italy. In all cases, as far as possible, results have been given for the system adopted by each Member State for the first direct elections.

As far as constituencies are concerned, where regional constituencies have been the subject of serious discussion or have been adopted for the first election, those boundaries have been adopted for the study. Results have additionally been given for each country taken as a whole. Where countries have decided on a single national constituency, an attempt has generally been made to form regional constituencies on the basis of administrative units already used for electoral or other purposes. The reader is reminded that where mixed systems involve a national calculation which takes account of seats already allocated at a lower level, the distribution of seats to parties will correspond exactly to the results we give for a single national constituency.

Apart from the results obtained on the basis of the voting figures for a given general election in each country, an attempt has also been made to give some idea of what a simultaneous election in the nine

<sup>1</sup> Rattinger, H., Zängle, M. & Zintl, R., 'Mandatsverteilungen im Europäischen Parlament nach der Direktwahl: Eine Simulationsstudie', *Ordo Politicus*, Bd. 17, (Berlin (Duncker & Humblot); 1979). See also: 'Distribution of Seats in the European Parliament after Direct Elections: A Simulation Study', *European Journal of Political Research*, Vol. 5, no. 3 (September, 1977), pp. 201-218.

countries might produce under different electoral systems. For this purpose, one of the Eurobarometer opinion polls conducted on behalf of the Commission of the European Communities in the Member States has been applied to the national election results. The poll taken was that conducted between 19 April and 15 May 1977<sup>2</sup>. While the size of the samples taken made it hazardous to disaggregate the results of the poll itself to the level of regional or indeed single-member constituencies, a simulation was nevertheless conducted at that level by assuming the same distribution of party support throughout the country as was the case in the last national election. Thus, the national election results were transformed by applying a national swing calculated from the Eurobarometer. While this approach may be criticised for its assumption of a standard national swing, we hope that our intention of illustrating the effects of different systems has been achieved. The figures given below are not intended to present an accurate statement of the hypothetical results of direct elections held in the spring of 1977.

Subsequent to the first direct elections in June 1979 it became possible to make additional calculations for each country on the basis of the votes cast in those elections. We therefore prepared a further set of tables designed to illustrate the effects of applying different voting systems to the voting patterns actually witnessed at the time. These latter tables can be found in Appendix III. The constituencies employed do not correspond in every case to those used in the simulation exercise described above, since they are based on actual experience and since published results may not always have lent themselves to disaggregation. Nevertheless, they should serve to inform the interested reader of the possible effects of introducing an alternative voting system, always bearing in mind that alternative systems may well induce different voting patterns.

<sup>2</sup> Rabier, J. R., *Eurobarometer No. 7*, Commission of the European Communities, July 1977. Data on magnetic tape as SPSS system file provided by Belgian Archives for the Social Sciences (BASS), Louvain-la-Neuve.

TABLE 1

BELGIUM: 24 seats

*National Election/Eurobarometer*

	RW	VU	PCB/KPB	PL-PRLW	FDf	BSP	PSB	PVV	PSC	CVP
SINGLE NATIONAL CONSTITUENCY										
D'Hondt & Hagenbach-Bischoff	—	3/2	—	2/1	1/1	3/3	4/5	2/1	2/2	7/9
Modified Highest Average	—	3/2	—	2/1	1/1	3/3	4/5	2/1	2/2	7/9
Modified St. Lagüe	1/-	3/2	—	2/1	1/1	3/3	3/5	2/2	2/2	7/8
St. Lagüe	1/1	2/2	1/1	2/1	1/1	3/3	3/4	2/2	2/2	7/7
Highest Remainder (Droop Quota)	1/-	2/2	1/-	2/1	1/1	3/3	3/5	2/2	2/2	7/8
Highest Remainder (Natural Quota)	1/-	3/2	1/1	2/1	1/1	3/3	3/4	2/2	2/2	6/8
TWO CONSTITUENCIES										
<i>(Flanders + Dutch lists; Wallonia + French lists)</i>										
D'Hondt & Hagenbach-Bischoff	1/-	2/1	—	2/1	1/1	3/3	4/6	2/1	3/3	6/8
Modified Highest Average	1/-	2/1	—	2/1	1/1	3/3	4/6	2/1	3/3	6/8
Modified St. Lagüe	1/-	2/2	—	2/1	1/1	3/3	4/6	2/1	3/3	6/7
St. Lagüe	1/1	2/2	—	2/1	1/1	3/3	4/6	2/1	3/2	6/7
Highest Remainder (Droop Quota)	1/1	2/1	—	2/1	1/1	3/3	4/6	2/1	3/2	6/8
Highest Remainder (Natural Quota)	1/1	2/2	-/1	2/1	1/1	3/3	4/5	2/1	3/2	6/7

### THREE CONSTITUENCIES

#### (Hal-Vilvoorde with Flanders)

D'Hondt & Hagenbach-Bischoff	1 <del>+</del>	2/1	—	2/1	2/1	3/3	4/7	2/1	2/2	6/8
Modified Highest Average	1/1	2/1	—	2/1	2/1	3/3	4/6	2/1	2/2	6/8
Modified St. Lagüe	1/1	2/1	—	2/1	2/1	3/3	4/6	2/2	2/2	6/7
St. Lagüe	1/1	2/1	—	2/1	1/1	3/3	5/6	2/2	2/2	6/7
Highest Remainder (Droop Quota)	1/1	2/1	—	2/1	1/1	3/3	5/6	2/2	2/2	6/7
Highest Remainder (Natural Quota)	1/1	2/1	1 <del>-</del>	2/1	1/1	3/3	4/6	2/2	2/2	6/7

#### (Hal-Vilvoorde with Brussels)

D'Hondt & Hagenbach-Bischoff	1 <del>-</del>	2/1	—	2/1	2/1	3/2	4/7	1/1	2/2	7/9
Modified Highest Average	1 <del>-</del>	2/1	—	2/1	2/1	3/2	4/7	1/1	2/2	7/9
Modified St. Lagüe	1/1	2/1	—	2/1	2/1	2/3	4/6	2/1	2/2	7/8
St. Lagüe	1/1	2/1	—	2/1	1/1	2/3	5/6	2/1	2/2	7/8
Highest Remainder (Droop Quota)	1/1	2/1	—	2/1	1/1	3/3	5/6	2/1	2/2	6/8
Highest Remainder (Natural Quota)	1/1	2/1	1 <del>-</del>	2/3	1/1	3/3	4/6	2/1	2/2	6/8

---

RW	Rassemblement Wallon
VU	Volkswijk
PCB/KPB	Parti Communiste Belge / Kommunistische Partij van België
PL-PRLW	Parti Libéral - Parti de la Réforme et de la Liberté en Wallonie
DFD	Front Démocratique des Francophones
BSP	Belgische Socialistische Partij
PSB	Parti Socialiste Belge
PVV	Partij voor Vrijheid en Vooruitgang
PSC	Parti Social-Chrétien
CVP	Christelijke Volkspartij

### 5.1.1. BELGIUM: ELECTION TO THE CHAMBRE DES REPRÉSENTANTS APRIL 1977

We have based our division of Belgium into constituencies on that adopted by Philippart in his simulation exercise<sup>3</sup>. Not surprisingly, our own results for the d'Hondt system based on the 1977 election figures correspond to his. We have, however, performed the additional calculations necessary to produce the results for other systems of proportional representation as well as transforming the figures on the basis of the Eurobarometer. The transformation applied in the case of Belgium was performed in such a way as to take full account of lists confined to one or other language community. The two constituencies in Table 1 correspond to the Dutch and French speaking electoral colleges while the three constituencies involve taking Brussels as a constituency in its own right, whether with or without the Hal-Vilvoorde area.

### 5.1.2. DENMARK: ELECTION TO THE FOLKETING, FEBRUARY 1977

The simulation assumes that the election would be contested by the twelve parties mentioned. If this were the case, whatever the system, Danmarks Retsforbund and the Pensionistenpartiet would gain no seats at all.

Apart from the results for Denmark as a whole (excluding Greenland and the Faroes), results are given for systems using three constituencies without any national aggregation. The three constituencies are the three areas in use in national elections: Copenhagen (two seats), the Islands (seven seats) and Jutland (six seats).

Of particular interest is the advantage given to the single large party – the Social Democrats – by the d'Hondt system (used in the first direct election) as compared, for example, to the Modified St. Lagüe system used in national elections.

<sup>3</sup> Phillipart, A., *Exercice de simulation sur les élections des neuf pays de la Communauté Économique Européenne au suffrage universel: Belgique*, Institut Belge de Science Politique, Bruxelles, 1977 (Computer Printout).

TABLE 2

DENMARK: 15 seats

*National Election/Eurobarometer*

	A	B	C	F	K	M	Q	V	Y	Z
<b>SINGLE NATIONAL CONSTITUENCY</b>										
D'Hondt & Hagenbach-Bischoff	8/9	—	1/1	-1/1	—	1/1	—	2/2	—	3/1
Modified Highest Average	6/8	—	2/1	1/1	—	1/1	—	2/2	—	3/2
Modified St. Lagüe	6/8	—	2/1	1/1	—	1/1	—	2/2	—	3/2
St. Lagüe	5/7	1/-	1/1	1/1	1/-	1/1	1/-	2/2	-1/1	2/2
Highest Remainder (Droop Quota)	6/7	1/-	1/1	1/1	1/1	1/1	—	2/2	-1/1	2/1
Highest Remainder (Natural Quota)	6/7	1/-	1/1	1/1	1/1	1/1	—	2/2	-1/1	2/1
<b>THREE CONSTITUENCIES</b>										
D'Hondt & Hagenbach-Bischoff	10/11	—	1/-	—	—	1/-	—	2/2	—	2/2
Modified Highest Average	8/9	—	1/1	—	—	—	—	2/3	—	3/2
Modified St. Lagüe	8/9	—	1/1	—	—	1/-	—	2/3	—	3/2
St. Lagüe	8/9	—	2/2	—	—	1/-	—	2/2	—	2/2
Highest Remainder (Droop Quota)	7/9	—	2/2	—	—	2/-	—	2/2	—	2/2
Highest Remainder (National Quota)	6/7	—	2/2	-2/2	—	2/-	—	2/2	—	3/2

**DANISH PARTIES**

A Socialdemokratiet  
 B Det radikale Venstre  
 C Det konservative Folkeparti  
 E Danmarks Retsforbund

F Socialistisk Folkeparti  
 K Danmarks kommunistiske Parti  
 M Centrum Demokraterne  
 P Pensionistenpartiet

Q Kristeligt Folkeparti  
 V Venstre, Danmarks Liberale Parti  
 Y Venstresocialisterne  
 Z Fremskridtspartiet

E: Danmarks Retsforbund }  
 P: Pensionistenpartiet } No seats under any system



### 5.1.3. FEDERAL REPUBLIC OF GERMANY: ELECTION TO THE BUNDESTAG, OCTOBER 1976

In the case of Germany, each *Land* has been taken separately for the purpose of regional constituencies. Since the number of members to be elected in Hamburg, Bremen and the Saarland is particularly low (effectively a plurality election in Bremen), opting for regional constituencies would probably involve amalgamating certain *Länder*. Nordrhein-Westfalen could also be split into two. The constituencies used in the simulation, however, are as follows: Schleswig-Holstein (3 seats), Hamburg (2 seats), Niedersachsen (10 seats), Bremen (1 seat), Nordrhein-Westfalen (23 seats), Hessen (7 seats), Rheinland-Pfalz (5 seats), Baden-Württemberg (11 seats), Bayern (14 seats), Saarland (2 seats).

It is clear that different systems would make little difference to the result, except for the FDP in regional constituencies, which would be considerably disadvantaged by highest average methods. It is also clear that the 5% threshold could be lowered without any effect, given present voting behaviour.

### 5.1.4. FRANCE: ELECTION TO THE ASSEMBLÉE NATIONALE, MARCH 1978

The simulation assumes, first of all, that the UDF would continue as an alliance for direct elections and that a common list would be presented. While the MRG figures as a separate list, in most constituencies in the national elections there is an effective electoral alliance between the PS and the MRG. Figures have therefore been included to indicate the effect of the PS and MRG presenting a common list. Given the application of a 5% threshold clause in the first direct election in France, one table presents the effects of different systems in a single national constituency with that 5% threshold clause. Figures for voting in the first round have been applied in all cases.

Simulating results for regional constituencies is of questionable value in the case of France, given the widespread opposition to regional entities. In that respect, the formation of around ten regional constituencies could not have been attempted as in the case of Ger-

TABLE 3

## GERMANY: 78 seats

*National Election/Eurobarometer*

	CDU*	CSU*	SPD	FDP	DKP	NPD
SINGLE NATIONAL CONSTITUENCY						
D'Hondt & H.-B.	30/31	8/9	34/32	6/6	—	—
Modified Highest	30/31	8/9	34/32	6/6	—	—
Average	30/30 (31)	8/9	34/32	6/6	—	—/1
Modified St. Lagüe	30/30 (31)	8/9	34/32	6/6	—	—/1
St. Lagüe	30/30 (31)	8/9	34/32	6/6	—	—/1
Highest Remainder (Droop Quota)	30/30 (31)	8/9	34/32	6/6	—	—/1
Highest Remainder (Natural Quota)	30/30 (31)	8/9	(34) 33/32	6/6	—	1/1
TEN LÄNDER CONSTITUENCIES						
D'Hondt & H.-B.	31/33	9/9	36/34	2/2	—	—
Modified Highest	31/33	9/9	36/34	2/2	—	—
Average	30/33	8/9	35/31	5/5	—	—
Modified St. Lagüe	30/32	8/9	34/31	6/6	—	—
St. Lagüe	30/32	9/9	34/31	5/6	—	—
Highest Remainder (Droop Quota)	30/32	8/9	34/31	6/6	—	—
Highest Remainder (Natural Quota)	30/32	8/9	34/31	6/6	—	—

\* Result not altered by combined/separate CDU/CSU lists.

N. B. — A 5% threshold would exclude the NPD (as would also a stipulation that a party must achieve at least one quota to participate in the distribution of "remaining seats"). Figures in brackets indicate the party which would win the seat.

## GERMAN PARTIES

CDU	Christlich-Demokratische Union Deutschlands
CSU	Christlich-Soziale Union
SPD	Sozialdemokratische Partei Deutschlands
FDP	Freie Demokratische Partei
DKP	Deutsche Kommunistische Partei
NPD	Nationaldemokratische Partei Deutschlands

TABLE 4

FRANCE: 81 seats

*National Election/Eurobarometer*

	RPR	UDF	MRG	PS	PC	Ecol.	Alliance MRG + PS	
TWENTY-TWO REGIONAL CONSTITUENCIES								
D'Hondt & Hagenbach-Bischoff	22/7	18/19	—	22/49	19/6	-/1	Gain 2 from UDF/ 1 from PC/	3/-
Modified Highest Average	22/7	18/19	—	22/49	19/6	-/1	Gain 2 from UDF/ 1 from PC/	3/-
Modified St. Lagüe	21/13	19/20	—	22/41	19/6	-/1	Gain 1 from UDF/ 1 from PC/	2/-
St. Lagüe	20/16	20/21	—	21/36	19/7	1/1	Gain 1 from UDF/ 1 from PC/	2/-
Highest Remainder (Droop Quota)	20/13	20/21	—	21/40	19/6	1/1	Gain 1 from UDF/1 from UDF 1 from PC/	2/1
Highest Remainder (Natural Quota)	20/16	20/22	—	21/35	19/7	1/1	Gain 1 from UDF/1 from UDF 1 from PC/	2/1

## FRENCH PARTIES

RPR	Rassemblement pour la République
UDF	Union pour la Démocratie Française
MRG	Mouvement des Radicaux de Gauche
PC	Parti Communiste
Ecol.	Ecologistes

TABLE 4

FRANCE: 81 seats

*National Election/Eurobarometer*

	RPR	UDF	MRG	PS	PC	Ecol.	Alliance MRG + PS
<b>SINGLE NATIONAL CONSTITUENCY (No threshold)</b>							
D'Hondt & Hagenbach-Bischoff	21/13	18/19	1/1	21/37	19/10	1/1	Gain from RPR 1/1
Modified Highest Average	21/13	18/19	1/1	21/37	19/10	1/1	Gain from RPR 1/1
Modified St. Lagüe	20/13	18/19	2/1	20/37	19/10	2/1	No change —
St. Lagüe	20/13	18/19	2/1	20/37	19/10	2/1	No change —
Highest Remainder (Droop Quota)	20/13	18/19	2/1	20/37	19/10	2/1	No change —
Highest Remainder (Natural Quota)	20/13	18/19	2/1	20/36	19/10	2/2	Lose to RPR 1/-
<b>SINGLE NATIONAL CONSTITUENCY (5% threshold)</b>							
D'Hondt & Hagenbach-Bischoff	21/13	19/19	—	22/39	19/10	—	Gain from UDF 1/-
Modified Highest Average	21/13	19/19	—	22/39	19/10	—	Gain from UDF 1/-
Modified St. Lagüe	21/13	19/19	—	22/38	19/11	—	Gain from UDF/PC 1/1
St. Lagüe	21/13	19/19	—	22/38	19/11	—	Gain from UDF/PC 1/1
Highest Remainder (Droop Quota)	21/13	19/19	—	22/38	19/11	—	Gain from UDF/PC 1/1
Highest Remainder (Natural Quota)	21/13	19/19	—	22/38	19/11	—	Gain from UDF/PC 1/1

many, Italy and the United Kingdom. The only administrative units larger than the *départements* in the case of France were the economic planning regions – 21 in number. While not wishing to indicate that the use of such regions as constituencies in France would be a viable proposition, we nevertheless felt that such an exercise would provide a valuable illustration of the effects of using very small constituencies with proportional representation. An additional constituency was created for the overseas departments and territories.

As compared to the national election results, the Eurobarometer indicated a swing away from the RPR and from the PC towards the socialists. Though we have made no attempt to “correct” the Eurobarometer results, the swing away from the Communists is almost certainly due in part to the reluctance of respondents to indicate that they would vote Communist. It can clearly be seen how the distortion inherent in systems of PR can be exaggerated by the use of small constituencies. With a highest average method, the largest party manages to secure a bonus of twelve seats over and above its proportional share of the national vote. Where the parties are of roughly equal strength, however, as in the case of the national election results, there is little difference in the use of small constituencies rather than a single national one.

The constituencies are as follows: Bretagne (4 seats), Pays de la Loire (4 seats), Charentes (3 seats), Aquitaine (4 seats), Midi-Pyrénées (4 seats), Limousin (2 seats), Centre (3 seats), Basse-Normandie (2 seats), Haute-Normandie (2 seats), Région Parisienne (13 seats), Bourgogne (2 seats), Auvergne (2 seats), Languedoc (3 seats), Provence-Côte d’Azur/Corse (6 seats), Rhône-Alpes (7 seats), Franche-Comté (2 seats), Alsace (2 seats), Lorraine (3 seats), Champagne-Ardenne (2 seats), Picardie (3 seats), Nord-Pas de Calais (6 seats), DOM-TOM (2 seats).

#### 5.1.5. IRELAND: ELECTION TO THE DÁIL, JUNE 1977

The four constituencies employed are those used in the first direct election: Dublin (four seats), Connacht-Ulster (three seats), Leinster (three seats) and Munster (five seats).

It is interesting to note that while STV as such would not alter the results compared with any highest average system, the largest

TABLE 5

## IRELAND: 15 seats

*National Election/Eurobarometer*

	FF	FG	LAB
<b>SINGLE NATIONAL CONSTITUENCY</b>			
D'Hondt & Hagenbach-Bischoff	8/8	5/5	2/2
Modified Highest Average	8/8	5/5	2/2
Modified St. Lagüe	8/7	5/5	2/3
St. Lagüe	8/7	5/5	2/3
Highest Remainder (Droop Quota)	8/8	5/5	2/2
Highest Remainder (Natural Quota)	8/7	5/5	2/3
S.T.V.	8/8	5/5	2/2
<b>FOUR CONSTITUENCIES</b>			
D'Hondt & Hagenbach-Bischoff	9/9	5/4	1/2
Modified Highest Average	9/9	5/4	1/2
Modified St. Lagüe	9/9	5/4	1/2
St. Lagüe	9/8	4/4	2/3
Highest Remainder (Droop Quota)	9/9	4/4	2/2
Highest Remainder (Natural Quota)	9/8	4/4	2/3
S.T.V.	9/9	5/4	1/2

**IRISH PARTIES**

FF Fianna Fáil  
 FG Fine Gael  
 LAB Labour Party

party – Fianna Fáil – gains an extra seat through the use of small district magnitudes as opposed to a single national constituency.

#### 5.1.6. ITALY: ELECTION TO THE CAMERA DEI DEPUTATI, JUNE 1976

Although combinations of twenty constituencies and three constituencies were also discussed in the case of Italy, for the purpose of this exercise we used two different sets of pluri-regional constituencies thought at the time the simulation was undertaken to be the most likely combination to be adopted<sup>4</sup>. The constituencies are as follows:

##### i) Nine constituencies:

- 1) Valle d'Aosta, Piemonte, Liguria, Sardegna (12 seats);
- 2) Lombardia (13 seats);
- 3) Veneto, Trentino A. A., Friuli V. G. (9 seats);
- 4) Emilia-Romagna, Marche (8 seats);
- 5) Toscana, Umbria (6 seats);
- 6) Lazio (7 seats);
- 7) Abruzzi, Molise, Puglia (8 seats);
- 8) Campania, Basilicata (8 seats);
- 9) Sicilia, Calabria (10 seats).

##### ii) Eight constituencies:

- 1) Valle d'Aosta, Piemonte, Liguria (10 seats);
- 2) Lombardia (13 seats);
- 3) Veneto, Trentino A. A., Friuli V. G. (10 seats);
- 4) Emilia-Romagna, Toscana (11 seats);
- 5) Marche, Umbria, Lazio (9 seats);
- 6) Abruzzi, Molise, Campania (10 seats);
- 7) Puglia, Basilicata, Calabria (9 seats);
- 8) Sicilia, Sardegna (9 seats).

<sup>4</sup> The five Italian constituencies eventually adopted were:

- 1) Valle d'Aosta, Piemonte, Liguria, Lombardia (22 seats);
- 2) Veneto, Trentino A. A., Friuli V. G., Emilia-Romagna (15 seats);
- 3) Toscana, Marche, Umbria, Lazio (16 seats);
- 4) Abruzzi, Molise, Campania, Puglia, Basilicata, Calabria (19 seats);
- 5) Sicilia, Sardegna (9 seats).

TABLE 6

ITALY: 81 seats

*National Election/Eurobarometer*

	DC	PCI	PSI	PSDI	PRI	PLI	MSI	DP	Rad.*
<b>SINGLE NATIONAL CONSTITUENCY</b>									
D'Hondt & Hagenbach-Bischoff	33/31	28/23	8/16	3/3	2/2	1/1	5/4	1/1	—
Modified Highest Average	33/31	28/23	8/16	3/3	2/2	1/1	5/4	1/1	—
Modified St. Lagüe	32/30	27/22	8/15	3/3	3/3	1/2	5/4	1/1	1/1
St. Lagüe	32/30	27/22	8/15	3/3	3/3	1/2	5/4	1/1	1/1
Highest Remainder (Droop Quota)	32/30	27/22	8/15	3/3	3/3	1/2	5/4	1/1	1/1
Highest Remainder (Natural Quota)	32/30	27/22	8/15	3/3	3/3	1/2	5/4	1/1	1/1
Highest Remainder (Imperiali Quota)	33/30	28/23	8/16	2/3	2/2	1/2	5/4	1/1	1/1
<b>NINE PLURI-REGIONAL CONSTITUENCIES</b>									
D'Hondt & Hagenbach-Bischoff	41/37	33/26	4/16	—	—	—	3/2	—	—
Modified Highest Average	40/37	31/26	7/16	—	—	—	3/2	—	—
Modified St. Lagüe	36/35	31/26	10/17	—	—	—	4/3	—	—
St. Lagüe	34/31	30/25	10/16	1/3	1/2	—	5/4	—	—
Highest Remainder (Droop Quota)	36/32	29/26	9/15	2/3	1/1	—	4/4	—	—
Highest Remainder (Natural Quota)	31/31	29/23	10/16	3/5	2/2	—	6/4	—	—
Highest Remainder (Imperiali Quota)	38/35	31/26	8/14	1/1	-1/1	—	3/4	—	—



TABLE 6

ITALY: 81 seats

*National Election/Eurobarometer*

	DC	PCI	PSI	PSDI	PRI	PLI	MSI	DP	Rad.*
EIGHT PLURI-REGIONAL CONSTITUENCIES									
D'Hondt & Hagenbach-Bischoff	40/36	32/27	7/18	—	—	—	2/-	—	—
Modified Highest Average	39/36	32/27	8/18	—	—	—	2/-	—	—
Modified St. Lagüe	36/37	32/24	9/17	—	—	—	4/3	—	—
St. Lagüe	36/32	30/23	9/17	1/4	-/1	—	5/4	—	—
Highest Remainder (Droop Quota)	34/32	30/24	9/17	2/4	—	—	6/4	—	—
Highest Remainder (Natural Quota)	32/32	28/22	9/17	2/4	2/2	—	8/4	—	—
Highest Remainder (Imperiali Quota)	38/33	31/24	9/17	1/3	—	—	2/4	—	—

\* The Radical Party fails to reach one quota (Natural, Droop or Imperiali).

## ITALIAN PARTIES

DC	Democrazia Cristiana
PCI	Partito Comunista Italiano
PSI	Partito Socialista Italiano
PSDI	Partito Socialdemocratico Italiano
PRI	Partito Repubblicano Italiano
PLI	Partito Liberale Italiano
MSI	Movimento Sociale Italiano
DP	Democrazia Proletaria
Rad.	Partito Radicale

Of particular interest are the results produced by the Imperiali system, which, while not excluding the smaller parties, is nevertheless much closer to the highest average methods than the other highest remainder systems or the St. Lagüe methods. The use of constituencies can be seen to work generally to the advantage of the largest parties.

#### 5.1.7. LUXEMBOURG: ELECTION TO THE CHAMBRE DES DÉPUTÉS, MAY 1974

The location of the major population centres in Luxembourg is such that it is extremely difficult to divide up the country on the basis of current administrative boundaries into two or three roughly equal parts. In spite of its geographic oddity, an attempt was nevertheless made to ascertain the likely effect of dividing the country into two by amalgamating the constituencies used in national elections. Two three-seat constituencies were formed from the Sud and Est and the Centre and Nord. The effect of this reduction in constituency size under highest average systems was to transfer one seat from the Liberals to the Socialists. This can be attributed to the fact that the Socialists have well over double the vote of the Liberals in the Sud.

#### 5.1.8. NETHERLANDS: ELECTION TO THE TWEEDE KAMER, MAY 1977

Figures were used for all Dutch parties represented in the Tweede Kamer, which also corresponded to the data available from the Eurobarometer. The prospect of a party which failed to get 0.67% of the votes in national elections securing sufficient votes to obtain a seat in the European Parliament seems rather remote.

While it would have been possible to construct a number of multi-member constituencies for the Netherlands, neither the provinces, nor the *kieskringen* were adequate on their own and there was no obvious objective method of amalgamating them. Since, unlike Luxembourg, there was no serious discussion in the Netherlands of having anything less than a national constituency, an exercise in

TABLE 7

## LUXEMBOURG: 6 seats

*National Election/Eurobarometer*

	PC	PCS	PSD	POS	PD
SINGLE NATIONAL CONSTITUENCY					
D'Hondt & Hagenbach-Bischoff	—	2/2	—	2/3	2/1
Modified Highest Average	—	2/2	—	2/3	2/1
Modified St. Lagüe	1/—	2/2	—	2/3	1/1
St. Lagüe	1/—	2/2	—	2/3	1/1
Highest Remainder (Droop Quota)	1/—	2/2	—	2/3	1/1
Highest Remainder (Natural Quota)	1/—	2/2	—	2/3	1/1
TWO THREE-MEMBER CONSTITUENCIES					
D'Hondt & Hagenbach-Bischoff	—	2/2	—	3/3	1/1
Modified Highest Average	—	2/2	—	3/3	1/1
Modified St. Lagüe	1/—	2/2	—	2/3	1/1
St. Lagüe	1/—	2/2	—	2/3	1/1
Highest Remainder (Droop Quota)	1/—	2/2	—	2/3	1/1
Highest Remainder (Natural Quota)	1/—	2/2	—	2/3	1/1

## LUXEMBOURG PARTIES

PC	Parti Communiste
PCS	Parti Chrétien Social
PSD	Parti Social Démocratique
POS	Parti Ouvrier-Socialiste
PD	Parti Démocratique

TABLE 8

NETHERLANDS: 25 seats

*National Election/Eurobarometer*

	CDA	PvdA	VVD	PPR	CPN	D'66	SGP	PSP
SINGLE NATIONAL CONSTITUENCY								
D'Hondt & Hagenbach-Bischoff	9/9	10/10	5/5	—	—	1/1	—	—
Modified Highest Average	9/9	9/10	5/5	—	—	2/1	—	—
Modified St. Lagüe	8/8	9/10	5/5	-1/1	—	2/1	1/-	—
St. Lagüe	8/8	9/9	5/5	-1/1	—	2/1	1/-	-1/1
Highest Remainder (Droop Quota)	8/8	9/10	5/5	-1/1	1/-	1/1	1/-	—
Highest Remainder (Natural Quota)	8/8	9/9	5/5	-1/1	1/-	1/1	1/-	-1/1

A threshold of one quota would exclude CPN & SGP (Last Election)  
PPR, D'66, PSP (Eurobarometer)

## DUTCH PARTIES

CDA	Christen Democratisch Appel
PvdA	Partij van de Arbeid
VVD	Volkspartij voor Vrijheid en Democratie
PPR	Politieke Partij Radikalen
CPN	Communistische Partij van Nederland
D'66	Democraten '66
DS'70	Democratisch Socialisten '70
SGP	Staatkundig Gereformeerde Partij
BP	Boeren Partij
GPV	Gereformeerd Politiek Verbond
PSP	Pacifistisch Socialistische Partij

TABLE 9

## UNITED KINGDOM

i) GREAT BRITAIN: 78 seats

*National Election/Eurobarometer*

	CON	LAB	LIB	SNP	PC		CON	LAB	LIB	SNP	PC
SINGLE NATIONAL CONSTITUENCY						ELEVEN REGIONAL CONSTITUENCIES					
D'Hondt & H.-B.	29/41	32/27	15/8	2/3	—	D'Hondt & H.-B.	31/42	33/28	11/5	3/3	—
Modified Highest Average	29/41	32/27	15/8	2/3	—	Modified Highest Average	31/42	33/28	11/5	3/3	—
Modified St. Lagüe	29/40	32/27	15/8	2/3	—	Modified St. Lagüe	28/42	32/27	15/6	3/3	—
St. Lagüe	29/40	32/27	15/8	2/2	-1	St. Lagüe	28/41	32/27	16/7	3/3	—
Highest Remainder (Droop Quota)	29/40	32/27	15/8	2/3	—	Highest Remainder (Droop Quota)	29/42	32/27	14/6	2/3	—
Highest Remainder (Natural Quota)	29/40	31/26	15/8	2/2	1/1	Highest Remainder (Natural Quota)	27/40	32/27	17/8	2/3	—
THREE NATIONAL CONSTITUENCIES						SEVENTY-EIGHT SINGLE-MEMBER CONSTITUENCIES					
D'Hondt & H.-B.	29/41	32/26	14/8	3/3	—	Simple plurality:		Liberals	No Seats		
Modified Highest Average	29/41	32/26	14/8	3/3	—		Plaid Cymru				
Modified St. Lagüe	29/40	32/27	14/8	3/3	—		Conservative	34/63			
St. Lagüe	29/40	32/27	15/8	2/3	—		Labour	41/14			
Highest Remainder (Droop Quota)	29/41	32/26	14/8	3/3	—		SNP	3/1			
Highest Remainder (Natural Quota)	29/40	32/27	15/8	2/3	—						

ii) NORTHERN IRELAND: 3 seats

National Election/Eurobarometer

	UUU	SDLP	All.
D'Hondt & Hagenbach-Bischoff	2/3	1/-	—
Modified Highest Average	2/3	1/-	—
Modified St. Lagüe	2/3	1/-	—
St. Lagüe	2/2	1/-	-/1
Highest Remainder (Droop Quota)	2/3	1/-	—
Highest Remainder (Natural Quota)	2/2	1/-	-/1

iii) UNITED KINGDOM: 81 seats

National Election/Eurobarometer

	CON	LAB	LIB	SNP	PC	UUU	SNP	All.
D'Hondt & Hagenbach-Bischoff	30/42	33/28	15/8	2/2	—	1/1	—	—
Modified Highest Average	30/41	33/28	15/9	2/2	—	1/1	—	—
Modified St. Lagüe	29/41	32/27	15/9	3/3	—	2/1	—	—
St. Lagüe	29/41	32/27	15/9	3/3	1/-	1/1	—	—
Highest Remainder (Droop Quota)	29/41	32/27	15/9	2/3	1/-	1/1	1/-	—
Highest Remainder (Natural Quota)	29/40	32/27	15/9	2/3	1/1	1/1	1/-	—

UNITED KINGDOM PARTIES

CON Conservative Party  
 LAB Labour Party  
 LIB Liberal Party  
 SNP Scottish National Party

PC Plaid Cymru  
 UUU United Ulster Unionists (Official & Democratic)  
 SDLP Social Democratic & Labour Party  
 All. Alliance Party

drawing somewhat arbitrary boundaries was considered to be superfluous. It should be noted that a threshold of one quota (i.e. 4%) would variously exclude the smaller parties, effectively leaving only the CDA, the PvdA, the VVD and possibly D'66. The use of smaller constituencies would have the same effect, confining competition to the three major groupings.

#### 5.1.9. UNITED KINGDOM: ELECTION TO THE HOUSE OF COMMONS, OCTOBER 1974

The single-member constituencies used are those proposed in the reports produced by the Boundary Commissioners for England, Wales and Scotland in May 1978. Any attempt to divide Northern Ireland into three constituencies would give three seats to the Ulster Unionists.

The regional constituencies correspond to those put forward by the British Government in the European Assembly Elections Bill of 24 June 1977: Scotland (8 seats), Wales (4 seats), North England (5 seats), North West England (9 seats), Yorkshire (7 seats), West Midlands (7 seats), East Midlands (5 seats), East Anglia (3 seats), South West England (6 seats), South East England (14 seats) and Greater London (10 seats).

The three-nation results treat England as a 66-member constituency.

The discrepancy between a plurality system and any of the proportional representation systems appears clearly in the result. The exaggeration of the swing to the Conservatives indicated in the Eurobarometer is also to be noted. It is interesting that the position of Plaid Cymru around the threshold means that its best chances lie in a British or UK aggregation rather than in a Welsh constituency.

## 5.2. THE CHOICE OF A UNIFORM VOTING SYSTEM

We set out at the beginning of this report to discover, in the context of an electoral system for direct elections to the European Parliament, what sort of voting system might be adopted as part of the uniform procedure. We have described the national electoral systems of the nine Member States and of Greece, Spain, and Portugal; we have examined the theoretical possibilities; and we have discussed the attitudes of the political forces in each of the countries. We have just set out examples of what might be expected from different systems where illustration was required. With all this in mind, let us examine the possible solutions available to us.

The starkest contrast we have seen is that between plurality and majority systems on the one hand and systems of proportional representation on the other. Seven out of the nine Member States use some form of proportional representation in their national elections. In general, this can be traced historically in the progression from 'one man, one vote' to the notion of 'one man, one vote, one value'. Arguments in favour of the latter notion are based on the somewhat abstract idea that justice in electoral terms can be approximated by attempting to give each voter an equal opportunity to influence the form in which he is represented. The elected body should consequently mirror the divisions of opinion among the electorate. Arguments counter to that notion tend to be based on justification of departure from it, rather than questioning the basic notion itself. Such justification, more often than not, is related to the process of government formation and parliamentary stability.

It is argued against absolute proportionality that there is a need to form stable governments which enjoy the support of a parliamen-



tary majority, even though they may not command the support of a majority of the electorate. It is further argued that electors are denied a clear choice of government by post-election manoeuvring between parties which may or may not have been apparent prior to the election. There is a case to be put against these arguments, that minorities also have their rights and that governments should not be able to act contrary to the wishes of the majority of the electorate. While that argument should not go by the board, we are not, for the present, discussing the creation of an assembly which is to act as an electoral chamber for a European government. It is therefore fairly easy to dismiss those arguments against proportionality which relate to government formation.

The other main argument against systems of proportional representation is that which conceives of represented groups in territorial units and would have it that the single-member constituency is the only means of providing a direct link between the voter and *his* Member of the European Parliament. There is little evidence to suggest that the voter who has not cast his vote for the winning candidate feels represented by that candidate or his party. That he may use the candidate from his constituency as his channel for complaint in dealings with central administration is true. Even if that were the type of duty an MEP might be expected to perform, the efficiency of that channel given the size of the constituency is somewhat questionable. Other means of providing such a possibility can be envisaged, and we find this argument for personal contact too weak to justify distortion of the representative function. This is not to say, however, that, within the limits imposed by size, a local base cannot be established for individual candidates, and this is one aspect of voter representation to which we shall return in due course.

In the light of all that has gone before, we are convinced that some form of representation must be envisaged which is more proportional than simple plurality or majority systems, whose effects at the European level would be unduly magnified by the comparatively small numbers of elected members. We find the argument in favour of 'one man, one vote, one value' of considerable attraction and believe that the extent of detraction from it caused by the use of single-member constituencies cannot be sufficiently justified by any of the arguments put forward.

If we go a stage further and adopt the notion of the equality of the European voter as the ideal, using it as a yardstick to judge dif-

ferent voting systems, then we may say that any departure from the ideal should be based on the countervailing advantage of some other course of action. To do so in connection with direct elections immediately calls into question the very basis of seat distribution to the Member States.

We have seen that different countries adopt varying standards in their own electoral systems. They may base themselves on weighting the influence of a voter according to the population of the area where he resides, or on its size in comparison to other areas. How far, we may ask, does the consideration of nationality or the nation state justify departure from the notion of voter equality to which we have alluded? This is not a question which we can hope to answer within the confines of this report. Nevertheless, we feel obliged to point out that in the absence of a re-discussion of the allocation of seats to the Member States, we must work within the constraints already imposed, in the knowledge that the equality of the vote in a uniform system is consequently an aim which cannot be closely approximated.

Before we go on to examine the sort of uniform system which might be adopted within the confines of each Member State, it is useful nevertheless to point out that, even in the absence of a re-discussion of the distribution of seats to Member States, it would be possible to attenuate the disequilibrium in that distribution. We saw in Chapter 2, above, that where a higher level allocation of seats took place, taking account of the seats already allocated at lower level, the higher level system would tend to remove the lower level distortion up to the point where the whole, complex system might be said to correspond to the characteristics of the superposed system. Within some of the Member States such systems are already operated. There is no technical reason why a similar complex system could not be expanded to the European level.

In more concrete terms, the creation of a European pool of 'supplementary seats' could serve to attenuate some, but by no means all, of the distortion in the current seat distribution. Supplementary seats would be allocated to parties taking account of the seats already won and using the total number of votes polled by the party as the basis for allocation. The effect of such a system would be to allocate the supplementary seats to the countries and the parties where the cost of a European Parliament seat in terms of votes cast was the highest. Once allocated to a particular party in a

particular country, the seat could be disposed of to an individual by whatever means were most appropriate to the method of candidate presentation within that country.

It is clear that the benefit from such a pool would go first of all to the Federal Republic of Germany. It is equally clear that Luxembourg would derive no benefit unless the pool were of such magnitude as would make the European Parliament totally unworkable. Thus it can be stated that a pool would not totally approximate voter equality, while departure from absolute proportionality could be justified by the practical necessity of a minimum of representation for the nation state. Moreover, the institution of European supplementary seats would act as a bonus for high turnout. Thus seats could be expected to go to the countries which succeeded in mobilising their voters. While, in order to have 'free competition', this would probably necessitate Belgium's and Luxembourg's abolishing their obligatory voting requirement, it could give an added incentive to vote which might otherwise not be there.

Apart from the purely technical aspects of more closely approximating European voter equality, such a pool might also affect the nature of European party alliances. Should the system of calculation chosen be one of the highest average methods, there would be an advantage to the national parties in having combined lists at the European level. Although such a prospect is not an immediate one, the idea has interesting implications which in the longer term should not be ignored.

In short, then, while we do not propose to discuss the basis of a redistribution of seats to the Member States, nor to recommend the institution of a European pool of supplementary seats, we find that the latter possibility – taken from the example set internally by some Member States – could be envisaged as a means of restoring equilibrium among voters from different states. Given that we have chosen to accept the constraints already imposed, however, we shall now go on to examine how far it is possible and desirable with a uniform procedure to approximate voter equality within the confines of each Member State. In other words, to what extent should the value of a vote in, say, Ireland, in relation to all the other votes in Ireland, be equivalent to the value of a vote in, say, Germany, in relation to all the other votes in Germany?

We have seen that from an analytical point of view, it is possible to distinguish the questions of how to divide seats among the parties

and how to allocate party seats to individuals. While in particular voting systems the two processes may occur simultaneously, it will assist our discussion if we examine the two questions separately. We believe that this approach is justified by the fact that it is already clear that parties will be one of the major actors in elections to the European Parliament and that to examine both aspects together would only lead to confusion.

One of the major factors affecting the degree of proportionality is the number of seats to be allocated. We have referred to this earlier as the 'district magnitude'. It may also be thought of as the size of the constituency, but any notion of this being synonymous with the level at which candidates are nominated should at this point be rigorously avoided.

In order to gain a minimum degree of proportionality, the number of seats to be allocated must be above a minimum level. After all, proportional representation in a single-member constituency is precisely the same as plurality. The larger the number of parties contesting the election, the larger the magnitudes must be in order to secure a reasonable degree of proportionality. While Birke found that, with the exception of Ireland, all systems of proportional representation used districts no smaller than five<sup>5</sup>, Lijphart and Gibberd commented that:

'the five seat district... is a small district, but it is not an extreme case from the empirical point of view: it represents "ordinary PR". When we consider it from the perspective of theoretically possible or desirable district magnitudes, however, it does come close to the lower extreme of the scale. It has often been pointed out that larger districts are required in order to achieve a closer approximation to the ideal of proportionality'<sup>6</sup>.

We are of the opinion that in order to gain a minimum degree of proportionality the minimum district magnitude should be set at the level of five seats. We are conscious that political circumstances will require exceptions to be made to this rule. It is almost inconceivable,

<sup>5</sup> Birke, W., *European Elections by Direct Suffrage: A Comparative Study of the Electoral Systems Used in Western Europe and Their Utility for the Direct Election of a European Parliament*, (Leiden (Sijthoff); 1961), p. 164.

<sup>6</sup> Lijphart, A. & Gibberd, R. W., 'Thresholds and Payoffs in List Systems of Proportional Representation', *European Journal of Political Research*, Vol. 5, no. 3 (September 1977), pp. 219-244, at p. 233.

for example, that Northern Ireland should form part of a constituency with any other part of the United Kingdom, or that West Berlin should likewise form part of the FRG. It is impossible that Greenland should even make use of proportional representation with a single seat. Any derogation from the general provision, however, should be both justifiable and clearly set out. In any case, district magnitude should, in our opinion, never fall below the level of three.

Having concluded that district magnitude should normally be no smaller than five, the question arises as to whether constituency sizes should be larger. While a greater degree of proportionality could be achieved thereby, it would be impossible at the European level for the smallest constituency to be larger than a six-seater. No-one is suggesting that Luxembourg should be merged with Belgium, for example. There does not appear to be a case for attempting to force larger district magnitudes on the Member States.

On the other hand, it could be argued that no district should have more than around five or six seats. The only valid argument we can find to support that particular thesis is that ordinal voting, i.e. numbering of parties, would require constituencies small enough to make counting practicable. The choice of a method of seat attribution which uses categorical voting, i.e. plumping for one party only, not only makes larger constituencies feasible, but introduces greater proportionality in such constituencies than is the case with ordinal voting in small districts. Unless dictated by the choice of an ordinal voting method, therefore, reducing district magnitudes assumes the character of uniformity for the sake of uniformity and cannot seriously be upheld. On balance, we prefer the greater proportionality obtainable through a categorical party ballot with a larger number of seats per district.

The main justification for an ordinal voting system would seem to lie not in the possibility of transferring one's vote from one party to another but in the possibility of transferring one's vote from a candidate of one party to the candidate of another. What this would appear to indicate is that unless we opt for the STV system as such, no maximum limit should apply to the number of seats per district. It is sensible at this point, therefore, to defer the discussion of thresholds and methods of calculation until we have resolved the question of STV or categorical party voting. Since this matter, in turn, is dependent on the requirements in respect of preference voting for individual candidates, let us consider how desirable it is for

the voter to be able to vote for the candidates of more than one party.

It is extremely difficult in the abstract to assess the advantages of allowing the voter to split or transfer his vote between different parties. It would seem that this might be useful either where two parties displayed few differences or where the voter was not adequately catered for by the parties presenting candidates. While the voter may feel himself drawn towards representatives of a particular strand of opinion in one party, he may find that the same sort of strand of opinion is represented better by candidates of a different party rather than the other candidates of the first party. Is it necessary, then, to limit him to a choice among candidates of a single party?

Firstly, one may justifiably maintain that cross-party transfers should not be such as to allow manipulation by a party's opponents of the order in which its candidates are elected. Thus *panachage* on the Luxembourg national election model would be excluded. But this is not the case with ordinal voting. The need for cross-party transfers can probably be attenuated by larger constituencies for candidate presentation. Thus, a voter would find more representatives of a strand of opinion within his party of first choice. Indeed, since the constituency size for candidate presentation cannot exceed the district magnitude (number of seats to be allocated), we are led to the circular argument that 'ordinal voting requires smaller constituencies, smaller constituencies require ability to transfer across parties, and this ability is catered for by ordinal voting', while larger constituencies preclude ordinal voting but make cross-party transfers less necessary. It is clear that a choice must be made between the ability to transfer across parties through ordinal voting and the greater proportionality assured by larger district magnitudes. In view of the importance of party in the eyes of the voter, even in Ireland, and considering the general trend in the Member States of the Nine, we are bound to conclude that the arguments in favour of giving the voter complete freedom of choice are outweighed by the practical advantages of larger district magnitudes than are feasible with STV. Thus, we would say that the voter should be limited, when casting his vote, to the choice of one party only.

We may now return to the precise method of translating party votes into seats in the European Parliament. We have already discussed the characteristics of the different modes of calculation. Some systems favour the larger parties while others make it easier for small

parties to gain representation. The general European trend seems to be toward the d'Hondt highest average system and thereby towards a system which favours the large groupings. One of the major arguments in favour of highest average systems is that they act as a disincentive to fractionalisation. This argument does have a certain attraction, though the combination of a comparatively small number of seats for distribution and an already established party system makes the need for such an added disincentive at the European level somewhat questionable.

We saw that all systems of proportional representation would allocate one seat to each full quota: where they differed was in their treatment of the remainders. For this purpose, the d'Hondt method may be thought of as the Hagenbach-Bischoff method, since the result is precisely the same. Now, the highest remainder method operates by rounding up or rounding down the fractions of a seat to which a party would be entitled under pure proportional representation. Thus, any given party may win only one more seat than it has obtained full quotas of votes. The d'Hondt and Hagenbach-Bischoff methods, on the other hand, through the way in which they operate, may give an added bonus to a large party by allocating more than one seat to that party's remainder. In this way, with, say, eight full quotas, a party could succeed in gaining ten or eleven seats. Of course, this would depend on the number and performance of the other parties, and this is by no means always the case, but the d'Hondt method does retain this ability to depart from proportionality in specific circumstances.

It is impossible to achieve absolute proportionality, and some bias in the system must therefore be present. We would tend to follow the European trend in favouring a highest average method, introducing a slight bias towards the larger groupings. Nevertheless, we can find no justification for the additional bonus which the d'Hondt system could award. We would therefore propose that the method of calculation be specifically designed in order to exclude this possibility<sup>7</sup>. Thus, a party receiving between, say, eight and nine quotas, might receive either eight or nine seats. While the use of the highest quotients would still favour the largest formations, an excessive advantage would be avoided.

In the examples given earlier in this chapter, we have included

<sup>7</sup> See Chapter 2, p. 36, above.

the results of such a modified highest average method, which even simplifies the process of calculation used by the Hagenbach-Bischoff method. The exact method of calculation is illustrated in Appendix III, but we should point out here that the use of the Droop quota already advantages the larger parties, while the natural quota would bring the results nearer to absolute proportionality. From the examples in this chapter it can be seen that in the majority of cases, the end result is exactly the same as that given by the d'Hondt method. A notable illustration of the "additional bonus" is provided by Table 2 on page 259 in the case of Denmark. The advantage given by d'Hondt to the Social Democrats is directly attributable to the fact that one large party is competing with a large number of small ones.

Inextricably bound to the choice of a system for allocating seats is the question of thresholds. We saw in Chapter 2, above, that all systems shared a maximal inherent threshold of one Droop quota. The minimal threshold – the point which a party must pass to be able, but not certain, to win a seat – depended on the type of system and the number of parties contesting the election. Is it necessary or desirable that a legal threshold should additionally be fixed in the case of direct elections?

There are a number of points to be made here. Firstly, the system-inherent thresholds are already rather high in absolute terms because of the small number of seats to be distributed. Secondly, and partly as a consequence, it is somewhat doubtful that low thresholds would act as an impetus to national party proliferation. Thirdly, the choice of a highest average method would in any case set the minimal threshold nearer the maximal.

A clear distinction must be made between legal thresholds fixed above and those fixed below the maximal threshold of one quota. While the latter affect parties whose support is somewhat below the level required to be certain of winning a single seat, the former exclude parties which would otherwise be entitled to at least one seat. Given the large number of votes per seat already required in European as opposed to national elections, we can find no justification whatsoever for excluding groups whose support merits only one or two seats in the European Parliament. We would therefore recommend that Member States be prohibited in any case from applying a legal threshold higher than one Droop quota.

On the question of excluding parties whose support does not, of itself, merit a single seat, we are somewhat more equivocal. The



necessity for such a step would be partly related to the system of seat allocation chosen. If the modified highest average system we have proposed were adopted, we can see no great advantage in having a legal threshold. Since the absolute level, however, would depend on the number of seats to be allocated, we would propose to leave to the Member States the question of whether a legal threshold, albeit limited to a maximum of one Droop quota, should be applied.

Having established that we favour a system where the voter may express a preference for one party (or group of candidates) only, we may now turn to the question of the extent to which the voter should be able to influence the choice of candidates to fill the party seats. Under any electoral system, the order in which candidates are elected to fill a party's seats will depend on choice exercised on the one hand by the party and on the other hand by the voter. The choice may be entirely in the hands of the party, as in France, or entirely in the hands of the voter, as in Ireland. The question which we now have to resolve is what combination of party and voter choice would be the correct one in the case of European elections.

It would be open to us to make the order of candidate election the prerogative of the party. Given that direct elections require a degree of centralised candidate selection almost unknown in national elections, there is a danger that candidate selection might be conducted at a level so far removed from the 'grass roots' that seats in the European Parliament might become little more than sinecures awarded by patronage. In order to ensure a minimum of democratic selection, we believe that the party member or the voter, or both, should have a real opportunity to influence the choice of candidates to fill a party's seats. While it might be desirable to legislate on methods of candidate selection to ensure the widest possible participation by a party's members, we find that there is such disparity between the nature and membership of parties throughout the European Community that a common approach is virtually impossible. Moreover, it would go against the tradition of some Member States to make reference to 'parties' at all; it is, after all, perfectly easy to stipulate that groups of candidates should be put forward as such rather than restricting this right to a formally constituted party. We are firmly of the opinion that in these circumstances, the possibility of a party's presenting a blocked list should be excluded.

Thus, it is necessary to envisage some form of participation by

the voter in determining the 'list order' applicable to a party's candidates. It would be possible for us to formulate rules to allow all voters an opportunity to influence the order of election of every party's candidates. Since we stated earlier, however, that manipulation of the "list order" by a party's opponents should not be allowed, ruling out the possibility of *panachage*, it follows that we would limit the right to influence a party's 'list order' to those voters who opted for that party.

Various methods are available to combine party influence and voter influence, by giving the voter some form of preference vote. While it is not possible to set out here all the methods available, we shall attempt to put forward the major combinations.

When examining the merits of the different methods of preference voting, it is useful to think of the process of determining which individual candidates fill a party's seats as an election in its own right. The electorate consists of the voters who have plumped for the party; the voter is voting in a multi-member constituency whose size will be determined by the number of seats a party has won. The party's list represents all the individual candidates who are competing for those seats. What is the best method of filling them?

First of all, voting may be obligatory or optional. Thus, the voter may be able to plump for the party as such (e.g. Italy) or may be required to exercise a preference vote (e.g. Netherlands national system).

The form in which the voter may cast his vote varies considerably. If his vote is categorical, he may have the equivalent of one cross, or a number of crosses, to allocate. If he has a number of crosses, this number may or may not correspond to the number of seats to be filled. He may be allowed to cumulate his vote for one candidate or more. Finally, he may have an ordinal vote which he casts by numbering the candidates and which makes his vote transferable.

There are two ways in which the party may exercise an influence. The first is that the list may be printed in the order determined by the party as a guide to the voter. The second is that the party may intervene in the way preference votes are used.

For the purpose of our discussion, it is of no great import whether a 'list order' is printed on the voting paper. This will simply mean that the party is able to give an indication to the voter rather than necessarily affect directly the order in which candidates are

elected. It is of much greater importance to understand whether the party may intervene in the use of preference votes. Let us begin by assuming that the party *cannot* intervene.

The ability to cast one categorical preference vote is effectively the same as the system known as the single non-transferable vote. A vote is cast for one candidate in a multi-member constituency, and the first past the post are elected. If voting is not obligatory, a vote for the party as such may be considered as an abstention.

The same sort of reasoning applies to multiple 'X' voting. This is actually comparable to the 'limited vote'<sup>8</sup>, though it may additionally be possible to exercise a 'cumulative vote' by casting more than one vote for a given candidate. The result is similarly a modified plurality election<sup>9</sup>.

If the voter were given a transferable vote, then the system would operate in exactly the same way as STV. The voter would number the candidates from one onwards until he was indifferent. A list quota would be found and candidates declared elected on reaching the quota.

Required to judge the suitability of different systems, we would rank proportional representation in the form of a transferable preference vote as far more satisfactory than any form of plurality in a multi-member constituency. The arbitrary nature of the latter in its determination of the successful candidates does not need to be laboured.

Let us now consider how a party may intervene in the use of preference votes. In the first set of examples, where voting was optional, the voter who plumped for the party was taken to have abstained. In this case, however, we may consider that the voter who plumps for the party makes over his preference vote to the party.

In systems of preference voting which give some say to the party, votes for the list are practically always considered as transferable preference votes. A list quota is calculated (either Droop or natural) and preference votes made over to the party are transferred according to the party's own preference schedule (i.e. list order). Thus, we may consider that under these circumstances the voter who casts his vote for the party is effectively numbering all the party's candidates

<sup>8</sup> Effectively the same plurality system as was operated in certain United Kingdom constituencies in the 19th Century.

<sup>9</sup> For further comment, see Chapter 2, p. 33 above.

in the order determined by the party. It is, in fact, a rather easier method than the system used, for example, in Australia, where the parties are accustomed to issuing 'how to vote' cards instructing the voter — who is obliged to number *all* the candidates — how to arrange the candidates, who appear in alphabetic order on the voting paper.

Such a system may be combined either with a single 'X' for those voters who do not make their preference votes over to the party, or with an ordinal vote for the voter who disagrees with the party's own list order. Unless a system of points were used, rather than a transferable vote, it would not be feasible to combine such party influence with multiple 'X' voting. It should be noted that where the transfer of votes by the party is combined with 'X' voting, this is comparable to allowing the voter who wishes to cast his own preference vote to write only the figure '1'.

To illustrate this conceptual approach, let us take the Belgian system of voting. The voter who votes for the list alone has effectively numbered the candidates from the top to the bottom of the list. The voter who votes for a candidate has effectively placed a figure '1' against his name. Applying the counting rules of the single transferable voting system will give precisely the same results as is, in fact, the case under Belgian electoral law.

Where obligatory preference voting is combined with party intervention, the voter's preference can only take the form of a single cross. As before, this can be taken as the figure '1'. Thereafter, it is the party which provides the numbering. Thus, any vote for number 1 on the list is transferable right down the list. Unlike the former situation, however, votes for other candidates also become transferable in the list order: the party determines not only the manner of transfer of the vote of those who opt for the party's own list order, but also of those who opt for a different candidate than number one. In certain circumstances, this ability may be attenuated by special rules (*viz.* Netherlands), but it may generally be taken to apply.

The range of systems operated in the national elections of the nine Member States stretches from one end of the spectrum to the other. Yet we have set ourselves the task of trying to give an equal weight to each person's vote. It follows from our conception of the distribution of party seats to candidates as an election in its own right that we should attempt to achieve that aim when establishing a procedure for the use of preference votes.

While we find that it would be possible to force the elector to exercise an ordinal preference vote (ordinal since we have already rejected plurality voting), we believe that to do so would be somewhat impracticable. In line with the tradition of many Member States, voters should have the opportunity of voting for a party as such. Yet to treat such voters as having abstained in terms of the election of candidates, especially in states not accustomed to ordinal voting, would give undue influence to the preference voter. It seems right that the party proposing the candidates should have a say in the order in which those candidates are elected. Thus, we would treat the party voter as having made over his preference vote to the party, acquiescing in the party's own list order. And for this purpose, we would take it that the party's order should appear on the ballot paper.

Having decided that the party voter's preference vote should be transferable down the list, would it be reasonable to limit the non-party voter to a single 'X' or figure one? While an argument may be put on the grounds of the complications involved in the counting, we believe that to disfranchise the voter who disagrees with the party rank order, to the extent of making his vote non-transferable, would not only introduce an unacceptable element of injustice but would also render the preference vote more illusory than real. We would therefore conclude that *all* preference votes should be effectively transferable.

With this in mind, certain restrictions are necessary both to make the personal preference vote an effective one and to ensure that the counting does not become unduly complex. We believe that the size of a list should therefore be limited, and a consequence of this is that a constituency used for the purpose of seat allocation may have to be divided into two or more voting districts for the purpose of candidate presentation – the equivalent of *kieskringen* in the Netherlands national electoral system or the regions adopted for the first direct elections in Italy. In order to enable the voter to exercise a minimum degree of choice, we would set the minimum size of a voting district at the same level as the minimum constituency size. Thus, constituencies electing up to nine members would form a single voting district.

The maximum size of a voting district depends to a certain extent on the method of filling vacant seats, since some extra names might be required if casual vacancies were to be filled from the list.

While we shall return to the question of the maximum size for a voting district, therefore, we would say that the number of names on the list should be limited to twenty at the very most.

Though we stated earlier that *all* preference votes should be transferable, a case may be made for limiting that transferability in order to ease counting operations. In line with our earlier comments on minimum constituency and district sizes, we would suggest that the preference voter should be able to number at least five names, in order to make the exercise worth while. Beyond that somewhat arbitrary point, it may increasingly be argued not only that counting operations are made more time-consuming, but also that the voter's perception of the choice available to him is much reduced. While not wholeheartedly subscribing to that argument, we feel that the value of the transferable preference vote would not be nullified by its being left open to each Member State to limit the voter's optional numbering to a maximum of at least five.

The prospect of more than one voting district in a given constituency, with different lists in each voting district, raises the question of how to divide the party seats among the voting districts. We would not propose any first stage allocation of seats at the level of the voting district but would favour a division along the lines of the German or Dutch national model, on the basis of each party's poll in the voting districts. While some bias cannot be avoided, we can see no justification for advantaging the larger districts. We would consequently suggest that in the case where more than one voting district is contained within a constituency, seats won by a party in the constituency should be allocated to the district lists on the basis of the highest remainder method, using the natural quota. In order to avoid vitiating the personal preference vote or recounting preference votes after the first declaration of results, we would exclude the possibility of a candidate's name appearing on more than one list.

Finally, we should turn our attention to the method of filling casual vacancies. The type of election we have suggested would make by-elections both unnecessary and unwise, since the result could not in any way be proportional. Seats falling vacant could be filled either by a *suppléant* attached to particular candidates on a list, from a separate list of *suppléants*, or from the same list as used in the election. Having examined the different systems available, we are of the opinion that the list used in the election itself should provide replacement candidates. To this end, the order in which the candidates

were eliminated would be established at the time of the election and the reverse order applied to the filling of vacant seats. Although theoretically more satisfactory, retaining voting papers used in the election and transferring the retiring candidate's preferences would meet with objections of a practical order.

Returning, then, to the maximum size of a voting district, we would suggest that this should be somewhat below the maximum number of names on a list in order to provide a reasonable pool of unelected candidates. The only objective marker available to suggest what is otherwise a perfectly arbitrary figure is the number of seats for distribution in Ireland and Denmark, where we would not exclude a single voting district corresponding to a single national constituency. Thus we would say that the voting district should cover an electorate corresponding to no more than fifteen seats.

The actual form of the ballot paper might be left to the discretion of the Member States. The writing in of candidates' names, for example, could be used instead of numbering printed names. We would strongly favour the latter, however, due to the treatment of votes cast for the party. It could conceivably be left open to a party to abstain from using the preference votes made over to it; in this case candidates' names could be printed in the party's order simply as a guide, or else in alphabetic order. Finally, given the possible length of a voting paper including all the names from all the lists, separate party ballots could be printed which would be freely available in the polling station, the voter being issued with an official envelope or with an adhesive stamp to stick to his chosen party's ballot. This would have the advantage of easing the counting operations considerably.

### 5.3. CONCLUSION

The range of options available in choosing a uniform procedure is wide. Some of the choices we have made are somewhat arbitrary, and those not based on principle, although they must be made, are not fundamental to the solutions we put forward. We have tried, throughout, to be guided by the aim of giving to the voters of the nine Member States roughly equal influence over the choice of their representatives in the European Parliament.

Points of a uniform voting system:

- constituencies should normally have a magnitude of at least five seats;

- voters would vote for a single party (or group) either by marking that party's name or symbol, or by validating that party's ballot;

- party votes would be totalled and seats distributed to the parties within the constituency using the modified highest average formula set out in Appendix III;

- there should normally be no legal threshold, though Member States might fix a threshold of not more than one Droop quota at their discretion;

- constituencies could contain one or more voting districts in which different lists would be presented: the smallest voting district should cover an electorate corresponding to at least five seats; the largest voting district should cover an electorate corresponding to no more than fifteen seats;

- no more than twenty names should appear on each list of candidates;

- voters for a given party could number that party's candidates in order of preference: votes cast for the party as such would



normally be taken as having the same effect as numbering the candidates according to the party's rank order; Member States could limit the extent of the numbering, but would have to allow the rank-ordering by the voter of a minimum of five candidates;

— where a constituency contained more than one voting district, seats won by the party would be divided among the party's lists on the basis of the number of votes polled by each list and using the highest remainder method with the natural quota;

— the votes polled by a list would be divided by the number of seats obtained by the list, plus one (Droop quota): candidates would be elected and eliminated using the transferable preference votes according to counting rules based on those for the single transferable voting system;

— the rules of counting would be such as to provide a clear order of elimination, the reverse of which would be used to fill seats falling vacant between elections.

*The Members of the Direct Elections Group  
at the European University Institute,  
set down by Geoffrey Hand*

6. SPECIFIC PROPOSALS  
FOR A UNIFORM PROCEDURE



The establishment of uniformity in elections to the European Parliament is a challenge to deeply-established national traditions and party interests, or what are seen as party interests. Inevitably, those who wish to achieve something in this area will be pulled between the poles of a minimalism which has constant regard to the politically possible and an idealist maximalism perhaps a little dazzled by the Europe of the hoped-for future. Although the present study is the work of a small group, its members have felt these pulls and in addition have been aware that the academic milieu in which they have been working has its own temptations to unrealism (and yet, also, that it is potentially better equipped for reflection on principles and longer-term considerations than is the political arena). The group concerned, indeed, has been a microcosm of the larger world of European affairs in that it has not been possible to construct a set of proposals with which every member in every case was able to agree to the last detail. Yet, it was able to end with a consensus on a great deal, especially of a general character, and this chapter goes forward as a collective suggestion.

## INTRODUCTORY

The starting-point for any set of proposals must be the Council Act of 20 September 1976 concerning the first direct, though not *uniform*, elections. The most basic datum derived from it is the number and national allocation of seats among the Member States (art. 2). Any proposals for uniformity which presented a challenge to that could have no hope of acceptance before the second direct elections in 1984, although one must face the fact that the discrepancies, from the point of view of proportionality, to which this allocation gives rise are of course greater than any others with which

an approach to direct elections is concerned. There are other elements of the Act which obviously must be at least retained; examples are the term of parliamentary office (art. 3.1); the basic list of incompatibilities (art. 6.1); the prohibition on double voting (art. 8). Less clear-cut cases, in looking to the future, are, for example, the Dual Mandate (art. 5) and the election period (art. 9). But, by and large, this is the foundation for progress.

A second elementary consideration is that uniformity need not be absolute. There are numerous 'nuts and bolts' in the electoral tradition of each Member State which constitute low priorities for standardization, since their differences do not prevent the over-all effect being uniform; one might consider the analogy of different systems of measurement in the past – two machines might discharge the same function, for all that one had its dimensions expressed in centimetres and one in inches. Excessive preoccupation with matters of secondary importance, but sometimes high sensitivity, might create obstacles which would hamper the work of the European Parliament and the controversy aroused might actually discourage natural developments towards 'uniformity' in the Member States.

It is with a third governing principle that rougher political waters are entered. It is that the fundamental electoral system must be proportional in character or effect in order to guarantee a sufficient representativity. It is interesting that when a questionnaire was addressed to a number of national and Community experts and academics 'all the commentators emphasized that some form of proportional representation in all Member States should be a prerequisite'<sup>1</sup>. Amongst the national systems used for the first direct elections there is one which by no stretch of language can be called proportional, that of the United Kingdom; if a single dividing line had to be drawn amongst the national systems, it is likely that it would have to be drawn between the United Kingdom and the other eight. Yet, even amongst those who may view the British system in the abstract with bewildered distaste, it is easy to find many who accept that, given aspects of British history and sociological structure, it has been something of a pragmatic success *domestically*; however, the functions of the European Parliament are not those of Parliament in the British Constitution and some of the merits traditionally

<sup>1</sup> P. 236, *supra*.

claimed — above all, stability of government — are inappropriate in the new context. At the same time, if the United Kingdom has to be persuaded to accept a system which in general will be far more in the tradition of its eight partners (abstracting ourselves from the Greek case), it is obvious that some thought must be given to conserving within the framework of a different system some of the values to which the British attach importance in theirs.

Similarly, three Member States in particular, Ireland, Italy and Luxembourg, are accustomed in their national systems to an important role for preferential voting, and it exists with less impact in some others. Here again it is felt that there is a value to be to some extent conserved within the proposed framework.

In what follows we have given pride of place to the electoral system and method of voting, and have then dealt with, in the second place, the franchise, and, in the third, the actual holding of elections and the political parties.

## 6.1. THE ELECTORAL SYSTEM AND THE METHOD OF VOTING <sup>2</sup>

We propose a system of proportional representation, with the possibility of preferential voting, in regional constituencies returning not less than five members each, or, where a Member State so chooses, in a single national constituency. We propose that the distribution of seats to parties or groups should be based upon the modified Highest Average method, the division of seats among district lists upon the Highest Remainder method, and the treatment of preference votes upon modified Single Transferable Vote rules. We shall explain these proposals in the paragraphs which follow, although the detailed rules for counting and certain other relevant matters are separately set out in an Annex to this chapter.

<sup>2</sup> One member of the group has been unable fully to accept the views of the majority of his colleagues in this section of the proposals, although it is not suggested that there is a disagreement on the most fundamental principles.

In his view, what is needed is a step by step approach. A common approach should be suggested for certain essential elements but to try to go beyond them would, certainly for the 1984 direct elections, be unrealistic and could even become counterproductive.

The first of these elements is that the elections should, in 1984, be held, in all Member States, in accordance with the *principle* of proportional representation, while each Member State should remain free to choose what kind of proportional representation is best suited to the (geographical, linguistic and other) circumstances of that country.

A second is that an element of preferential or personal voting should be introduced.

In his view, while the proposals given above largely meet these criteria, they go, certainly for 1984, too far beyond them and are intolerant of a certain element of discretion and flexibility which is vital for the effectiveness of the uniform electoral procedure.

Further, in his view, the matters of electoral law, such as 'the voting paper and manner of voting' and 'detailed counting rules' set out in the Annex, are quite excessively detailed.

### 6.1.1. CONSTITUENCIES

We propose that each Member State should establish one or more constituencies within its boundaries. Except where provided for by express derogation<sup>3</sup>, no constituency should elect fewer than five members. We suggest this minimum because it represents the smallest constituency size which can be expected to produce a reasonable degree of proportionality. It will, of course, have the effect that one Member State, Luxembourg, will be obliged to use a single national constituency. Where more than one constituency is established, the Member State concerned shall undertake to have regard to the size of the electorate in allocating seats to the constituency, but no precise rules shall be laid down at Community level.

### 6.1.2. NOMINATION DISTRICTS

Each constituency should contain one or more districts for the purpose of nominating candidates. In establishing such nomination districts, the Member States shall have regard to the electorate contained within the boundaries of each district in relation to the electorate of the constituency. Apart from the exceptional cases in which a constituency may elect fewer than five Members, no nomination district shall cover an electorate smaller than that corresponding to five of the constituency seats nor larger than that corresponding to fifteen of those seats. In other words, even where a national constituency is in question, no nomination district should have more than fifteen seats. Thus, the following table applies:

	Lux.	Irl.	DK <sup>a</sup>	B	NL	D; F; I; UK <sup>b</sup>
Seats	6	15	16	24	25	81
Min. No. of Districts	1	1	2	2	2	6
Max. No. of Districts	1	3	3	4	5	16

<sup>a</sup> If, as is very possible, there was a derogation regarding Greenland (see note 3, *supra*), the Danish figures would in practice be the same as the Irish.

<sup>b</sup> In practice, given derogations regarding West Berlin and Northern Ireland, the German and British figures are likely to be 6 and 15, rather than 6 and 16.

<sup>3</sup> It might be expected to have such derogation in the cases of Greenland (it still part of the European Community), Northern Ireland and West Berlin.



Groups of no less than five and no more than twenty candidates should be presented in each nomination district. The order of candidates on each list should be indicated at the time of nomination. No single candidate should be permitted to appear on more than one list, nor in more than one nomination district. Where a constituency contains more than one nomination district, provision shall be made for an appropriate declaration to have the effect of linking together single lists across, but not *within*, the nomination districts.

The objectives of these provisions are threefold: to present the elector with a reasonable degree of choice – not too restricted and yet not confusingly wide; to ensure «manageable» voting papers and counting operations; to provide a number of unelected candidates to fill casual vacancies (on which see the Annex to this chapter, points 3 and 7). The provision for linking lists from different nomination districts is of course necessary to allow effective constituency counting in a party context.

### 6.1.3. VOTING PAPER AND MANNER OF VOTING

The precise form of the voting paper should be left to individual decision by each Member State, subject to the form adopted being capable of functioning in the proportional and preferential system advocated. Possible details and variations are indicated in the Annex to this chapter, point 4.6.

We propose that the individual Member States should adopt rules by which to judge the validity of papers marked in other than the prescribed fashion. The basic test, which has, however, to be applied to many different factual situations, is whether there has been an unambiguous (even if technically irregular) expression of choice.

### 6.1.4. COUNTING AND THE DISTRIBUTION OF SEATS

(More detail on these matters, especially on the treatment of preferences, will be found in the Annex).

Three operations may be distinguished. The first is the distribution of seats to parties or groups. This should be carried out at constituency level. The modified Highest Average method should be

used<sup>4</sup>. This biases the allocation of seats in favour of the large parties, but, unlike the d'Hondt system, does not give parties an 'additional bonus'.

Next, there comes the division of the seats thus won by each party or group among the individual lists. A 'natural' quota is calculated from the constituency results of the party and it should then be divided into the individual district list total for the party. The Highest Remainder method should be used for the final allocation<sup>5</sup>. It is believed that this arrangement will avoid disadvantaging smaller districts.

Lastly, there is the allocation of seats to individual candidates of the party. Unless a party otherwise declares, its list order is to be regarded as the sequence of preferences adopted by those who simply vote for the party list without expressing individual preferences. These assumed or 'automatic' preferences and those actually expressed are then to be the basis of the allocation on the Single Transferable Vote system<sup>6</sup>. (Provision may be made to limit the number of express preferences allowed to each voter, if a Member State so desired, but a voter should be entitled to number at least five candidates on a list).

<sup>4</sup> Cfr. chapter 2, p. 36, *supra* and Appendix III, section 5, *infra*. Characteristic of this method is that each party is limited to receiving no more than one additional seat for its 'remainder' after distribution of seats by fixed quota.

<sup>5</sup> Cf. chapter 2, p. 36, *supra* and Appendix III, section 6, *infra*.

<sup>6</sup> Ordinal voting of this type is discussed on pp. 53-4, of chapter 2, *supra* (Intra-party preferences).

## 6.2. THE FRANCHISE

### 6.2.1. VOTING AGE

A minimum common voting age of eighteen has already been agreed upon in all the Member States for the first direct elections to the European Parliament. We see no reason why this should be modified under a uniform procedure.

### 6.2.2. RESIDENCE

It is suggested that the basic rule should be residence in one of the Member States. For future direct elections under a uniform electoral procedure, voters should be allowed to exercise their right only where they have their principal residence, as a means of ensuring against double voting. Where nationals of a Member State return there to reside, having been resident in a 'third country', it would seem desirable to have a minimum agreed period for establishing the new residence for the purpose of elections to the European Parliament.

### 6.2.3. CITIZENS «ABROAD»

It is suggested that for this difficult, but important, problem a 'two-stage' solution should be attempted.

For the 1984 direct elections all citizens of one of the Member States resident within another of the Member States should be able

to vote, either in the country of residence or the country of origin. Where the latter option is adopted, steps should be taken to avoid the necessity of electors returning to the country of origin in order to vote there in person. Postal voting or voting in embassies or consulates are obviously such steps.

But for subsequent elections a greater measure of uniformity and of European identity should be the goal. Such citizens should be able, in all Member States, to vote for the candidates who present themselves for the European Parliament in the country where they actually reside. (As implied under the heading of 'Residence', above, nationals of the Member States living in non-Community countries should correspondingly be excluded from voting).

#### 6.2.4. OTHER SPECIAL VOTING PROCEDURES (We are here concerned with special procedures applying to persons resident in 'their' Member State)

We see no imperative reason for uniformity of procedure in such matters as postal and proxy voting in general, the special status of members of the armed forces, the blind and handicapped, etc. etc. No doubt, the Member States may gradually grow together in these matters.

#### 6.2.5. THE REGISTER OF VOTERS

Equally, we see no imperative reason why an attempt should be made to introduce uniformity in this area, although a general supervision by the European Communities may be necessary to avoid double voting.

In a longer term, however, we should accept that inclusion on the register should be automatic and not require, in normal circumstances, any special application; and, as implied under 'Citizens «abroad»', above, all nationals of one of the Member States resident in another Member State should be included in the electoral register of the Member State of residence.

### 6.2.6. OBLIGATION TO VOTE

While we do not think that a common approach to this matter is possible for the 1984 elections, given the different approaches existing in national traditions, we advocate that, ultimately, voting in European elections should be non-obligatory.

### 6.2.7. DISQUALIFICATIONS

It is felt that this element of the electoral law can be left to the discretion of the Member States. In some, after all, it bears a relationship to national criminal law.

## 6.3. ELECTIONS AND PARTIES

### 6.3.1. ELECTION DAY

It is suggested that the period of election days be shortened even for the 1984 direct elections. Polling should take place in all the Member States either on a Sunday or on the next day, Monday. For subsequent elections, a single weekday is suggested. Monday appears to have most to recommend it. We further suggest that the coincidence on the same day of European elections with national, regional or local elections should be avoided, in order to concentrate attention on European issues and to prevent confusion in the minds of voters as to candidatures and voting systems.

### 6.3.2. PARTY BANS

The considerations, to a considerable extent of an historical character, which may justify the position of certain Member States on this matter where national elections are concerned, do not necessarily have the same validity in a European context, especially when real European parties will emerge. We suggest that in the longer term an attempt should be made to secure an understanding against party bans in European elections, although we do not think that any attempt should be made to achieve uniformity in this matter for the 1984 European elections.

### 6.3.3. CAMPAIGN RULES

Under this heading come a number of points on which national practice varies very considerably. We believe that efforts should be made in consultation with the party groups to establish a general framework of guidelines. Thus, where *financing of the party electoral campaigns* is concerned, we suggest the following guidelines: public funding assistance from Community as well as national authorities; no absolute restriction to parties already represented in the European Parliament; funding not to be given directly to the individual candidates. We can see no case for harmonization of the *duration of the election campaign*. *Regulation of campaign expenses* should indeed be attempted, but this calls for close consultations between the parties. A point of increasing importance, given the transnational effects of radio and television, and the likely increase in importance of transnational party groupings, is *access to the media*. While it may be necessary to leave the question open for the 1984 elections, in the longer term attention will have to be given to the possibility of a controlled proportionality of access to media time, bearing in mind the broad strength of the individual political parties.

## 6.4. ANNEX TO CHAPTER 6 <sup>7</sup>

The topics discussed in this Annex are either ones which we do not think appropriate for inclusion in the general proposal or expansions of indications given in the main body of the chapter. They are the following:

- 1) The dual mandate.
- 2) Thresholds.
- 3) Vacancies.
- 4) Rules for nomination and eligibility.
- 5) Incompatibilities and disqualifications for election.
- 6) The voting paper and manner of voting.
- 7) Detailed counting rules.
- 8) Declaration and validation.

### 6.4.1. THE DUAL MANDATE

We believe that the terms of art. 5 of the Council Act of 20 September 1976 can be retained for the 1984 elections. Although we favour the elimination of the dual mandate, we believe that the question needs continued study by parliamentarians, both European and national, especially with a view to keeping the channels of communication open between the European Parliament and the national parliaments. Some of our group share the view, expressed to us by many persons consulted, that the end of the dual mandate will come more smoothly and perhaps more quickly if the matter is left to the

<sup>7</sup> Cf. p. 298, n. 2, *supra*.



national parliaments for formal decision, instead of an attempt being made at the Communities level to impose an incompatibility.

#### 6.4.2. THRESHOLDS

A common approach in time for the 1984 elections is probably not possible. Although we do not think a common legal threshold would be justified and although we dislike the idea of any legal thresholds at all, especially when the inherent thresholds are borne in mind, we think that at first Member States should be free to impose a legal threshold if they so wish. However, we propose that such a threshold should not be permitted to exceed one Droop quota.

#### 6.4.3. VACANCIES

The system we propose lends itself to filling vacancies on the principle of 'next on the list'. In any event, we are strongly against by-elections, our own specific proposals for the system apart. While individual by-elections can never supply a proportional result, they are likely to provide the occasion of a test of political opinion within a single country regarding the government of the day, without relevance to the nature and functions of the European Parliament.

#### 6.4.4. RULES FOR NOMINATION AND ELIGIBILITY

We do not think that detailed uniformity is necessary in nomination rules. Nevertheless, it would be desirable to have some common elements or guidelines, best achieved through tripartite consultations involving the Member States, the European institutions, and the party groups. We are against deposits and if, in the interests of discouraging frivolous candidatures, a quota of signatures is required it should be kept as low as is compatible with this objective, in order to ensure a chance for new political forces to secure representation.

With regard to the age of eligibility, there is no need to come to a formal harmonisation for the 1984 elections. A measure of uniformity could be introduced later, choosing either 21 or 18 (as being already the voting age).

#### 6.4.5. INCOMPATIBILITIES AND DISQUALIFICATIONS FOR ELECTION

In general, it seems appropriate simply to continue the operation of art. 6 of the Council Act of 20 September 1976. However, art. 6.2 should in future be subject to the limitation that no Member State should impose in European elections additional rules which go beyond, not only those in art. 6.1, but also those in force for national elections. (Of course, an exception to this might be permitted where the Dual Mandate is concerned – see 6.4.1, *supra*).

#### 6.4.6. THE VOTING PAPER AND MANNER OF VOTING

As indicated in 6.1.3 of this chapter, the precise details of the voting paper may be left to the Member States, in order to minimize the problems arising from unfamiliarity. Nevertheless, the system which we propose does of course dictate certain elements.

A separate paper might be adopted for each party list or alternatively a single voting paper bearing all the lists presented (the first would facilitate counting operations). In either case, the names of the candidates should be printed on the voting paper in the order in which they appear on the nomination papers and there should be a validating procedure by arranging for the paper to bear an official mark or to be enclosed in an official envelope.

Provision has to be made to accommodate the element of preferential voting in the system which we advocate:

i) Where a separate voting paper is used for each party list, a space should appear next to the name of each candidate where the figures 1, 2, 3 and so on, may, if desired, be written. The voter should validate the choice of list by whatever procedure the Member State prescribes and may also, if he wishes, number the candidates from 1 onwards to the extent desired.

ii) Where a single voting paper is used bearing all the lists presented, there has of course to be a means of indicating a vote for a particular list. This can be in accordance with the individual traditions of the Member States, although for most of them a space at the top of the list, next to the name, cipher, or symbol of the list, to be marked by the voter in an appropriate way, would perhaps be ac-

ceptable. A space should appear in addition next to the name of each candidate where the figures 1, 2, 3 and so on, may, if desired, be written. The voter should be free either to mark a single list in the fashion prescribed or number the candidates on a single list from 1 onwards to the extent desired or do both to the same list – but within the system which we propose the voter cannot validly mark one list *and* number candidates on *another* list.

#### 6.4.7. DETAILED COUNTING RULES

The count shall begin after the close of the poll in the last of the Member States to complete polling operations. Every attempt should be made to achieve the highest possible degree of simultaneity of the various operations in the various Member States, including the availability of results to the media.

The first stage is the distribution of seats to parties or groups, which shall take place at a central point within each constituency. The votes cast for each list in each nomination district shall be reported, and where two or more lists formed the object of a declaration to that effect, the votes for those district lists shall be added together and they shall be treated as one combined constituency list.

A quota shall be determined by adding the votes given for all the lists and dividing the total thus found by one more than the number of seats in the constituency. The quotient thus found shall be rounded up to the next integer to give the quota.

Should a Member State have chosen to apply a legal threshold (6.4.2, *supra*), the quota shall be recalculated for subsequent purposes by excluding from the total poll all those votes cast for the lists excluded by the operation of the threshold.

The total poll of each district list or combined list shall be divided by the quota and so many seats allocated as correspond to the number of whole quotas contained in that poll. The total poll of each district or combined list shall then be divided by one more than the number of seats so allocated to it, and one seat shall be awarded in turn to the highest quotients thus obtained until the total number of seats in the constituency has been allocated.

The second stage is the division of the seats thus won by each party or group (combined list) among the individual district lists. The total poll of the combined list shall be divided by the number of

seats so allocated and the resulting quotient rounded up to the next integer. The quota thus obtained shall be divided into the total number of votes polled by each district list in the combined list. Among the resulting quotients, as many of the highest remainders shall be rounded up and as many of the lowest remainders rounded down as results in an exact distribution to the district lists of the seats obtained by the combined list.

The third stage is the allocation of seats to individual candidates. The count for this purpose shall be held at a central point for each nomination district. The votes for each list shall be separated; thereafter counts may be conducted for each list separately and simultaneously.

The total of the votes polled by each list shall be divided by one more than the number of seats awarded to it and the resulting quotient shall be rounded up to the next integer to give the quota. The next operation shall be to separate those papers which bear a preference vote from those where the voter has voted for the list alone. The votes cast for the list alone shall be added together and divided by the quota. As many candidates in the order of the list shall be declared elected as correspond to the number of whole quotas thus obtained. The same number of whole quotas shall be subtracted from the total of votes cast for the list alone and the next highest candidate on the list shall be credited with the number of votes thus obtained.

If the group presenting the list has declared that the order of candidates shall not be used for this purpose, the operation just described shall not take place. The quota shall be redetermined using the total of preference votes cast rather than the total poll of the list.

The next operation shall consist of dividing the preference votes into parcels. For this purpose, regard shall be had to first preferences, except in the case of candidates already declared elected, where the next available preference shall be used. Each candidate shall be credited with a number of votes corresponding to the number of papers in his parcel.

If any candidate has reached the quota, that candidate shall be declared elected. The surplus of votes obtained by a candidate over and above the quota shall be transferred to candidates not yet elected or eliminated, provided a further preference is expressed. Where more than one candidate has a surplus, they shall be transferred in the order of their magnitude. Where surpluses are equal, re-

gard shall be had to the relative position of the candidates at the last stage of the count at which they were unequal and the higher placed shall be the first to have his surplus transferred. Where they were always equal, lots shall be drawn to determine which surplus shall first be transferred. The transfer of surpluses may be suspended at any point where their combined value is lower than the number of votes separating the two lowest placed candidates.

The transfer of a surplus shall be determined by examination of the last parcel of votes received by a candidate. The parcel shall be divided into sub-parcels according to the next available preference. The value of the surplus shall then be divided by the total value of all the transferable sub-parcels. The resulting quotient, multiplied by the previous value of a transferable paper and ignoring decimal places beyond the second, shall give the new value of each transferable paper. Each sub-parcel shall then be marked with its new value and transferred as a new parcel to the appropriate candidate, who shall be credited with the value of the parcel.

Where no surpluses remain to be transferred, or where surplus transfer has been suspended, the candidate with the lowest number of votes shall be eliminated and all his votes transferred at their current value to the continuing candidates. Where two or more candidates are lowest, regard shall be had to the relative position of the candidates at the last stage of the count at which they were unequal, and the lower placed shall be the first to be eliminated. Where they were always equal, lots shall be drawn to determine which candidate shall be first to be eliminated.

Where a candidate who is eliminated has been credited with list votes, such votes shall be transferred first of all to the next continuing candidate in the order of the list. If such a transfer results in a surplus for that candidate, the candidate shall be declared elected and the surplus transferred to the subsequent continuing candidate in the order of the list, and so on until the list votes are exhausted. Only then shall the personal preference votes of the eliminated candidate be transferred.

Surpluses shall be transferred and candidates shall be eliminated in this way until all the seats have been filled. Where neither the transfer of surpluses nor the transfer of votes of eliminated candidates could alter the relative position of continuing candidates, counting may be terminated. Seats remaining to be filled are awarded to the highest placed candidates.

Finally, it is proposed that a concluding stage of the count make provision for casual vacancies (6.4.3, *supra*). This can be done by placing non-elected continuing candidates at the top of a reserve list. Then, eliminated candidates should be placed thereafter in the *reverse* order of their elimination. This should constitute an effective reserve list for filling casual vacancies.

#### 6.4.8. DECLARATION AND VALIDATION

The Council Act of 20 September 1976, art. 11, provided that, pending the introduction of a uniform system, the Assembly should verify credentials on the basis of the official results declared by the Member States. We regard this as still a satisfactory framework for the 1984 elections. However, in the future the validation of the results declared in each Member State should be reserved exclusively to the European Parliament, with recourse to the European Court of Justice in disputes arising from the procedures of declaration and validation. The right of recourse should be open to every candidate and elector in the relevant constituency.



## APPENDIX I

*Jacques Georgel*

### THE ELECTORAL SYSTEMS OF GREECE, PORTUGAL AND SPAIN

Spain, Portugal and Greece have the common characteristic of having at more or less the same time emerged from dictatorial regimes and of being on the road towards democracy. The resemblance cannot be pushed any further without risk. Not only did dictatorship reign much longer in Portugal (1926) and Spain (1936), than in Greece (1967), but the circumstances of its end were very different in the three countries.

Chronologically, the Portuguese regime was the first to collapse, on 25 April 1974. Its army, the only solidly constituted body in a country where others had been carefully destroyed, revolted for two reasons: the tiredness born of a colonial war that had lasted for thirteen years, was being fought on three fronts, and seemed to be interminable; and corporative problems (the slowness of promotion, the appointment of «militia men» to careers more rapidly than professional officers). Within a few hours Europe's oldest dictatorship disappeared. The way was clear for a new beginning, wiping out all the institutions of yesterday – apart from the spirit of the regime, a rather harder nut to crack. Following two years of heady revolution, the country elected first a constituent assembly and then a legislative assembly.

A few weeks later the expedition imprudently launched against the Republic of Cyprus by the Greek colonels who had held power since the 1967 coup d'état turned to disaster. The monarchy, at first an accomplice of the military, then hesitant – but powerless – towards them with the accumulation of their defects, opposed them



and lost its throne in the adventure. In the Greek case, however, the break was less brutal, less profound, than in the Portuguese case. Various forces intervened to avoid a complete break, and a former politician, Mr. Karamanlis, a voluntary exile in France for some years, flew back to Athens to pick up the reins of power that everyone else was letting slip. The election was therefore held not, as in Portugal, after a complete break but by a process that involved a certain measure of control.

This control is still more marked in the case of the third dictatorship, that of Madrid. The process of transition from the authoritarian regime to democracy was kept in hand by the heirs of Francoism from the Caudillo's death in November 1975 until the adoption of the new constitution three years later. A first legislative election was held on 15 June 1977 and a second, after the adoption of the constitution, on 1 March 1979. Among other reasons, this «control» of the transition by the Francoists is to be explained as follows: contrary to the two preceding cases, in Spain it was not the dictatorship that collapsed but only the dictator that died. His supporters did not lose power, especially since the octogenarian Caudillo, by taking a whole month to die, gave them all the time they needed to set up the control of which we have spoken. The feat of his heirs was to use the dictatorial legality set up by Francoism down through the years to eliminate precisely the dictatorial character of the regime and to come closer, step by step, to the group of the democracies. The instrument of transition was the (temporary) political reform law approved by referendum on 15 December 1976 and promulgated on 4 January 1977. More attention will therefore be paid here to the Spanish electoral law, which has already been applied twice; moreover, the development of the country is of greater interest.

## SPAIN

1. The *principles* governing the election of the future chambers are laid down in article 2 of the political reform law and by one of its transitional provisions. It will surprise no one to hear that the aim pursued by the reform was, to be sure, to democratize the Spanish political system, but at the same time to facilitate the retention of power by those who already held it.

The *Cortes*, instead of remaining a single chamber, became bi-

cameral: there are provisions for the election of a Congress of Deputies and a Senate. The first, with a membership of 350, is elected by adult Spaniards by universal suffrage, in direct and secret elections, for a term of four years. The electoral system is proportional representation with two corrective factors. Firstly, to avoid the chamber being 'awkwardly' fragmented, the securing of a seat is subject to the obtaining of a minimum number of votes. Secondly, in line with an age-old rule, the basic territorial unit for election is the province (there are 50 in Spain); for each province a minimum number of deputies is fixed. The figure of 350 deputies corresponds, for a population of 35 million, to one deputy per 100,000 head of population, but some provinces are very densely populated, for example in Old Castile or Catalonia, while others (Andalusia) are almost empty: six provinces do not reach a figure of 200,000. It seemed desirable to restrain the excessive inequalities of representation that would result from pure proportionality. It nevertheless remains that in half of Spain (26 provinces out of 50) each province will send no more than five deputies to Madrid. «The choice of this P. R. system was made mainly because of two fundamental political considerations, firstly to seek to attract the traditional democratic political forces excluded or driven into clandestinity under the authoritarian regime, so that they would take part in the elections and be able to contribute to the creation of a general consensus on the new regime; secondly to keep the traditional right and extreme right within comfortable limits and prevent them from impeding the democratic process that was under way, given their long domination of the state apparatus at all levels» (M. Martínez-Cuadrado) <sup>1</sup>.

The principles stated by the political reform law for the Senate, the second chamber of the Cortes, the members of which have a term of office of four years, are as follows. Firstly, the senators represent territorial units, and not population. Secondly, they are divided into two categories: 207 of them are elected by adult Spaniards in universal, direct and secret elections, there being four per continental province, one per island province and two for each of the «presides» Ceuta and Melilla. A second category, to a maximum of one-fifth of the first category, of 41, is that of senators appointed by the King. Theoretically, the basic electoral system for the election of senators is single-round majority voting.

<sup>1</sup> *Revue Pouvoirs*, no. 3, 1979.

The resistance of the regional administrations set up by Francism is behind the choice of the provinces instead of the regions as the base for the election of senators. This choice accentuates the imbalances. Between the region with fewest electors and that with most there is a span of one to ten; however, if instead of the 16 regions one takes the 50 provinces, the span goes from 1 to 45. «The four senators of Soria will represent 100,421 people, while those of Barcelona will represent 4,536,057, that is, six times the national average of one senator per 172,000 inhabitants. Likewise, ten provinces where half the population live will have only 40 senators, or 20% of the seats. On the contrary, the 25 least peopled provinces will have an absolute majority in the upper chamber with only 24% of the population. There is no doubt that this considerable disproportion was aimed at and will have the effect of favourising the conservative forces in the least developed regions where caciquism is still rife and where the absence of industrialisation has maintained agricultural structures unfavourable to the penetration of progressive ideas» (G. Carcassonne and P. Subra de Bieusses) <sup>2</sup>.

Such were the basic provisions of the political reform law. They were completed, before the first elections and immediately after the legalisation of the political parties long banned by Franco, by a decree-law of 18 March 1977 giving the electoral rules. The law of 4 January had in fact authorized the government to lay down these rules for the first elections. Among the provisions, the following are the most interesting.

For the Congress, it is laid down that each province shall have a minimum of two deputies. To this figure is added one further seat for every 144,500 inhabitants, plus one for any remainder of 70,000. In these conditions the minimum number of deputies will not be less than three (in the case of seven provinces) and the maximum will be around 30 (Madrid: 32; Barcelona: 33). Each party putting up candidates for election submits a list with as many names as there are seats to be filled. Seats are assigned proportionately to the percentage of votes obtained, with remainders distributed on the d'Hondt system (highest average). To avoid the atomization of the Congress, no list can be represented unless it has secured at least 3% of the

<sup>2</sup> Carcassonne Guy and Subra de Bieusses Pierre, *l'Espagne ou la démocratie retrouvée* (Editions nationales, administratives et juridiques: Créteil, 1977), p. 87.

electors *registered* in the electoral district. Split voting, preferential voting and changes in the list are not permitted.

It is not possible here to go into a thorough commentary on these provisions. We shall confine ourselves to noting – since the very principle of *proportional* representation is affected – that, by choosing the province as the electoral district and by providing it with a minimum representation, the effect in terms of proportionality is to produce a span of one (Soria has one seat per 33,474 inhabitants) to four (Madrid with one seat per 141,256 inhabitants), whereas the point is to represent, not territorial units, but a population, and on an equal basis.

As for the Senate, the decree-law of 18 March 1977 sought, if the authors are to be believed, to reduce the coarseness of single-round majority voting. It is a familiar fact that in such a system the votes of the minority are lost and do not secure any representation. The major parties have the means to make themselves known and to cover all the electoral districts with their propaganda; they therefore have an advantage over the small parties that do not have such possibilities. It is an equally familiar fact that electoral justice is not done by this system, since the majority of seats can be secured if many of them are taken by a small margin, without necessarily securing a majority of votes over the whole country. To attenuate this severity, the electoral decree-law (art. 21) provides that the electors can vote for a maximum of only three candidates listed, for the four seats to be filled in each province. The four persons for whom there is the largest number of votes are then elected. This system blocks any tendency towards a monopoly of representation in any one province.

To finish with this aspect of the problem before coming to the electoral procedure, a word on the grounds of ineligibility and incompatibility (the first constitutes a bar to election; the second obliges a person elected to choose between his parliamentary mandate and another activity that cannot be combined with it). Eligibility is conferred at the age of 21, as is the right to vote. The decree-law (art. 4) provides for not less than twenty types of activity whose pursuit involves ineligibility or incompatibility. Among those mentioned are the ministers, the high officials of the national (and local) administration appointed in the council of ministers by decree; there are also the presidents of the great national public institutions (Supreme Court and National Economic Council, for example), the

magistrates, the members of the Election Commissions with supervisory tasks, civil governors of all grades, police commissioners and police chiefs, appointed trade union officials. A second category includes local administrators, whose ineligibility is limited to the electoral district where they work.

Apart from government ministers and national administrators, incompatibility affects the ineligible. If a deputy or a senator accepts one of the above-mentioned positions, he has to give up his parliamentary seat. The same rule applies to the second category, that of local administrators; the only ones to escape being «the presidents of local councils, interinsular associations and municipal councils, as well as the mayors of municipalities». Finally, in line with a constant tradition, it is not possible to belong to both Chambers at the same time.

Some clarifications here will perhaps be useful. Firstly, the system works in the British and not the French way: this means that before becoming a candidate one must resign any office that involves ineligibility; it is not possible to await the electors' decision and resume one's employment in the administration if not elected. Secondly, the law clearly states – and certainly not by chance – that ineligibility attaches to the position of *minister* of government, that is, holder of a ministerial portfolio; and not to that of member of the government. In this way, the leader of the governing party, Adolfo Suárez, who headed the government though he did not run a department, could legally be a candidate; while L. Calvo Sotelo, who did hold a portfolio, had to resign before he could put himself before the voters. It should further be noted that after election members of parliament may join the government without giving up their seats; this was the case for eight of them in 1977<sup>3</sup>.

<sup>3</sup> Art. 70. 1. The electoral law shall establish grounds for ineligibility and incompatibility for Deputies and Senators, which shall in any case include:

- a) Members of the Constitutional Court.
- b) The high offices of the State Administration, as may be laid down by law, with the exception of members of the Government.
- c) The Defender of the People.
- d) Active Magistrates, Judges and Public Prosecutors.
- e) Professional soldiers and members of the Security and Police Forces and Corps on active service.
- f) Members of the Election Commissions.

2. The validity of the certificates of election and credentials of the members of both

2. *The procedure* governing the holding of the elections is the more complex for being part of a legal and political whole aimed at transforming Francoism while using its very philosophy. An example, that of the political parties, will illustrate this assertion. Franco had said on several occasions that parties were injurious to the political health of a country, and that they would never re-appear in Spain. On the eve of the 1977 elections the great problem was not so much to know whether the parties would resurface, since there were more than 200 of them, but to decide whether the Communist Party would secure legalization despite the hesitations of the army. If one or several parties were excluded from the electoral competition, it could not be pretended that the country was turning its back on dictatorship to advance towards liberal democracy. Not without difficulty, the Spanish Communist Party secured its legalization.

The three principal aspects of the regulations are examined here: supervision, propaganda and financing.

The organization and supervision of the elections are entrusted to the Election Commissions: zonal, provincial and central. Since the last one serves as a model, we shall consider it specifically. Its 16 members are personalities above all suspicion (5 Supreme Court magistrates; 1 councillor of state, the President of the Academy of Moral Sciences, etc...) and representatives of the political parties (5 members). There was extreme meticulousness in the appointment of the members at all levels, with the aim of avoiding the criticisms often directed in the past against the rigging of the Francoist elections.

The central commission carries out a number of tasks: directing and inspecting all the counting offices, replying to questions raised by the provincial commissions, and giving instructions to the latter; deciding on appeals made to it; filing the electoral registers and the records of the election; acting as a disciplinary jurisdiction for the officials that have a part to play in the elections; and correcting infringements and inflicting penalties (above-mentioned decree law, art. 14).

Each province is divided into electoral sections, each section with at least one polling station, the president and the two secretaries of

Chambers shall be subject to judicial control, on the terms to be established in the electoral law.

(Source of translation: *Documentación administrativa*, no. 180, Madrid, Oct.-Dec. 1978, pp. 1062-3).

which are appointed by the zonal commission by drawing lots among those electors who have at least a first degree (art. 25-26).

The announcement of the electoral consultation, by publication in the Official State Gazette of the royal decree, must precede the holding of the elections by at least 55 days (by-elections can be held only during the first two years of the parliamentary term; art. 29). The presentation of candidates, by groups that have met the law's rules on political associations, is made to the provincial election commission between the 11th and 20th day inclusive following the publication of the announcement. The list may not include either less or more candidates than there are seats to be filled (art. 30-36).

The election campaign lasts 21 days; it ends at midnight on the day immediately preceding the election. On polling day, operations commence at 9 a.m., after the setting up of the polling station, and continue until 8 p.m., unless because of circumstances beyond control (art. 52). Each voter, after having used the booth if he so wishes, and identified himself by an official document, hands the returning officer two envelopes containing respectively his vote for the Congress and his vote for the Senate. It is the returning officer who slips the envelopes into the ballot boxes (art. 54) <sup>4</sup>.

It is a condition of the validity of the vote that the two envelopes be handed simultaneously to the returning officer; the ballot papers and envelopes for the election of deputies are different from those for senators, and the details given on them are not identical. For deputies, the name or possibly the sign or symbol of the group putting them forward is given, and then the names of the candidates in the order of presentation. For senators, the names of candidates put up in the district are given, with a box for the cross by which the voter assigns his vote to one or several candidates. Candidates' names appear on the ballot paper in alphabetical order, with, if appropriate, the name or symbol of the group putting them up.

At 8 p.m., the returning officer announces the closure of the polls, after admitting the votes in progress and those of the polling station. Then he puts into the ballot boxes the envelopes containing the ballot papers of those electors entitled to vote by post; whereafter the polling clerks and the delegates of the political groups in attendance sign the lists of voters in the margin of each page, im-

<sup>4</sup> Illiterate or physically handicapped voters may be assisted by a person of their choice.

mediately below the last name listed (art. 56). To be entitled to a postal vote, a voter unable to go to the polling station on voting day must apply in writing to the zonal commission not less than five days before the vote, providing proof of his identity (the request may be effected by authenticated power of attorney). The registration form, two envelopes and the ballot papers are sent to the applicant, whose personal vote can no longer be accepted if he turns up at the polling station on voting day. Until polling day, the postal service keeps the postal votes, sent by registered post; they are delivered to the polling stations only on polling day between 9 a.m. and 8 p.m. Postal votes arriving after closure are not opened, but burnt (art. 57-58). These provisions apply to the 800,000 Spanish migrant workers, many of whom could not vote in 1977 because of the short time limit between the election date and the deadline for applications.

After the polls have closed counting begins, with priority being given to the Congress. Votes cast using a non-official ballot paper or envelope, or on a ballot paper without envelope, or in an envelope containing more than one ballot paper, are invalid, as are votes on a ballot paper where names have been changed or scored out or the order of presentation has been altered (Congress), and votes for a number of candidates greater than the permitted maximum (Senate). Votes for a candidate who has legally withdrawn are regarded as blanks. In cases of doubt as to the interpretation of a ballot paper, it is for the polling station to decide. Those present at the count may ask for the examination of any ballot paper that they feel is doubtful. Unlike the others, such ballot papers are not burnt following the count; they are added to the report for any possible proceedings. The result of the count is telegraphed to the provincial commission. The report, as detailed as possible, is signed by the staff of the polling station, then submitted, with the documents, to the municipal or cantonal court, the judge of which passes it to the provincial commission, keeping a copy in his archives (art. 64-67). The provincial commission verifies the exactness of counts in his province by zonal commissions, and then does the calculations leading to the allocation of seats. The central commission passes to the Cortes the list of deputies and senators elected according to these reports by the commissions, copies of which can be obtained by the candidates' representatives (art. 68-71).

The decisions of the provincial commissions on the announcement of candidates and of those elected may be the subject of an



appeal to the appropriate chamber of the territorial court in the electoral district where the Election Commission is domiciled<sup>5</sup>.

If the announcement disputed is that of the election of a deputy or senator, the competent jurisdiction is the Supreme Court (Chamber of Administrative Proceedings) and the appeal must be brought within five days of the announcement. Preliminary investigations may not exceed ten days; the verdict must be rendered within a similar period (art. 73-75). If the appeal is not either declared inadmissible or dismissed, the decision announcing the candidacy or election is cancelled and the act has to be repeated. There is also a procedure for revision by higher commissions of the decisions of lower election commissions (art. 76 and 77).

Infringements of electoral legislation are «penalized» by fines (10,000 to 100,000 pesetas) and imprisonment (one to six months if the culprit is a public official, one month for a private person) (art. 83). The ordinary courts are competent, and likewise the ordinary procedure is used. However, if the infringement does not constitute an offence, it is the election commission that punishes it, by a fine (art. 90-93).

Electoral propaganda is regulated by articles 37-43 of the decree-law, the first of which defines the electoral campaign: "All of the lawful activities organized or developed by the parties, federations, coalitions, groups of electors and candidates, with a view to the securing of votes".

The important point in our age is not so much the rules on poster-ing (art. 39) and public meetings on official premises (art. 41), as propaganda by radio and television, since these forms of contact with the public are infinitely more effective methods of propaganda.

In this connection, the decree-law of 18 March 1977 confines itself to asserting in principle the right for political associations to free use of space on television and radio, and in the publicly owned press. Regulations on the exercise of this right are left for a decree, though the setting up of a control committee is provided for (art. 40). This committee, which functions under the direction of the central election commission, controls the programming of (publicly owned) radio and television broadcasts. Two types of members are

<sup>5</sup> With a time limit of two days following the announcement, then urgent proceedings (three days for the preliminary investigation and the same period for the judgment).

on the committee: those appointed by the government, and representatives of groups putting up candidates for election. The twelve members of the committee set up in 1977 were divided equally between these two categories.

The decree provided for by the text of 18 March 1977 was published on 17 May in the Official State Gazette. Parties or coalitions putting up candidates in more than half the provinces are entitled to thirty minutes television, while ten minutes only are allotted to parties putting themselves up in four provinces totalling 20% of the electorate. The first category covers about a dozen political groups, and the second only the Catalan parties. The total therefore represents some five hours broadcasting spread over three weeks. That is not much. Moreover, the powers of the control committee are confined to the assignment of the times allotted; obviously they do not relate to the content of the news put out by television during the campaign. But television is a state monopoly.

As for the financing of the campaign, the decree-law of 14 March sets up state subsidies, the use of which is checked by the election commissions before being made public (art. 44-48). From this point of view, each seat secured in the Congress the Senate is «worth» one million pesetas, and each vote secured by a list for the Congress, of view, each seat secured in the Congress or the Senate is «worth» one million pesetas, and each vote secured by a list for the Congress,

3. Such were the provisions governing the first legislative elections, held in 1977, the results of which were as follows:

	Votes	% Votes	Seats	% Seats
Centre Democratic Union (UCD)	6,220,889	34.74	165	47.14
Spanish Socialist Workers' Party (PSOE)	5,229,460	29.21	118	33.71
Communist Party of Spain (PCE)	1,655,704	9.24	20	5.71
Popular Alliance	1,469,870	8.21	16	4.57
Popular Socialist Party (PSP)	799,376	4.46	6	1.71
Democratic Pact for Catalonia	498,744	2.78	11	3.14
Basque Nationalist Party	286,540	1.60	8	2.28

None of the other groups secured 2% of the vote, or more than two seats <sup>6</sup>.

<sup>6</sup> Comparing the 1977 elections with the last free elections, those of 1936, Guy Carcassonne notes an astonishing persistence of the tendencies over a gap of 40 years: "Of the 48

In the Senate, the Popular Alliance took only two seats, and the Basque Left only one, while the Catalans took 15 and Independents 35. The two big groupings in this second chamber are those of the Socialist Party (48) and especially the Centre Union (106). Of the 41 senators appointed by the King, 7 are in the latter group, with the rest remaining independent or else joining the «non-aligned».

The figures in the above table speak for themselves, showing in particular that the representation is rather far from being truly proportional. On average, the UCD needed 38,300 votes per deputy, while the PSOE needed 45,500, the PCE 85,400 and the Popular Alliance 92,300 for the same result.

These inequalities, in favour of the government coalition, were not redressed immediately after the 1977 election. On the contrary, the Constitution, in which the Spaniards inserted the basic elements of their electoral system, confirmed the 1977 text. The Congress still continues to have a mixture between representation of populations (defining the number of those elected per district) and territorial electoral districts (stating the minimum number of deputies per province), and between proportionality and a majority system – for instance, when a province has only three or four seats. In the Senate, not only are four people to be elected in each continental province, but each «Self-Governing Community» is assigned one additional seat, with the right to one more per million head of population. The result is that the number of seats is not identical in all electoral districts, since it depends only in some of them on the size of the population (1978 Constitution, articles 68-69) <sup>7</sup>.

metropolitan provinces plus the Balearics, from the view-point of left-right tendencies, 34 remain exactly identical, 10 showed a swing to the right, one a swing to the left, and only 3 showed reversals" ('Espagne 1936-1977'; in *Pouvoirs*, no. 3, 1979, p. 151 f.).

<sup>7</sup> Art. 68. 1. Congress consists of a minimum of three hundred and a maximum of four hundred deputies, elected by universal, free, equal, direct and secret suffrage on the terms laid down by the law.

2. The electoral district is the province. The cities of Ceuta and Melilla shall each be represented by a Deputy. The total number of Deputies shall be distributed in accordance with the law, each electoral district being assigned a minimum initial representation and the rest being distributed in proportion to the population.

3. The election in each electoral district shall be conducted on the basis of proportional representation.

4. Congress is elected for four years. The term of office of the Deputies ends four years after their election or on the day that the Chamber is dissolved.

5. All Spaniards who are entitled to the full exercise of their political rights are electors and eligible for election.

The law shall recognize and the State shall facilitate the exercise of the right of suffrage of Spaniards who find themselves outside Spanish territory.

Spanish bicameralism therefore does not choose between the election of one chamber by P.R. and the other by majority voting; nor does it opt frankly between the representation of populations in one case and of territorial communities in the other.

In these conditions, the shortcomings noted at the first elections, especially the over-representation of the conservative rural provinces, with the corresponding effect on the government coalition, had every reason to be repeated at the second elections held on 1 March 1979<sup>8</sup>.

	Votes	% Votes	Seats	%Seats
Centre Democratic Union (UCD)	6,293,878	35.1	168	48.0
Spanish Socialist Workers' Party - Popular Socialist Party (PSOE-PSP)	5,475,389	30.5	121	34.6
Communist Party of Spain (PCE)	1,938,904	10.8	23	6.6
Democratic Coalition	1,097,653	6.1	9	2.6
Catalan Nationalists	605,545	3.4	9	2.6
Basque Nationalist Party	574,384	3.2	11	3.2
Various Regionalists	451,474	2.5	8	2.3

In the Senate, the UCD secured 120 seats, and the PSOE-PSP 65<sup>9</sup>; the Basque Nationalist Party took 8, and Independents 5. The

6. Elections shall take place between thirty and sixty days after the end of the term of office. Congress-elect must be summoned within twenty-five days after the holding of elections.

Art. 69. 1. The Senate is the Chamber of territorial representation.

2. In each province, four Senators shall be elected by universal, free, equal, direct and secret suffrage by the voters in each of them, on the terms to be contained in an organic law.

3. In the island provinces, each island or group of islands with a "Cabildo" or Island Council shall constitute an electoral district for the purpose of electing Senators, of which there shall be three for each of the larger islands - Gran Canaria, Mallorca and Tenerife - and one for each of the following islands or groups of islands: Ibiza-Formentera, Menorca, Fuerteventura, Gomera, Hierro, Lanzarote and La Palma.

4. The cities of Ceuta and Melilla shall each elect two Senators.

5. The Self-Governing Communities shall moreover nominate one Senator and a further Senator for each million inhabitants in their respective territories. The nomination shall be incumbent upon the Legislative Assembly or, in its default, upon the Self-Governing Community's highest corporate body, in accordance with the provisions of the Statutes, which shall, in any case, guarantee adequate proportional representation.

6. The Senate is elected for four years. The Senators' term of office shall end four years after their election or on the day that the Chamber is dissolved.

(Source of translation: *Doc. Admin.*, no. 180, pp. 1061-2).

<sup>8</sup> This second election was the consequence of a dissolution of the assemblies provoked on 2 January 1979 by Prime Minister Adolfo Suárez with the aim of securing a new "lease" for the government after the adoption of the Constitution of 5 December 1978.

<sup>9</sup> The PSOE and PSP merged in 1978. The Democratic Coalition is a successor grouping to the Popular Alliance. The figures may vary from one organ of information to another since no official voting results are published in Spain.

Democratic Coalition and the Catalan Left took 2 each; one further seat went to the Catalan Nationalists; there are 4 non-aligned.

Abstentionism, which had reached 21.6% in 1977, rose to 32%.

## PORTUGAL

Adopted on 4 April 1979 and promulgated on the 25th of that month<sup>10</sup>, the Portuguese law for elections to the Assembly of the Republic has come into effect with the elections on 2 December 1979.

Before the drawing-up of this law by the Assembly, there had been two elections, one in 1975 (constituent) the other in 1976 (legislative). Though the provisions governing these two elections are now of no more than historical interest, they should not be totally neglected, if only because some of the principles remain in force.

### 1. THE 1975 AND 1976 ELECTIONS

As in Spain, proportional representation is the basis of Portuguese electoral legislation for the Assembly of the Republic, the sole chamber, the legislative period of which is four years except in cases of dissolution.

The members (263 in the elections of 1975 and 1976) are elected in each electoral district according to the size of the population, the remainders being distributed, again as in Spain, according to the d'Hondt method (Constitution, art. 155). There are 22 districts, 18 in metropolitan Portugal. The smallest (Horta, in the Azores) has 26,031 voters and elects one member. The largest (Lisbon) has 1,447,755 electors and 58 members.

The age for voting and standing is 18. Emigrants, who constitute more than one fifth of the total number of Portuguese, are entitled to vote<sup>11</sup>. The vote is personal and may be exercised by post for the legislative elections: physically handicapped persons may be helped by a person of their choice.

<sup>10</sup> *Diário da República*, 16 May 1979, pp. 915-937.

<sup>11</sup> In 1975, for the Constituent Assembly, a single electoral district was constituted for the emigrant vote; the following year, for the legislative elections, two were provided (Europe, rest of world).

At the time of voting, the voter identifies himself to the returning officer: he is given the ballot paper on which the names and symbols of the parties appear, and indicates with a cross the group to which he wishes to give his vote (it should be borne in mind that illiterate voters form a very considerable portion of the total). The suffrage is free, direct, equal and secret. Complaints are judged by the ordinary courts<sup>12</sup>.

The first elections that had guarantees of being free and fair after 50 years of dictatorship, were in 1975 and showed exceptionally high participation: 91.7%. The voters spread their votes over four main parties:

	Votes	% Votes	Seats	% Seats
Portuguese Socialist Party (PSP)	2,151,945	37.9	115	46
Peoples Democratic Party (PPD)	1,503,402	26.4	80	32
Portuguese Communist Party (PCP)	709,659	12.5	30	12
Social Democratic Centre (CDS)	434,189	7.6	16	6

Two other parties (the Popular Democratic Movement and the People's Democratic Union) secured five and one seats respectively; the remaining votes (10%) were scattered over parties that did not secure any seats.

It is easy to see, as in Spain, that proportionality is, here too, weighted in favour of the major parties, whose percentage of seats is rather higher than the percentage of votes. 18,712 voters are enough for one socialist deputy, 23,700 for a Communist; the only UDP deputy represents 47,000.

A second observation born of this election to the Constituent Assembly has to do with the existence of two Portugals. The southern part of the country is clearly favourable to the left parties; the northern part remains strongly conservative.

Though somewhat narrowed the following year, this divide was confirmed by the elections to the – legislative – Assembly of the Republic, held on 25 April 1976 after the adoption of the Constitution.

<sup>12</sup> There is no public financing of the electoral campaign.

	Votes	% Votes	Seats	% Seats
PSP	1,913,521	35	107	41
PPD	1,331,393	24	73	24
CDS	875,821	15.9	42	16
PCP	791,394	14.6	40	15

## 2. THE LAW OF 25 APRIL 1979

Apart from some provisions appearing in the Constitution of 2 April, which will be mentioned in passing, the electoral legislation is laid down in the detailed law of 25 April 1979, adopted by the first elected assembly of the Portuguese Republic. This legislation is detailed here under five headings: general principles, organization of elections, propaganda, electoral operations, and disputes.

### *General principles*

The right to vote and to stand for election goes to Portuguese citizens of either sex over 18 and not deprived of their civil rights (arts. 1, 2 and 4). The Assembly is made up of 246 members (Constitution art. 151; Law, art. 13) elected by list voting with proportional representation on the highest average (d'Hondt) system; in each electoral district, the number of members to be elected is based on the size of population. The Azores are a single electoral district, as is Madeira; there are two electoral districts for Portuguese resident abroad: Europe and rest of world, including Macao. Not only is no threshold set for election, but the establishment of one is forbidden (Constitution, arts. 152 and 155; Law, arts. 12-16). The list submitted to the voters must contain at least as many names as there are seats to be filled, plus some names of possible alternates. If a seat falls vacant the next on the list is appointed (arts. 17 and 18).

The ineligibilities apply to magistrates, the military, diplomats, civil servants with the grade of director, civil governors and ministers of religion (Constitution, art. 157; Law, arts. 6 and 51). They exist, clearly, only when such persons are in service. As for the incompatibilities, they concern the exercise of the parliamentary mandate together with either being a civil servant or official of another public

body corporate or being a member of the government (Constitution art. 157; Law, art. 18). These incompatibilities work *à la française*: it is not necessary to resign before the election, but only to opt between the parliamentary mandate, once secured, and the office incompatible with it.

### *Organization of the elections*

The President of the Republic shall convoke the electors at least 80 days in advance (art. 19). The presentation of candidacies by the parties shall take place between the seventieth and the fifty-fifth day before the elections, before the ordinary judge of the chief town of the electoral district (art. 23) who shall verify that the requisite formalities have been complied with (art. 26(1)). Regarding his decisions, objections may be brought before the same judge. Disputes shall be brought within three days before the judicial tribunal of the district, which shall deliver a verdict within an identical period (arts. 30 and 32).

Once the candidatures have been found to be in order, the lists are made public. The campaign, which lasts 21 days, closes at midnight one full day before the election (art. 53). As long as it lasts, no opinion polls may be published (art. 60).

### *Propaganda*

Many hours broadcasting on radio and television are provided for the benefit of sufficiently representative groups, the criterion being the presentation of 50 candidates distributed over at least five electoral districts. Without even considering the private radio stations, ninety minutes air time on national channels and thirty minutes on regional transmitters are allowed these parties each day. As for the public television, it allows them thirty minutes each day, extended to forty minutes on Saturdays (arts. 62 and 63).

The allocation of this air time among the parties depends on the number of candidates put forward by each. Supervision is effected by the National Commission for Elections (art. 71), which also supervises use of funds employed during the campaign (art. 75), although there is no official financing by the state, and although financing by public or private enterprises is not authorized (art. 76).



For each candidate, fifteen times the amount of the minimum salary may be spent; any more than that is illegal (art. 77).

### *Electoral operations*

Voting operations begin at 8 a.m.; the 'bureau' of each polling station consists of a returning officer and three polling clerks (arts. 41 and 44). Representatives of the candidates may attend the operations (art. 50).

As a general rule, each elector must come in person to exercise his right to vote; military personnel on duty may however vote by post, following a procedure fairly close to that described for Spain (art. 79).

By contrast with Spain, however, when the polls are opened, it is the members of the polling station that vote first; then the postal votes are placed in the ballot box. The last voters are admitted at 7 p.m..

The ballot paper bears the names, initials and symbols of the parties, and a box to enable the voter to indicate his choice. After being identified by the returning officer, the voter receives a ballot paper, marks his vote in the booth, and returns the ballot paper, folded, to the returning officer who puts it in the ballot box. Handicapped persons may be helped by another voter of their choice (art. 86-97).

Ballot papers with no mark in the box provided are considered as blank; ballot papers with more than one cross are considered invalid, as are those that allow doubt as to the voter's choice (vote for a list that has been withdrawn or whose registration has been refused), and those that bear not only a cross but some unacceptable mark (art. 98).

Complaints made at this stage of the election are brought before the 'bureau' of the polling station, which must decide on them (art. 99).

Once polling is declared closed by the returning officer, he counts the unused ballot papers and then the voters entered on the list. He has the ballot box opened and counts the ballot papers in it. Under the supervision of the returning officers, the tellers proceed with the count, and for greater certainty the ballot papers allocated to each list are counted a second time.

Invalid ballot papers and doubtful ballot papers are attached to

the report drawn up by the polling station and sent to the National Commission for the count. The others are entrusted to the local judge, who destroys them after the expiry of the time limit for appeals and cases of dispute. The report is sent to the National Commission within 24 hours of the close of the polls. This Commission begins its work on the fourth day after the elections; it is made up of the judge of the chief town of the electoral district (at Lisbon and Oporto, the principal civil judge), two lawyers chosen by the chairman, two professors of mathematics appointed by the Ministry of Education, six returning officers appointed by the civil governor, and finally a clerk, chosen by the chairman, who performs the functions of secretary (art. 108).

The National Commission for the count verifies the voting operations at all levels and in all electoral districts.

### *Disputes*

Candidates, their representatives and the political parties may appeal against irregularities. The time limit for this purpose is 24 hours after the electoral operations; the ordinary court in the place where the election was held is competent to take cognisance and must decide within 48 hours of the presentation of the appeal. Illegalities complained of are not taken into account unless they would have an effect on the results. If the appeal is allowed and the election cancelled, new elections are held on the second Sunday following the cancellation.

The Assembly of the Republic is the supreme judge of the election of its members. To this end, the National Commission for Elections sends it a copy of the documents on the general count (art. 117-120).

If an illegality, for which redress is requested, constitutes a penal infraction, the culprit incurs a penalty of imprisonment or a fine (possibly both), accompanied by the deprivation of political rights (art. 125). The first punishment may be up to two years; fines go from 500 to 500,000 escudos, and the deprivation of rights is from one to five years (art. 125, and 128-168); obviously the seriousness of the act committed and the scale of penalties are extremely closely related. The election rigging under Salazarism was so shameful and freedom of expression suffered so much from it that the electoral law of 1979 is marked by extreme meticulousness; it seeks to pro-

vide for and to penalize all conceivable infractions, to the point of inflicting a fine on voters who reveal what list they have voted for (art. 151).

*Results of the December 1979 Legislative Elections*

Registered:	6,758,447	
Voted:	5,912,913	(87.5%)
Democratic Alliance	42.2%	122 seats
Portuguese Socialist Party	27.4%	73 seats
Portuguese Communist Party	19.0%	47 seats
Social-Democratic Party	2.4%	7 seats
People's Democratic Union	2.2%	1 seat

GREECE

The main original aspect of the Greek electoral system (as laid down by the Constitution of 9 June 1975 and the law of 1926, amended on several occasions) used for the first time on 17 November 1974, is the procedure for assigning seats in several stages. We shall therefore pass over fairly rapidly the other aspects of the matter, which are of no special interest by comparison with Spain and Portugal.

The single Greek chamber is elected for four years by universal (both sexes), direct, equal and secret suffrage. Voting age is 21 and the age of eligibility is 25. There are 300 members of parliament; electors must not have been deprived of their civil rights. Voting is compulsory (Constitution, art. 51).

The allocation of votes is effected according to the *reinforced* proportional representation system. "The number of members elected to each constituency shall be specified by presidential decree on the basis of the legal population thereof as it appears in the latest census". (Constitution, art. 54(2)). There are successive allocations of votes, and this complicates counting operations. In a first stage, ballot papers are distributed among independent candidates or the parties; then the preference votes given to the various candidates are counted. The operation is supervised in each polling station by a supervisory commission and by the candidates or their representatives.

To allocate the seats, the «measure» is calculated, which is the quotient of the number of votes cast in the constituency divided by the number of seats to be filled. Each party (or coalition, or isolated candidate) receives as many seats as the number of voting measures secured. This is the first stage of the allocation.

In a second stage, the remainders are used to distribute the seats not yet allocated. To do this, several constituencies are «regrouped» according to a new division, and seats are allocated according to the strength of the competing parties, this strength being calculated by dividing the number of votes remaining in the new constituency by the number of seats remaining to be allocated therein.

If, following this second operation, some seats have still not been allocated a third assignment is made. The votes received by the parties or coalitions are added, and the total divided by the number of seats not yet allocated.

To take part in the second and third allocation, parties and coalitions must reach a minimum percentage of votes over the whole country. This percentage was fixed in 1974 at 17% for parties and 25% for coalitions (30% if the coalition includes three parties or more). If the figure is not reached by any of them, the two groups closest to it join in coalition. This system is called reinforced proportionality.

Finally, a provisional law, later constitutionalized (art. 54), provided that a certain number of seats (not more than 5%) be reserved for certain candidates put forward by the parties and coalitions, if these put up candidates in at least half of the constituencies. These seats are reserved to the parties participating in the second allocation; they are allocated according to the total number of votes obtained by each of these parties. The incumbents are called *national members*; in 1974, 12 seats were set aside for this purpose.

In 1974, the electorate was 8,893,835; votes cast were 4,908,974, in the 56 constituencies covering the whole country. There were eight competing parties. The results were as follows:

1st allocation: 186 seats

New Democracy:	135 (2,669,133 votes: 54.37%)
Centre Union:	31 (1,002,559 votes: 20.42%)
Panhellenic Socialist Movement:	12 ( 666,413 votes: 13.58%)
United Left:	8 ( 464,787 votes: 9.47%)

2nd allocation: 93 seats

New Democracy: 69  
Centre Union: 24

3rd allocation: 9 seats

New Democracy: 7  
Centre Union: 2

Only the New Democracy and the Centre Union reached the second allocation since the other parties had not reached 17% of the votes cast, the minimum threshold laid down.

Outcome:	New Democracy:	211
	Centre Union:	57
	Socialist Movement:	12
	United Left:	8
National Members:	New Democracy:	9
	Centre Union:	3
Final Result:	New Democracy:	220
	Centre Union:	60
	Socialist Movement:	12
	United Left:	8 <sup>13</sup>

GREECE – Comparison of results of 1974 and 1977 legislative elections in Greece

	1974		1977	
	% votes	seats	% votes <sup>14</sup>	seats
New Democracy	54.37	220	41.85	173
Centre Democratic Union	20.42	60	11.95	15
Pasok	13.58	12	25.33	92
Left Alliance	9.45	8	2.72	2
External Communist Party			9.36	11
National Party	1.10		6.82	5
Neo-Liberals			1.08	2

<sup>13</sup> Electoral disputes are in the hands of a Special Highest Court, composed of: the presidents of the Council of State, the Supreme Court and the Comptrollers' Council, 4 Councilors of State and 4 Members of the Supreme Court.

<sup>14</sup> In 1977: registered: 6,389,255  
voted: 5,193,659  
valid votes: 5,129,884  
abstentions: 1,195,596 (18.7%)

## APPENDIX II

### SECTION I

*Howard C. Yourow*

#### THE ELECTORAL SYSTEM OF THE UNITED STATES: A UNIFIED COMMUNITY ELECTIONS PROCEDURE IN COMPARATIVE PERSPECTIVE

Elections are to politics what a trial for murder is to law: in them is concentrated the intelligence and morality of the entire system. J. R. Pole, *Political Representation in England and the Origins of The American Republic*, p. 521.

#### I. OVERVIEW

The most noteworthy element of the American Constitutional scheme of 1787 is its successful staying power<sup>1</sup>. Although the Constitution has undergone significant amendment regarding the electoral processes it oversees, those processes remain much the

<sup>1</sup> The Articles of Confederation comprised the original post-independence blueprint for an American Union. They hoped to create a "loosely integrated" federal system, but the centrifugal forces supporting individual State authority, if untamed, were sure to rend asunder even that relatively timid plan. Thus, the calls for a new Constitutional Convention, which historic meeting produced the new scheme. Pole notes historical tensions whose undertones have obvious analogous consequences for European electoral integration: "The nationalists, though many of them were loyal to their states, were conspicuously less committed to local interests. Their leading spokesman had worked for many years on the continental stage, and by serving the Congress and the army had acquired a strong sense of nationhood. Some of them had business interests of interstate ramifications and prospects that would depend on the force of a central government and would owe nothing to that of the states. Whether through character or interest, they were men who had the gift of a continental imagination" (Pole, pp. 363-4).

same as outlined nearly two hundred years ago. Electoral powers is partitioned between the national government and the state governments and within the national and each state government among the executive, legislative and judicial branches. The first partition reflects the Federal nature of the American union and the second the idea of the prevention of the abuse of power through the separation of powers. The American voter, operating within an electoral system whose principles are universality, freedom, equality, directness and secrecy, elects the President and Vice-President of the United States<sup>2</sup>; the Congress of the United States, in the form of his district's member of the House of Representatives and his state's two members of the United States Senate<sup>3</sup>; the Governor and other executive officers of his state; the legislature of his state, in the form of his district's members of each of its two chambers<sup>4</sup>; the judicial officers of his state<sup>5</sup>; and the executive, legislative and judicial officers of his local (county, city or town) government<sup>6</sup>.

The oldest operating national political party system in the world organizes the American electoral infrastructure and gives life to the legal-constitutional scheme. The American dual party system was not envisioned by the Founders in 1787 and no party system has ever been formally incorporated into the national Constitution, but they have "grown up" together. The two major parties are thus as famous for their durability and adaptability as the Constitutional scheme of which they are not formally a part. Thus, one major duality in the organization of the American electoral system is that between the "legal" (i.e. constitutional) and the "extra-legal" or party components. And within both the constitutional and political realms exists another key dichotomy. Both the constitution and the party schemes operate, at the same time, under great decentralizing and centralizing forces. As the decentralizing forces, constitutional and political, have

<sup>2</sup> The Vice-President of the United States is the presiding officer of the United States Senate (Constitution, Article I, Section 3, Clause 4). His real constitutional importance lies in the fact that he succeeds to the Presidency upon the death, inability or incapacity to serve, or resignation of the incumbent President (Constitution, Amendment 25). His real political-electoral importance lies in his status as asset or liability to his Presidential running mate.

<sup>3</sup> The national judiciary is appointed and not elected.

<sup>4</sup> Only the state of Nebraska has a uni-cameral legislature.

<sup>5</sup> State judges are elected by the people or appointed by the state's executive (usually the Governor) depending upon the State constitutional scheme.

<sup>6</sup> Most such local officials are elected, rather than appointed by the State government; it is the judges who may be appointed rather than elected.

traditionally been considered the more important in the organization of American elections, we may rightly speak of American electoral processes at the local, state and national level rather than "the American electoral process"<sup>7</sup>. But strong centralizing forces in the national evolution have played and are playing their part in the elections arena as in national life generally. It is the mix of forces, political and legal, centralizing and decentralizing, simple and complex, that produces the current, and conditions the future, state of the American electoral system<sup>8</sup>.

## II. CENTRIFUGAL FORCES

Constitutional structure has been and remains a major centrifugal electoral force. The original document, reflecting the compromises inherent in the creation of a federal union and the contemporary opposition to executive power, lodged the major powers of electoral organization with the States and their legislatures (Art. I, Sec. 2, Cls. 1, 2, 3 and 4; Sec. 3, Cls. 1, 2, 3; Sec. 4; Art. II, Sec. 1, Cls. 2,3)<sup>9</sup>. In creating a separation of powers at the national governmental level 1, 2, 3 and 4; Sec. 3, Cls. 1, 2, 3; Sec. 4, Cl. 1; Art. II, Sec. 1, Cls. 2,3)<sup>9</sup>. In creating a separation of powers at the national gov-

<sup>7</sup> "Il n'y a pas un système, mais des systèmes électoraux américains, variables dans le temps et dans l'espace, quoique faits, dans leur ensemble, pour être coordonnés dans le jeu de la vie politique d'un Continent" (Duverger, *L'influence des systèmes électoraux sur la politique*, p. 116).

<sup>8</sup> "American electoral institutions have assumed their present characteristics largely as a by-product of federalism, separation of powers, and the fragmentation of political authority that both these institutional factors and the hegemonic liberal-bourgeois political culture have mandated. *Complexity* inheres in the very wide array of offices for which Americans are expected to cast ballots, not to mention a more or less wide range of referendum questions on which they are also expected to vote. This phenomenon is essentially the artifact of a presidential-congressional, separation-of-powers constitutional regime that is carried to especially great lengths at the state level. *Simplicity* is found in the universality of this regime — for example, every state except Nebraska has a bicameral legislature, and no state has a cabinet form of government — and in the concomitant universality of the simple-majority mode of election" (Burnham, "The United States: the Politics of Heterogeneity", in Rose, *Electoral Behaviour*, at p. 662).

<sup>9</sup> "Even a cursory reading of the Constitution discloses that each state seems to possess unquestioned authority. Its provisions, coupled with each state's authority to supervise all elections for state office, appear to endow the states with decisive control over all elections. The fact that the Constitution, as part of Article I, Section 4, reserved to Congress the right to make or alter regulations for congressional or senatorial elections, 'except as to the Places of choosing Senators', hardly downgrades state authority, for Congress has only rarely exercised this power and then only in very limited ways" (Reitman and Davidson, *The election process: voting laws and procedures*, p. 5).



ernmental level it made possible, in combination with larger societal forces, a further diffusion of electoral organization <sup>10</sup>.

What has been termed "political regionalism" may be the major "larger societal force" influencing the thesis of historical electoral decentralization <sup>11</sup>. It is the continuing strength of geographical and psychological regional pulls that, in their effect upon the body politic <sup>12</sup>, affects as well the formally de-centralized electoral structures <sup>13</sup>.

These formal and cultural centrifugal pulls, which may be said to find their counterparts in the Treaty structure and in the continuing importance of European nationalism and regionalism, affect not only the mechanics, but the results, of the election of the American Congress in ways relevant to a directly elected European Parliament. The major critical conclusion is that in America these factors contribute

<sup>10</sup> "Only the presidential election, held every four years, can functionally be regarded as a national election. Of course, members of the national House of Representatives are elected in single-member constituencies every two years, but the influence of local factors on the outcome of congressional elections is immense. It is thus problematic whether American congressional elections can be regarded as national in the sense in which one can so regard European parliamentary elections. When the focus of attention shifts to elections for state office the absence of national issues, while relative rather than absolute, is most striking" (Burnham, p. 680).

<sup>11</sup> "Du point de vue de la sociologie électorale, le fédéralisme américain ... implique l'autonomie quasi absolue des Etats quant à l'organisation du suffrage, aussi bien en matière d'élections dans le cadre de l'Etat que sur le plan fédéral. Cependant, cet aspect juridique de la question est lié étroitement à la répartition géographique des intérêts. Ce n'est que par le rapprochement du fédéralisme juridique et du régionalisme économico-social que l'on pourrait peut-être découvrir, finalement, le comportement électorale des populations de ce pays" (Duverger, p. 118).

<sup>12</sup> "Despite all superficial evidences of cultural homogenization Americans remain deeply divided along horizontal fault lines, many of which find geographical expression. It may even be that the supposedly homogenizing influence of television and other mass media, by making people of starkly contrasting political and social values aware of each other's existence and the extent of their differences, has contributed to the massive upsurge of horizontal cleavages in American politics during the 1960s. It is certain that the influence of sectionalism and other horizontal cleavage patterns on the outcome of national elections has been restored to a position of significance unparalleled since before the great depression. The absence of any mass-based working-class *conscience politique* in the United States implies that class polarization always remains subject to cross-cutting by sectionalism, racial antagonisms, and other horizontal cleavages" (Burnham, p. 713).

<sup>13</sup> For example: "It seems likely, however, that any formal centralization in the Congressional nominating process is a long way off. Identity of viewpoint between the Presidential and Congressional candidates is more likely to be achieved through domination of the campaign dialogue by Presidential candidates than by ignoring the traditional right of local political leaders to determine who their candidate shall be. At mid-term elections the nationalizing influence of the Presidency is largely diminished and in many cases absent. In two-party doubtful states and districts support or opposition to the program of the President plays a part and he may be called in personally to campaign; but this is rarely as important as local and state issues and personalities" (Clark, *Congress: the sapless branch*, p. 43).

to producing a parliamentary body that is too parochial<sup>14</sup>, too "political"<sup>15</sup>, and thoroughly "unmodern".

Thus, in the field of contemporary electoral administration, while it is certain that the traditional orthodoxy is on the wane, it is also true that state power still plays an essential part<sup>16</sup>. The absence of centralized administration in America has long been touted as a practical and symbolic sign of political freedom and flexibility, initiative and experimentation<sup>17</sup>.

### III. NATIONALIZING FORCES

The American State is finished. I do not predict that the States will go, but affirm that they have gone. Luther H. Gulick, "Reor-

<sup>14</sup> "The Congress is the place in which local men look at national and international issues from the viewpoint of parochial values and interests" (W. Burmeister (ed.), *Democratic institutions in the world today*, London (Stevens), 1958, p. 35).

"The compulsory representation of each locality by a resident of its incorporating state (Constitution, Art. I, Sec. 2, Cl. 2) reinforces the diversity of American politics and makes a virtue of particularism" (Pole, pp. 516-17).

"The issue of bi-cameralism and parochialism may be noted here. It is generally conceded that in the American Congress the Senate transcends the sectionalism which pervades every nook and cranny of the House of Representatives" (E. W. Chester, *Europe views America: a critical evaluation*, Washington, D.C. (Public Affairs Press), 1962, p. 55). But neither the bi- nor uni-cameral legislative arrangement is preferred *per se* for "breadth of vision". The uni-cameral European Parliament should at some point consider itself in terms of its bi- and uni-cameral European and American forbears.

<sup>15</sup> Federalism, the historic importance of local and sectional issues, and the decentralization of American parties are thus re-asserted to emphasize the lack-of-political-ideology issue.

<sup>16</sup> "Although the states' authority in election matters has been reduced, there still are literally thousands of state laws which define voting, party organization, campaign procedures, nomination and the election machinery. These all reflect the deep involvement of states in the election process. Since each state legislature is virtually autonomous, the 50 state systems vary greatly. One must look at the state codes as well as the changes produced by the Congress and the courts to bring the American electoral system into proper focus" (Reitman, p. 4). The following six areas of state administrative regulation demonstrate continuing decentralization: 1) registration laws restricting franchise eligibility; 2) ballot eligibility; 3) form of the ballot itself; 4) congressional, state and local nominating procedures, including candidate eligibility; 5) campaign finance and electioneering, and (6) post-election remedies. Note, *Harvard L. R.*, vol. 88 (1975), at 1115-16.

<sup>17</sup> Even as confirmed an "electoral nationalist" as Richard Claude asks: "What latitude is to be left at the state and local levels for experimentation with various schemes of representation suited to particular conditions and changing needs?", *The Supreme Court and the Electoral Process* (at p. 171). His conclusion: "The Supreme Court, especially since 1958, has given impetus to the nationalization of the electoral process. This is not to deny that decentralized administration and control of local, state and federal elections is a permanent feature of the American electoral process; rather it is to state that, increasingly, the conduct of every election proceeds within the limitations of federal guidelines" (p. 265). The notion of an ongoing *sharing* of electoral administrative powers is reflected in Note, *Harvard L. R.*, vol. 88 (1975), at 1111, and in Theis, *et al.*, *All about Politics*.

ganization of the State", *Civil Engineering*, vol. 27 (1933), p. 420<sup>18</sup>.

1. Many aspects of post-war American evolution add weight to the "nationalization thesis" regarding the electoral system. It may be viewed in its broadest international light as one of an innumerable number of territorial and cultural integration phenomena in this age of the "triumph" of technology<sup>19</sup>. If it is true that "technology centralizes and homogenizes"<sup>20</sup> then it is certainly true that "nationalization of American society (and therefore its politics) has changed and will continue to change"<sup>21</sup>.

2. An understanding of the emergence of an increasingly unitary electoral system must advance along political as well as legal lines. The struggles for women's suffrage, black enfranchisement, Chicano, Indian, Puerto Rican, childrens', homosexuals', cultural dissidents' and poor peoples' rights, abolition of the poll tax and reapportionment are all historical commentaries on the direction of political change in the United States. In each of these movements, reformers found that when they were blocked at one level of government, they could gainfully seek another at which to advance their proposals. In the past century, the effective cutting edge of these movements has been at the national level (a point at which party competition is more continuous than at the state and local levels). Where the elec-

<sup>18</sup> "Does each state have free rein to define suffrage qualifications and to organize the election of federal legislators? The answer in the negative has been two centuries in the making" (Claude, p. 23).

<sup>19</sup> "Dans le monde entier les positions du fédéralisme sont en recul et les Etats-Unis ne font pas exception à la règle. Les prérogatives des états particuliers ont perdu de leur justification aux intérêts organisés — partis politiques, syndicats, organisations patronales. Les moyens d'expression tels que la presse ou les télécommunications, ont acquis une audience nationale" (Loewenstein, "Réflexions sur le vieillissement de la Constitution fédérale américaine", in *Revue du Droit Public et de la Science Politique en France et à l'Etranger*, vol. 88 (Sept.-Oct. 1972) at p. 1010).

<sup>20</sup> Boorstin, *The Exploring Spirit*, pp. 56-7.

<sup>21</sup> Claude, p. 148. Claude's work is concerned with the judicial role in electoral integration but he must, of course, put what is but a part of the story into perspective. He lists the following causative factors, ascribing to each a rooting in "subtle shifts in popularly held values" and/or in "material-technological advance": 1) an accelerated diffusion of middle class values concerning civic participation; 2) the prospective numerical growth of the racial minorities; 3) the growth of urban megalopolis; 4) mass media technologies, especially television; 5) increased mobility; 6) communications and electronic advances, opening up new possibilities in voter registration, in the act of voting itself, in vote counting, in campaigning; 7) government agencies replacing the market in making decisions.

toral process is concerned, however, nationalized politics rubs against the traditional legal grain because conducting elections and defining the scope of the franchise have generally been decentralized functions of state activity<sup>22</sup>.

3. Another major factor is the integrative potential of the party system<sup>23</sup>.

4. The requirements of legitimacy also allow for more national and uniform standards of voter qualification and electoral process. In the American political system, voting serves the function of legitimation, that is, as a means to determine which alternatives are rightful by the entire citizenry. When the electorate and the manner of casting and counting votes differs from one part of the country to the other, the legitimacy of the outcome of various elections is thrown into question. In order to avoid a crisis of legitimacy, it becomes necessary to make qualifications and procedures more uniform so that they are acceptable to all (or at least to the dominant competitors for office and power)<sup>24</sup>.

5. The enlargement of the franchise, together with social and economic change, has also tended to reduce the dissimilarities between the cross-sections of state and regional electorates and such cross-sections of the national electorate as a whole. The Census Bureau statistics describe an increasingly unitary electorate<sup>25</sup>.

6. The unifying force of the Constitution itself must be considered along with the technological and political factors in weighing

<sup>22</sup> Claude, pp. 251-2.

<sup>23</sup> "The growth of the electorate has enjoyed bi-partisan support, since doubt generally envelops the question of which party will be the lasting beneficiary of any given increment to the electorate and neither party wishes to let the other take full credit. The consequence is that in addition to the sheer number of members the parties establish roles and procedures useful in integrating diverse interests and in bargaining for goals and resources for which those involved might otherwise compete in a mutually destructive manner" (Claude, pp. 254-255).

<sup>24</sup> Claude, p. 256; S. Rokkan, "Electoral systems", in *International Encyclopedia of Social Science*, at 621-9; S. M. Lipset, "Some social requisites of democracy: economic development and political legitimacy", in *American Political Science Review*, vol. 53 (March 1959), 69-105.

<sup>25</sup> See "Estimated Characteristics of the Electorate, 1820-1960", in William H. Flanagan, *Political Behavior of the American Electorate*, pp. 10-12.

the uniformization argument<sup>26</sup>. The following is an analysis of its relevant provisions.

The language of Art. I, Section 2, Cl. 1, to wit, that "The House of Representatives shall be composed of members chosen by the people of the several states" was declared important nationalizing language by the Supreme Court in its key re-apportionment and re-districting decisions of the 1960s (see *infra*, pp. 360-64), although the Clause remains the basis of historical state power over franchise qualifications<sup>27</sup>.

In Art. I, Section 2, Cl. 3, is found the authority for the apportionment by the federal House of its own seats<sup>28</sup>. The important point here is that early compromise on the sharing of federal power led to the still prevailing practice of de-centralized (i.e. state legislative) apportionment of federal House seats within each State itself.

Section 2, Cl. 4, lodges in the "Executive Authority" of each State the power to issue writs of election to fill vacant federal House seats<sup>29</sup>.

Art. I, Section 3 Senators<sup>30</sup>, of the original document lodged in the state legislatures the power to elect federal Senators.

Art. I, Section 4, Cl. 1, the "Times, Places, and Manner" Clause, is a bulwark of the nationalization thesis<sup>31</sup>. It reflects the historical federal compromise over election administration, granting initial

<sup>26</sup> "In the years following the Civil War, it has been the Federal Constitution which has proved the most significant vehicle for change. In the history of tinkering with the Constitution, about 5,700 suggestions for revision have been proposed. But the most successful have been those dealing with representation and voting. The electoral process has been the subject of more constitutional alterations than any other. No less than seven amendments have served to advance federal standards for the electoral process. Extension of the right to vote for groups previously frustrated in their efforts to gain that right at the state level was accomplished at the federal level: Negroes (Fifteenth Amendment in 1870), women (Nineteenth Amendment in 1920), and the poor (Twenty-Fourth Amendment in 1964). The net legal result has been that the introduction by gradual stages of universal suffrage has made the franchise a right of age, residence, and citizenship, and not one of property, race, sex, or occupation" (Claude, pp. xxi, 253-4).

<sup>27</sup> To wit, "The Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature".

<sup>28</sup> "... Representatives ... shall be apportioned among the several States ...".

<sup>29</sup> "When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies".

<sup>30</sup> "The Senate of the United States shall be composed of two Senators from each State (chosen by the legislature thereof) for six years; and each Senator shall have one vote". The legislative selection of Senators... superseded by Amendment 17.

<sup>31</sup> "The Times, Places, and Manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators".

authority to the States but superseding authority to the Congress to "make or alter" state regulations<sup>32</sup>.

The Congress first exercised its authority over the Congressional electoral process in 1842 by an enactment requiring the election of Representatives by districts. In 1870 and 1872, Congress for the first time passed comprehensive statutes dealing with elections. Under them, federal offenses were made of false registration, bribery, voting without legal right, false returns, interfering with officers of election, and neglect of duty by such officers. In addition, provision was made for the appointment of federal officers to supervise elections directly.

The statutes just referred to were part of the Reconstruction legislation of the postbellum era and were almost entirely repealed in 1894. All that was left standing on the federal statute book were provisions protecting the rights of individuals to vote. Such provisions make no attempts to regulate affirmatively the manner in which Congressional elections may be conducted.

Despite their repeal, the Reconstruction election laws remain of great significance, for they illustrate dramatically the extent of Congressional power over the election of Senators and Representatives. Under them, the Congress not only prescribed detailed regulations governing such election; it also provided for federally appointed officials to supervise them.

The power of the Congress over elections extends not only to general elections themselves but also to the primaries at which Congressional candidates are chosen. In *United States v. Classic* (1941) the right of the Congress to regulate primary elections for the nomination of its members was squarely recognized. The Congress consequently has the same complete authority to regulate Congressional primaries that it possesses with regard to Congressional elections<sup>33</sup>.

<sup>32</sup> The highest Court has construed the power given to the states by this language most broadly. State power over Congressional elections is, nevertheless, clearly subject to the overriding authority of the Federal Congress. Though the states do have the general power over the suffrage already noted, the right to vote for Senators and Representatives is derived, not from state but from federal law. Since a federal right is involved, it is one that can be protected by appropriate federal legislation. The Congressional power in this respect is not limited to the physical right to cast an effective ballot. The national legislature is vested with a paramount authority over all aspects of the Congressional electoral process. The power over Congressional elections is thus lodged primarily in the states and ultimately in the nation. The Framers submitted the regulation of such elections, in the first instance, to the relevant state authorities. But they reserved to the national authority a right to interpose, whenever it deems such action necessary. Schwarts, *Statutory history of the United States; Civil Rights*, vol. I, pp. 100-103, vol. II, p. 323.

<sup>33</sup> *Ibid.*

Thus, the national legislative power to unify the electoral "system" – or, at the very least, Congressional and Presidential electoral administration – is constitutionally authorized but has been historically superseded by countervailing de-centralizing forces<sup>34</sup>. Even if it can be said that the force of electoral uniformity is waxing, and predicted that it will soon or someday prevail, still it must be said that the Congress has to this day acted under its authority only in a piecemeal fashion, and then only under the pressure of the body politic and of its co-equal branches of government, especially the Supreme Court. It has thus far failed to act comprehensively.

The next unifying provision is found in Art. I, Sec. 5, Cl. 1, which, in providing that "Each house shall be the judge of the elections, returns, and qualifications of its own members", unqualifiedly guarantees that the national body retains final validation authority over its composition<sup>35</sup>.

The uniformization thesis takes on special strength when the «Times, Places and Manner» and «Judge of the Elections and Returns» clauses are read together – which, in Supreme Court jurisprudence, they are not. The point here, though, is that the text itself provides great centralizing potential. Whether and to what extent the judges seize upon the potential is the living question.

The regulation of interstate commerce by the national government provides an archetypal analogy for centralized American and European electoral regulation<sup>36</sup>. Just as technology has made centralized commercial regulation imperative (compare the growth of Congressional power under the Commerce Clause and the very growth of the Common Market itself) so does it provide the stimulation for political/electoral integration, which naturally and inevitably accompanies economic interdependence<sup>37</sup>.

<sup>34</sup> N.B., that the Clause is concerned specifically only with the election of the federal Congress, and with neither Presidential nor State and local elections. The text of the Constitution itself, then, impresses upon the system as a whole the decentralizing doctrine of the separation of powers and of federalism.

<sup>35</sup> For the analogous European Parliamentary power see the Council Act of 20.IX.76, Art. 11.

<sup>36</sup> "The Congress shall have power to ... regulate Commerce ... among the several States ..."; Art. I, Sec. 8, Cl. 3.

<sup>37</sup> "But whereas the inevitable laws of the market place have come to make the states nearly irrelevant in economic regulation, the overall trend in electoral process cases has been a search for ways to revitalize the responsiveness of state and local governments to expanded

Of interest, especially when read in conjunction with the Commerce Clause, is the "necessary and proper" or so-called "elastic" clause<sup>38</sup>. It has provided a foundation for centralized economic regulation and could doubtless do so in the case of electoral regulation. Further, in an increasingly centralized European federalism it is the kind of source which can provide regulatory power based on similarly potentially expansive Community treaty language and principles<sup>39</sup>.

The Presidential election illustrates the legitimacy of a highly decentralized procedure which is, at the same time, tending toward greater centralization as the ancient system upon which it is based comes under more and more criticism.

The first three Clauses of Art. II, Sec. 1 of the original Constitution, as altered by the 12th Amendment, admittedly create a highly decentralized Presidential election process and counter the nationalist electoral procedure argument.

Until very recently, the national Presidential nominating conventions have been seen as the creatures of the major political parties, controlled by the states.

But a landmark case has opened the party conventions to the reach of central judicial control. The U.S. Supreme Court has given the national party conventions and party rules a status superior to state election laws. In *Cousins v. Wigoda*, 415 US 956 (1974), the Court stated that the conventions serve the «pervasive national interest in the selection of candidates for national office, and this national interest is greater than the interest of any individual states».

The most significant formal change in American presidential conventions has been the establishment in many states of presidential primaries and popular-vote selection of delegates<sup>40</sup>.

and changing constituencies. The alternative – and the Supreme Court has prepared the way for it – would be for Congress to show the same willingness to regulate the electoral system that it has shown regarding the economic structure" (Claude, p. XIII).

<sup>38</sup> "The Congress shall have the power ... to make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof": Art. I, Sec. 8, Cl. 18.

<sup>39</sup> E.g., the expansive notions of the Preamble and of Part I, especially Articles 2, 3, 5 and 7; of the implied powers/*effet utile* doctrine; of Articles 100, 220, 235 and 236; and of the idea of "the system of the Treaty as a whole". Illustrative cases: *Wilhelm v. Kartellamt*, XV Rec. 1 (1969); *Commission v. Council*, XVII Rec. 263 (1971); *Hauptzollamt Bremerhaven v. Massey-Ferguson*, XIX Rec. 897 (1973); *Kramer*, XXII Rec. 1279 (1976).

<sup>40</sup> Burnham, p. 688.



Efforts are under way to abolish the convention and state primary system altogether and to replace it with a system of regional primaries or with a single national presidential primary for each party. The success of these efforts would further weaken the state electoral control mechanisms and crown the triumph of the jet plane and television tube as the crucial campaign factors. Such proposals have aroused opposition across the political spectrum on the grounds that the alienation factors are too high a price to pay for uniformity.

The Constitutional device of the Electoral College operates to insure a continuing de-centralization of the formal election of the National Executive<sup>41</sup>. Article II, Section 1, Clauses 2 and 3 read: "Each State shall appoint in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress"; "The Electors shall meet in their respective States". Thus the Electoral College is still state based: its composition is determined by state population (but according to the federal Constitutional apportionment); the individual electors are chosen by the state parties under state laws and are bound (or not) by the popular Presidential vote according to state law and/or custom<sup>42</sup>. The College now stands squarely counter to the thrust of the modern liberalizing and uniformizing federal initiatives in other electoral areas, and is often described in such terms as "an anachronism neither fulfilling the function anticipated for it by the framers nor reflecting contemporary theories of democracy"<sup>43</sup>. But the Senate has recently defeated a proposed constitutional amendment requiring the direct popular, one-man-one-vote election of the President and Vice-President<sup>44</sup>. It may be noted however that state discretion in choosing electors has not gone altogether untouched by the recent federal activism. In *Williams v. Rhodes* complex state systems which effectively limited access to the ballot to the electors of the two major parties was found to violate the equal protection clause of the Fourteenth Amendment. In *Oregon v. Mitchell*

<sup>41</sup> Mackie and Rose, *The international almanac of electoral history*, p. 431.

<sup>42</sup> See Theis, pp. 172-3.

<sup>43</sup> C.A. Miller, *The Supreme Court and the uses of history*, p. 144; Claude, pp. 242-3; *Delaware v. New York*, 385 US 895 (1968); Broder, "Electoral College: New Debate", *International Herald Tribune*, 21.III.79, p. 6.

<sup>44</sup> *Congressional Record*, 10.VII.1979, pp. 0887, S. 9036, 9038-9109.

the Court upheld the power of Congress to reduce the voting age in presidential elections and to set a thirty day durational residency period as a qualification for voting in presidential elections. The rationale emerging is that the Fourteenth Amendment limits state discretion in prescribing the manner of selecting electors and that Congress in enforcing the Fourteenth Amendment may override state practices which violate that Amendment and substitute standards of its own<sup>45</sup>.

Only the "time and day" problem in electoral college selection is specifically centralized by the original constitutional text<sup>46</sup>.

Through the Constitutional amending process (Article V) the basic law has been altered nearly a dozen times in respect of the electoral system. The following Amendments are relevant:

The first amendment freedoms of speech, press, assembly and association, relevant to a host of electoral system problems (control of media campaign time allowances; third party access to the ballot; libel and slander issues), have been viewed in this century in an increasingly national light by the Supreme Court.

The Civil War Amendments, Fourteen<sup>47</sup> and Fifteen<sup>48</sup>, are perhaps the symbolic turning points in the story of American electoral integration. They are the result of the crucial test of the survival of the American federal experiment itself; the first meaningful uniform electoral system action ever undertaken by the national government; and, equally important, continuing Constitutional symbols of the advanced stage of technological and legal interdependence into which the nation entered after the Civil War.

<sup>45</sup> Small, *The Constitution of the United States: Analysis and Interpretation*, p. 1357.

<sup>46</sup> "The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States" (Article II, Section 1, Clause 4).

<sup>47</sup> "Sharp inroads in the name of the Equal Protection Clause of the Fourteenth Amendment have been made into traditional State claims of exclusive control over voting qualifications" (Claude, pp. 49, 267). "The Equal Protection Clause of the Fourteenth Amendment restrains the States from fixing voter qualifications which invidiously discriminate" (*Harper v. Virginia*, 383 US at 663 (1966)).

<sup>48</sup> Claude comments upon the potential for uniform action which he sees as the logical extension of the Supreme Court's expansive interpretations of the Civil War Amendments: "The Supreme Court has read a Necessary and Proper (or Elastic) Clause (parallel to that in Article I, Section 8, Clause 18) into the Fifteenth Amendment, thereby offering Congress a vast measure of authority. Under the Times Places and Manner Clause and the Fourteenth and Fifteenth Amendments, Congress could even remedy a state practice not condemned by the Supreme Court or, of its own accord, strike down a state voting requirement which it judges to be invidiously discriminatory" (pp. 266, 270).

The special problem of region and race bears heavily on American electoral evolution. Many of the most serious national integration problems facing the United States have to do directly or indirectly with the legacy of Southern underdevelopment and its central importance to a country that is usually regarded as an exemplar of completed industrialization — for attitudes towards political life among inhabitants of the Southern region of the United States are much more similar to those encountered in Italy or Mexico than to those encountered in the rest of the United States or in the United Kingdom.

The Blacks were, for all intents and purposes, disenfranchised throughout the whole of agricultural, regional, ante-bellum America. The success of the Union in the Civil War opened a new stage in American development. The most important relevant change was the constitutional incorporation of the "Civil War Amendments", numbers 13-15, which followed upon the withdrawal of the Union occupation and domination of the South, and the acceptance of which was the specific condition for Southern re-entry and a return of control to state officials<sup>49</sup>.

(It is the continuing importance of the Amendments, especially the Fourteenth, which is noteworthy. "By far the most potent constitutional instrument for contemporary change has been the Fourteenth Amendment. Its utility has been proved in the three areas of districting, racial discrimination, and electoral process"<sup>50</sup>.)

"The 'counterrevolution' was consummated in a series of state constitutional conventions, referenda, and legislative acts between 1890 and 1904, and was legitimated by the Supreme Court in 1896 (*Plessy v. Ferguson*, 163 US 537). As a result virtually the entire black population of the ex-Confederate states was disenfranchised and this in turn created the condition for monolithic Democratic party supremacy throughout the region"<sup>51</sup>. It was mirrored in the North and West, as well, but in a *de facto* rather than a *de jure*

<sup>49</sup> "The three Civil War Amendments were the ... first steps ... taken to enlarge federal responsibilities for both federal and state elections" (Claude, p. 45).

<sup>50</sup> Claude, p. 265. "These three amendments, originally enacted in order to grant civil rights to newly-freed slaves, were repeatedly used to strike down state laws which directly or indirectly restricted minority Americans from gaining access to the ballot. The poll tax, literacy tests and related devices, and even to a great extent residency requirements, all fell in the face of Constitutional attack. The 14th Amendment has proved to be one of the most potent weapons challenging state control of all elections" (Reitman, p. 6).

<sup>51</sup> Burnham, p. 662.

fashion. The federal governmental establishment remained passive.

But the course of American development began to undergo radical change in the 1930s. The increase of power in Washington as a result of the Great Depression and Second War period re-adjustments signalled the end of central inaction *vis-à-vis* the electoral system.

The demands for the use of central power in the bulk of equality-related electoral matters grew from the post-War civil rights struggles and have been greatly influenced by the technology-spawned changes in regional and racial population patterns.

It is important to note both the leadership role of the High Court and the simultaneous intermix of activity by all three branches of the central government. The Court's keystone civil rights judgment of 1954 in *Brown v. Board of Education* was, in part, a stimulation for the congressional Civil and Voting Rights Acts of 1957 and 1960, which may be seen as having stimulated the Court's re-apportionment and re-districting decisions of 1962-64. They, in turn, were inspiration for the broader federal Civil Rights Act of 1964 and Voting Rights Act of 1965<sup>52</sup> and so on through the Court decisions and voting rights legislation of the late 1960s and early 1970s<sup>53</sup>.

The black movement, originating and continuing in the South, having grown to fully nationwide proportions, and having in the meanwhile been joined by a larger national/cultural reform movement encompassing the other racial and language minorities, women, cultural dissidents and homosexuals, was a central cause of wide-ranging electoral changes enacted and in part enforced by a "sympathetic" and "responsive" central government<sup>54</sup>.

An historical problem such as the American racial and regional one cannot repeat itself in the European context, according to the

<sup>52</sup> "... the most sweeping pieces of federal voting legislation in a century" (Diamond *et al.*, *Congressional Quarterly's Guide to Congress*, p. 508).

<sup>53</sup> "Reduction of state authority in voting matters was reinforced by passage of the major voting rights laws enacted by Congress in 1965 and 1970, especially the literacy and registration provisions, which drastically altered the shape of state legislative power over voting" (Reitman, p. 6).

<sup>54</sup> "The contest over the right to vote has shifted from legal guarantees to making the right more meaningful, in the face of bitter opposition in many parts of the United States where the poor, black and brown Americans, the young and women are organizing their political power. The social revolution now being fought in the United States, to bring groups hitherto seen as outside the pale into society and to have them enjoy the rewards that others possess, is inextricably connected to exercising political power at the ballot box" (Reitman, p. 2).

manifest logic of time and place. But *variations* on the theme are quite possible, if not likely. A geographically expanding Community is and will be faced with intra- and international regional tensions, and these, as shown, manifest themselves as problems in electoral unification efforts. Further, and equally important, are the population movements within the Community that are likely to continue. The South to North migrations within the Community and its trading partners may come to assume the kind of proportions that the black and white Southern migrations have assumed in the United States. These will continue to bring a myriad of cultural and political pressures, with possible, even probable, attendant changes in electoral and party systems. Such movements unfold in their due time — but they are undoubtedly under way. The Community, in uniformizing its electoral systems at the expense of the inclusion of great new masses of potential participants, invites a repetition of analogous American experiences. The Community can learn from both the positive and negative aspects of the American central authority's reaction to the demands to hasten the "inclusionary process".

In this century the Amending process has been used to extend the vote to women<sup>55</sup>, to integrate the Federal District of Columbia into the national (Presidential but not Congressional) electoral system<sup>56</sup>, to abolish the payment of taxes as a prerequisite to voting in federal elections<sup>57</sup> and to set a standard national voting age of 18 for all elections<sup>58</sup>. Naturally, the national Supremacy Clause must be cited in support of the uniformization-via-Constitution thesis<sup>59</sup>.

7. In the American system the prime moulder of this mass of sometimes ambiguous and sometimes conflicting groups of words is the Supreme Court. Therefore, it is necessary to concentrate attention upon the role of the national judiciary in the uniformization of the electoral process.

The first point to be made is that the judicial contribution to harmonization is really an effect — a product of the force of the post-war racial minorities and urban majorities, frustrated in their attempts to bring the electoral system into harmony with the broader

<sup>55</sup> Constitution, Amendment 19 (1920).

<sup>56</sup> Constitution, Amendment 23 (1961).

<sup>57</sup> Constitution, Amendment 24 (1964).

<sup>58</sup> Constitution, Amendment 26 (1971).

<sup>59</sup> Constitution, Article VI, Clause 2.

cultural and political changes afoot in "post-technological" America<sup>60</sup>. The failure of response of the local, state and federal political organs led to the turn to the federal judiciary, most notably in the areas of racial discrimination, re-apportionment and re-districting. But federal judicial activism has come to be a causative factor as well, and a stimulation to the Congress<sup>61</sup> and to the state governments.

The decisions of Chief Justice Marshall laid the foundations for the Supreme Court's power of Constitutional review of the acts of its co-equal branches in the national government<sup>62</sup>, and of the States<sup>63</sup>. But even this factor of paramount importance to the contrary notwithstanding, it was not until after the Union victory in the Civil War and the passage of the 13th, 14th and 15th constitutional amendments and of the Congressional Reconstruction legislation that an integrated national cultural and legal awareness arose<sup>64</sup>. This vital shift brought with it new and increased powers to the national judges and resulted in judicial activism, in the intervening century, that provided jurisprudential groundwork for the "Warren Court revolution"<sup>65</sup>.

Since the early 1960s "the Supreme Court has done more to extend voting and electoral process rights (and, consequently, national regulatory power) than during any other period in American history"<sup>66</sup>. Hearing both voter- and candidate-initiated suits under

<sup>60</sup> "Racial discrimination cases, reapportionment, and congressional districting suits did not by themselves change the balance of power in the United States. Rather, in advance of legislative recognition, judicial rulings on these topics gave legal expression to prior shifts in the political resources of racial minorities and urban majorities" (Claude, p. xii).

<sup>61</sup> Claude cites but one example of mutual stimulation: "The unexpected bonus Congress derived from the poll tax and literacy test provisions of the Voting Rights Act of 1965 is that the Supreme Court has responded with important decisions and in the process has lodged in Congress broad powers of supervision over the electoral process" (p. 130). Such phenomena are natural in multi-organ governmental relationships and should increase in the Community as a directly elected Parliament focuses the attention of the other organs upon the problems of its election and upon the effect of the electoral process on their own relationships with the parliament and with each other.

<sup>62</sup> *Marbury v. Madison*, 1 Cr. 137 (1803).

<sup>63</sup> *McCulloch v. Maryland*, 4 Wheat. 316 (1819, US).

<sup>64</sup> Note, again, the paramount importance of region, race and war as causative factors of eventual electoral change. There can be no reason to think that the same or similar factors (nationalism; regionalism within Member States; "racial" problems brought about by northern migrations) are not or cannot become analogous "larger forces" eventually effecting the international electoral process in an expanding Community.

<sup>65</sup> *Ex parte Yarbrough*, 110 US 651 (1884); *Burroughs and Cannon v. United States*, 290 US 534 (1934); *United States v. Classic*, 313 US 299 (1941).

<sup>66</sup> "Where the Supreme Court is concerned, the changes that have taken place in the

federal constitutional and statutory claims, the Court has uniformized democratic fairness standards and procedures in the drawing of constituency boundaries and the apportionment of representatives at every level of government<sup>67</sup>; uniformized and generally liberalized the law in its coming to grips with racial and other group discrimination in the voting rights arena<sup>68</sup>; and generally uniformized and liberalized the law of candidates rights<sup>69</sup>, state-set voter qualifications<sup>70</sup> electioneering behaviour<sup>71</sup> and civil procedural due process in bureaucratic handling of electoral-system complaints<sup>72</sup>.

view of its members in cases from 1870 to 1970 are enormous, especially with regard to voting rights and electoral process litigation" (Claude, pp. xxi, 23, 259).

<sup>67</sup> Uniform standards of voting equality are emerging in districting and apportionment cases for elections at every level. The leading cases are: *Boundaries: Gomillion v. Lightfoot*, 364 US 399 (1960); *Wright v. Rockefeller*, 372 US 52 (1964); *Fortson v. Dorsey* 379 US 433 (1965); *Wells v. Rockefeller*, 394 US 542 (1969). Apportionment: *Baker v. Carr*, 369 US 186 (1962); *Gray v. Sanders*, 372 US 368 (1963); *Wesberry v. Sanders*, 376 US 1 (1964); *Reynolds v. Sims*, 377 US 533 (1964); *Maryland Committee for Fair Representation v. Tawes*, 377 US 656 (1964); *Davis v. Mann*, 377 US 678 (1966); *WMCA v. Lomenzo*, 377 US 633 (1964); *Lucas v. Colorado General Assembly*, 377 US 713 (1964); *Burns v. Richardson*, 384 US 73 (1966); *Swann v. Adams*, 385 US 440 (1967); *Sailors v. Kent County Board of Education*, 387 US 105 (1967); *Dusch v. Davis*, 387 US 112 (1967); *Avery v. Midland County*, 390 US 474 (1968); *Kirkpatrick v. Preisler*, 394 US 526 (1969).

<sup>68</sup> "All procedures used by a State as an integral part of the election process (presumably including nominating initiatives, primary elections and party conventions as well as all elements of general election procedure) must pass muster against any charge of discrimination or of abridgement of the right to vote" (Douglas, J., *Moore v. Ogilvie*, 394 US 814 (1969)).

Leading cases are: *United States v. Raines*, 362 US 17 (1960); *United States v. Louisiana*, 380 US 145 (1965); *United States v. Mississippi*, 380 US 128 (1965); *South Carolina v. Katzenbach*, 383 US 301 (1965); *Allen v. Virginia Board of Elections*, 393 US 544 (1969).

"Federal power has been extended to reach purely private as well as state discrimination against voting rights, thus breaking a century-long limitation upon nationalized action. Vintage state-action doctrines have been removed as bars to federal protection of voters and registration workers against interference or intimidation by private individuals" (Claude, p. 266). Federal protective statutes based on the implementing clause (Section 5) of the 14th Amendment were first upheld in *United States v. Guest* 383 US 745 (1966), and *United States v. Price*, 383 US 787 (1966). The Civil Rights Act of 1968, an important example of Congressional responses to judicial and political leadership, includes in its broad national reach a provision applying federal criminal sanctions against "... whoever, whether or not acting under color of law, willfully injures, intimidates or interferes with any person in his attempt at voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election" (18 United States Code USC Section 245).

<sup>69</sup> *Anderson v. Martin*, 375 US 394 (1964); *Bond v. Floyd*, 385 US 116 (1966); *Fortson v. Morris*, 385 US 231 (1966); *Williams v. Rhodes*, 393 US 23 (1968); *Handnott v. Amos*, 394 US 358 (1969); *Powell v. McCormack*, 395 US 486 (1969).

<sup>70</sup> *Lassiter v. Northhampton County Board of Elections*, 360 US 45 (1959); *Harman v. Forsenius*, 380 US 528 (1965); *Carrington v. Rash*, 380 US 89 (1965); *Katzenbach v. Morgan*, 384 US 641 (1966); *Harper v. Virginia Board of Elections*, 383 US 663 (1966); *Kramer v. Union Free School District*, 395 US 621 (1969).

<sup>71</sup> *Mills v. Alabama*, 384 US 214 (1966). The key area of federal control of access to the electronic media is discussed *infra*, in section IV (vi), "Media".

<sup>72</sup> *Hanna v. Larche*, 363 US 420 (1960).

Thus, "... the Supreme Court... has articulated (though it has not singly initiated) a trend running counter to earlier traditions of decentralized control of the franchise and electoral administration by the States. The judges have certainly become close observers of the election process". However, "(Although) constitutional voting rights have been assigned a preferred-to-privileged position over other components of the electoral system ... insuring the impact of those votes on public policy by effective representation, or even requiring that an election be held in the first place remains a matter of politics"<sup>73</sup>. This observation speaks not only of the limitations of the Court in the American system but also of the other legal and cultural limitations upon the success of uniformizing actions – checks and balances in separating powers; federal structures; regionalism; individualist and decentralist ideology.

A major point of value for Europe is whether and to what extent it is desirable or possible for the Community Court to assume leadership in electoral regulation akin to that of the American High Court. While the two institutions are obviously at different developmental stages within different societal and time settings, for the purposes at hand they may be likened in their analogous form and function. Both are undemocratically composed interpreters of basic law documents (the Treaty in the larger political sense likened to the Constitution) which attempt to bind the member units of the federation to it. Moreover, the potential power of the Community Court depends as much upon how expansively the judges view their function as it does upon the outside forces affecting it. In this way the Court's potential as an electoral regulatory source is precisely analogous to the American historical development.

8. The judicial activities of the 1960s were among the forces which had their effects in the Presidential branch as well. These have had or may yet have formal national legislative repercussions.

President Kennedy's appointment of Commissions on Registration and Voting Participation and Campaign Finance contributed to the widening scope of debate over the federal election law. Something of the range of legislatively federalized elections standards is

<sup>73</sup> Claude, pp. xiv, 188.



suggested by the Commission's report, published in 1963. Its recommendations are addressed to the states, the commissioners realistically assuming the continued administration of elections by state and local officials<sup>74</sup>.

Building on the recommendations and findings of the two presidential commissions concerned with campaign financing and voting participation, President Johnson in 1967 called for comprehensive reform and a new set of nationalized standards to apply to federal elections. National legislative and/or judicial action has since been taken in all areas<sup>75</sup>.

9. The recent political-legal dynamic has produced a relatively small but greatly expanded federal electoral regulatory establishment. Federal government units which contribute to the security of voting rights or which are concerned with the electoral process have proliferated. They include committees on constitutional rights and on elections in both houses of Congress. The President's Committee on Civil Rights was succeeded by the U.S. Commission on Civil Rights.

More long-lived is the responsibility of the Bureau of the Census for maintaining voting statistics. Occasionally doing work touching on voting rights disputes is the Community Relations Service with its race-relations "diplomatic corps". More directly relevant to enforcement is the work of the Office of Hearing Examiners of the Civil Service Commission involved in administering the Voting Rights Act of 1965. Voting Rights Examiners are under the direction of the Attorney General who is responsible for deploying United States marshals and using the Federal Bureau of Investigation, occasionally brought into electoral investigations. The Justice Department discharges its duties under the civil rights laws through the Civil Rights Division. The Criminal Division maintains jurisdiction in election frauds and Hatch Act (civil service) matters. The Civil Rights Commission and the Civil Rights Division of the Justice Department, although not always in policy agreement, have been particularly instrumental in developing the voting provisions of the Civil Rights Acts of 1960 and 1964, the Voting Rights Acts of 1965 and 1970 and the civil rights protection provisions of the Civil Rights Act of 1968.

<sup>74</sup> Claude, pp. 273-4.

<sup>75</sup> *Ibid.*, p. 35.

The reaction to the Watergate scandals has led to the creation of the first Federal Election Commission <sup>76</sup>, charged with the monitoring of campaign financing and spending.

10. Thus, the recent past may be summarized as follows:

The meaning of state constitutional provisions is always open to alteration by Supreme Court interpretation or amendment of the Constitution. Further change in constitutional edicts can result from congressional statutes. All of these forces were activated in the last decade primarily under the impetus of the various movements for major social reform. The result of all this federal activity has been gradually to erode the states' power over voting to the point where it can now be stated that primary responsibility for insuring voting rights resides with the federal government <sup>77</sup>.

11. The further point is that of the future of integrated legal electoral development. The social dynamic of which the electoral system is a part continues to move it in the direction of uniformity <sup>78</sup>. "How long federal self-restraint will prevail will depend upon such factors as the changing social and technological realities of the political system, on changing party structures and on effectiveness of local governmental representation. Inhibitions on the nationalization of the electoral process now depend little upon constitutionally imposed limitations. If the litigation process is to recede from the center of the electoral arena, it will probably take its exit only because it has given way to legislation, to changing patterns of party competition and party discipline, or – less happily – to irresponsible extra-legal procedures" <sup>79</sup>.

According to the nationalist argument, then, the Supreme Court has manifested changed attitudes in its modern, integrated electoral

<sup>76</sup> *Infra*, p. 375; and Claude, p. 271.

<sup>77</sup> Reitman, pp. 5-6.

<sup>78</sup> "Congress has been presented with an unprecedented flood of federal election law proposals, symptomatic of the needs of a nation becoming increasingly unitary. A larger perspective in the volume and variety of electoral proposals must take account of technological and economic changes developing at a pace so rapid as to revolutionize campaign techniques and to make obsolete the traditional melange of poorly meshed federal and state laws on national elections" (Claude, p. 271).

<sup>79</sup> Claude, p. 277.

rulings and now challenges the Congress to "complete" the task through uniform legislation<sup>80</sup> or constitutional amendment<sup>81</sup>.

#### IV. THE ELECTORAL SYSTEM THROUGH ITS VARIOUS ASPECTS

##### 1. *Single Member Districts / Plurality Count*

The rule of thumb governing American electoral processes, be they federal, state or local, executive, legislative or judicial, primary or general, is that they are conducted according to plurality (which, with two-party hegemony, is equivalent to majority) vote counts within single member districts<sup>82</sup>.

Proportional representation, at-large, multi-member, cumulative and non-partisan electoral schemes, while not historically or temporarily unknown, are so few and far between as to be considered exceptional and experimental, and, therefore, unimportant in the system as a whole. Much of the reasoning here, however, is based on

<sup>80</sup> "If the constitutional amendment route to nationalized standards is not followed, a line of federal statutory development that would probably parallel the expansion of federal regulation of commerce would be the likely alternative. After a period of litigation challenging each new incursion all concerned would finally demur to the proposition that the question of whether local regulation should be reserved is more a matter of policy for Congress than a question of law for the courts" (Claude, p. 275).

At several points in his important and relevant study Claude notes that the essential block to uniformization has been and remains the hostility/apathy of the Congress itself. "Civil rights legislation since 1957, however, indicates a changing congressional temper, as does the increasing number of federal governmental agencies and commissions concerned directly or indirectly with the electoral process" (Claude, pp. 235, 270).

The European Parliament can nonetheless take inspiration from the negative example of the American Congress and can observe how the parliamentary organ of an emerging federal system ought *not* to act, at least as regards its relationship to the very processes by which it is elected.

<sup>81</sup> The active use of the American Amendment process suggests Community action under Article 236 or equivalent action under Article 235; Article 220 Member State Conventions, or "Decisions of the Representatives of the Member States within the Framework of the Council".

<sup>82</sup> "During the past century the uniform mode of securing election has been through the simple or relative majority with a single ballot. There have been only two significant and durable exceptions to this rule: the use of a crude variety of proportional representation in the lower house of the Illinois legislature, based on three-member districts; and, in most Southern Democratic party primaries, the requirement of an absolute majority on the first ballot, failing which a runoff between the two leading candidates automatically assures such a majority on the second" (Burnham, p. 569).

the discrimination issue and not on "purely" electoral systems grounds<sup>83</sup>.

Nonetheless, this fact of life constitutes a major difference between the electoral systems of the Member States, with the exception of the United Kingdom, and of the United States.

## 2. Apportionment and Districting

For the elections to the federal Senate the constituencies correspond to the states and thus to settled state boundary lines. Senate elections, therefore, present no current practical apportionment or districting problems.

For the elections to the federal House constituency boundaries are based upon the changes in total state *population* (Amendment 14, Sec. 2; distinguish *voters* and *citizens*) registered after every constitutionally required national decennial census. The power to apportion representatives after this enumeration is made is nowhere found among the express powers given to Congress but it has always been acted upon as irresistibly flowing from the duty positively enjoined by the Constitution<sup>84</sup>. The House itself apportions its membership among the states according to the census findings.

Since 1941 the House has used a «method of equal proportions» in an attempt to minimize proportional differences in the number of persons per Representative for any given states. As each state in the union is entitled to at least one Representative (Art. I, Sec. 2, Cl. 3) the first fifty seats are fixed. The question, then, is the division of the remaining number of seats, which number it is within the province of the Congress to determine (Act of June 10, 1929, 2 USC 2, 2a, 2b). As the current total membership has been set at 435 there remain 385 seats to apportion. Each state is given a priority value based on its total population, including state residents overseas, and is apportioned each additional seat in accordance with its priority

<sup>83</sup> "As to plans which comport with the equal population principle, such as proportional representation, weighted voting by legislators to reflect the unequal size of their constituencies, and plural-member districts, nothing the Supreme Court has said has cast doubt upon their constitutionality, although lower courts have divided on most of these issues. Whether the Fourteenth Amendment reaches such representation questions is the problem which may well identify the issues of constitutional politics before the (future) Supreme Court" (Claude, p. 200, and see Vlachos "Le système électoral et la vie politique aux États-Unis", in Duverger, at 115).

<sup>84</sup> *Prigg v. Pennsylvania*, 16 Pet. 539, 619 (US 1842).

value. In this way, the strength of each state's claim to a "next" seat is determined, and that strength diminishes as one apportsions "down" the list of descending order of population magnitude.

Each state legislature apportsions the House seats given to its state by the federal House and is to revise its own House district boundary lines accordingly. Unlike European practice it is not and never has been American practice to apportion federal legislative seats via Independent Commission<sup>85</sup>. Far from it. The state legislatures' powers to apportion and to district are still among their most prized possessions and it is accurate to state that the federal legislative apportionment is shared, as is most other electoral system power, between the two layers of government.

The story of the federal judicial "re-apportionment and re-districting revolution" must be told, however, for it bears heavily on the contemporary federal electoral dynamic.

Congressional statute requires the election of Representatives by districts<sup>86</sup>, but the Congress has left it to the States to define the "... geographical distribution of electoral strength among its subdivisions..." (*Baker v. Carr*, 369 US at 249-50). Each District must have a population of 30,000 or more (Const., Art. I, Sec. 2, Cl. 3). The national Re-apportionment Act of 1929 (USC 2a), which lays out the districting requirement, fixes the number of federal Representatives at 435 and apportsions them among the states according to the method of equal proportions (Amendments to the Act, 1941), omits the requirement, which had been contained in the previous Apportionment Act of 1911 (2 USC 2), that House districts be "... composed of a contiguous and compact territory ... containing as nearly as practicable an equal number of inhabitants".

The first major challenge to this scheme in the federal Supreme Court came in the case of *Colegrove v. Green*, 328 US 549 (1946). The apportionment law of the state of Illinois, which created federal house districts of dramatically varying populations, was attacked as an unconstitutional violation of the guarantee of equal protection of the laws in the 14th amendment to the federal Constitution. The Court refused to hear the case, stating that the apportionment and

<sup>85</sup> There is some small movement toward state bi-partisan commission districting (Claude, pp. 222-3) but no suggestions apropos of any "independent" national districting/apportionment agency.

<sup>86</sup> Small, p. 121.

districting issues involved were “political” and not justiciable, and that it had, therefore, no jurisdiction over the matter. But larger cultural and legal change began inevitably to work its will upon the Supreme Court and to revolutionize at the same time its own role and the overall federal power balance in the electoral system. In 1954 the historic school desegregation decision of *Brown v. Board of Education* was rendered and it opened up the ears of the national judges to the Fourteenth Amendment claim of denial of equal protection of the laws. In 1960 the High Court affirmatively applied this claim against racially motivated state legislative apportionment/districting, holding, in *Gomillion v. Lightfoot*, 364 US 339 (1960), that the Alabama legislature could not draw district lines so as to exclude blacks from voting in municipal elections. The Court recognized the plainly “political” nature of the action but saw in that no impediment to federal judicial remedy where constitutional right was involved (364 US at 347). Further, the effects of the massive postwar population migrations from country to city and from city to suburb were now beginning to be felt. Both in the federal House and in the state legislatures rurally oriented politics and “ancient” districting formulas made for considerable representational distortion when compared with the new population patterns. Rural areas were grossly over-represented, urban-suburban seriously under-represented.

This, then, was the background for a series of landmark decisions “revolutionizing” the national role, particularly the judicial role, in the apportionment/districting galaxy of the electoral universe. The principle underlying all of the decisions is the equality of individual voting weight within constituencies and of population among legislative districts at all levels of government. In *Baker v. Carr* (369 US 186 (1962)) it was held that the question of state legislative malapportionment is not a political one, beyond the reach of the national judiciary, but one involving the constitutional right to equal protection of the laws under the 14th Amendment. In *Gray v. Sanders* (372 US 368 (1963)) the Supreme Court held that the “county unit” system used in statewide and congressional primary elections in the state of Georgia was unconstitutional under the Equal Protection clause.

In the case of *Wesberry v. Sanders* (376 US 1 (1964)) the Court ruled that malapportionment of Congressional districts under State law presented a judicially cognizable rather than a political question – and, further, that the federal House districts within each state

must be equal in population. The foundation for the ruling was not the Equal Protection afforded by the Fourteenth Amendment but the divined meaning of Article I, Section 2, which requires that the federal representatives be "chosen by the people of the several States".

In a further series of cases the Court ruled that the "one person, one vote" principle under the Fourteenth Amendment Equal Protection clause required that all seats in both houses of the bicameral State legislatures must be equally apportioned on a population basis (*Reynolds v. Sims*, 377 US 364 (1964); *Davis v. Mann*, 377 US 378 (1964)); *Lucas v. Colorado General Assembly* 377 US 713 (1964)). The Court said that it left room for legislative experimentation in differing the size of constituencies from one chamber to the other, with, for example, one chamber composed of larger multi-member districts and the other of smaller single-member districts. In the 1969 case of *Kirkpatrick v. Preisler* (394 US 526) the Supreme Court "perfected" its earlier decisions on congressional apportionment in ruling that the states must make every good faith effort to achieve absolute mathematical equality in creating house district populations. Only unavoidable variances could be permitted<sup>87</sup>. In this period the national judicial apportionment power was extended to local governmental bodies as well. The Supreme Court ruled that county and school district legislative bodies are subject to all of the "one person, one vote" principles under the Fourteenth Amendment Equal Protection clause<sup>88</sup>.

The federal judicial power has been extended in this decade to supervision of multi-member district experimentation at the state and local levels (*Dusch v. Davis*, 387 US 112 (1967)). While such arrangements have been ruled not to be inherently violative of the new scheme of things they have been struck down where it has been proven that they have been enacted in order to discriminate against identifiable ethnic or political groups or against voters within such groups<sup>89</sup>. The American sense of the foreignness of other than simple single-member legislative districting is reflected, however, in the

<sup>87</sup> *Swann v. Adams*, 385 US 440, and *Kilgarlin v. Hill*, 386 US 120 (1967); *Wells v. Rockefeller*, 394 US 542 (1969).

<sup>88</sup> *Avery v. Midland County*, 390 US 474 (1968); *Hadley v. Junior College District*, 397 US 50 (1970); cf., *Sailors v. Board of Education*, 387 US 105 (1967).

<sup>89</sup> *Whitcomb v. Chavis*, 403 US 124 (1977); *White v. Register*, 412 US 755 (1973); *Burns v. Richardson*, 384 US 73 (1966).

1975 case of *Chapman v. Meier* (420 US 1), in which the Supreme Court catalogued the weaknesses in multi-member districting and ruled that in their supervision of the apportionment/districting field the lower federal Courts are to avoid the imposition of such plans upon the States. Again much of the judicial logic derives from anti-discrimination foundations and not from electoral system considerations *per se*.

Thus, the states and their localities still possess the powers to draw up the districts from which an apportioned representation derives – but they are now held to a national legal rule in so doing.

What has been the discernible effect of the new national judicial intervention in this important sector of the American electoral system? According to the authoritative *Congressional Quarterly* publications the factors of scale and inertia prevented the decisions from having any effect in the 1960s. However, progress has apparently been made due to the redistricting efforts made after the 1970 census. 385 of the 435 districts represented after the 1972 election varied less than 1% from the average state district population<sup>90</sup>. Further, the judicially inspired congressional re-apportionment has direct effects upon the Presidential election process, for both convention delegate and Electoral College member apportionments are based directly upon the Congressional apportionment. Meanwhile, the Congress has taken no comprehensive apportionment/districting action of its own<sup>91</sup>. It has neither strongly challenged the Supreme Court's lead nor taken initiatives of its own in this partly very "personal" affair<sup>92</sup>. It is thus the major intervention of the national judiciary in the apportionment/districting field that continues to be the most noteworthy development in the shifting of the legal bases of electoral power within the federal system as a whole. Generated by the fact that 20th century America has moved to the city, it consists of decisions which even narrowly interpreted specify requirements of

<sup>90</sup> Diamond, *et al.*, *Congressional Quarterly's Guide to Congress* p. 574.

<sup>91</sup> "Congress itself has been unable to introduce rationality (in terms of clearcut and uniform standards) into a constitutional scheme rendered ambiguous by its built-in federalism and by the unexpected advent of party politics" (Claude, p. 24).

<sup>92</sup> "Here indeed is an ironic turn of events: 'conservative' inertia in Congress has become responsible for litigation producing liberal court rulings at the grassroots level, decisions which by their strict emphasis on population equality take the very measure of political play out of districting which recalcitrant congressmen by their inaction had hoped to preserve" (Claude, p. 222).



enormous nation-wide impact. Such is acknowledged by the European commentators<sup>93</sup>. That it can have precedential impact for European electoral integration, as regards both the role of courts in and the substantive questions of representation, should be acknowledged by European parliamentary participants as well.

### 3. *The Two-Party System Capsulized*

The first characteristic of the system is that it is dominated by two major parties, each an extremely broadly based, catchall amalgamation of interests, both reflecting and re-enforcing the dominant ideological consensus<sup>94</sup>. These factors continue to negate the development of any effective, permanent alternative party. In its dualism the American party system is most closely linked to the British tradition, and contrasts with the Continental, multi-party model.

The second characteristic is that the degree of real or effective competition between the two parties varies throughout the local and State levels at which the Congress is elected and that it is greatest at the national or Presidential level.

The third characteristic is that the parties are geographically, psychologically and organizationally decentralized and diffused. A multitude of local and state party organizations control the

<sup>93</sup> E.g.: "L'histoire des Etats-Unis a été marquée par une quête toujours renouvelée d'une plus grande égalité entre les individus. Il continue à être cultivé. Ainsi, le premier mérite des décisions est d'avoir redonné au peuple une organisation de la représentation politique conforme à l'idéal égalitaire depuis toujours proclamé. En concentrant l'attention sur le domaine de l'égalité représentative les décisions de la Cour Suprême ont conduit les spécialistes et l'opinion publique à jeter un regard neuf sur nombre d'institutions ou d'habitudes américaines" (Vialle, *La Cour Suprême et la Représentation Politique aux Etats-Unis*, p. 201).

<sup>94</sup> Dahl (*Democracy in the United States: Promise and Performance*, p. 261) draws this comparison: "Unlike parties in many European countries, both Republicans and Democrats in the United States advocate much the same ideology. Both parties express a commitment to democracy, to the Constitution, and to the key social and economic institutions of American life: privately owned business firms, universal free public education, separation of church and state, religious toleration, and the like. To a European accustomed to the sound and fury of clashing ideologies, American party battles seem tame and uninteresting".

"The potentiality for conflict in American society is enormous. Yet it is not reflected at the level of the party system. The fact that the United States in the only industrial society that has not produced a working-class party is largely due to a set of peculiar historical circumstances but also to the nature of American two-partyism. And the extent to which the party system is conflict minimizing is patently revealed not only by the very high percentage of American nonvoters, but especially by their being low-strata nonvoters. The registration requirement would hardly be an impediment if politics had a salience for the nonvoting strata — a salience it obviously does not have" (Sartori, *Parties and party systems*, vol. I, p. 192).

nominating and policy making functions<sup>95</sup>. Regional party organizations are described as flimsy and the national (Presidential) party is said to be merely a temporary quadrennial necessity, albeit an important one. It materializes at the national nominating conventions and de-materializes in a few days, not to reappear again until the end of the next Presidential term. Further, their differing constituencies create a Presidential and Congressional party within each of the two parties<sup>96</sup>.

Why is party power so decentralized and diffused? Robert Dahl describes the most potent factor as "the sheer force of federalism"<sup>97</sup>. A cause and effect of this "sheer force" is what may be termed typically or traditionally American attitudes opposed to concentration of power. Generationally imbued attitudes like the "inheritance" of party loyalties are felt "in all of our political institutions" and carry over into party organization<sup>98</sup>. "The past weighs heavily on the future simply because diffusion and decentralization of party control are thoroughly institutionalized"<sup>99</sup>. In contrast, then, are the more highly centralized national parties of the Community Member States. In question is the form that interna-

<sup>95</sup> "Senatorial nominations are decentralized to state organizations; nomination of congressmen to state and district organizations. Control over nominations of state and local officials is, of course, highly decentralized and still further diffused by the direct primary" (Dahl, p. 265).

<sup>96</sup> "The substantial control over elections given to the state; the electoral college system; the fixed terms for President, senators, and congressmen; and the composition of the Senate are all contained in constitutional provisions that produce party decentralization and disunity. Directly as well as through the function of parties these provisions also produce the situation, so puzzling to Europeans, in which congressional members of the President's own party (even legislative leaders of the party) often and as a matter of course refuse to support the chief executive's program. Thus to constitutional provisions can be traced one reason for the outstanding characteristic of American political parties, their decentralization and lack of unity or discipline" (M. Grodzins, "Political parties and the crisis of succession in the United States: the case of 1800", in La Palombara and Weiner, *Political Parties and Political Development*, at p. 323).

<sup>97</sup> Dahl continues: "Federalism insures that the states and localities are in a great many respects autonomous, independent of direct control by national officials. Strong state and local political organizations can be built without federal patronage or largesse and can survive electoral defeat at the national level; the innumerable nominations for state and local office and the never-ending cycle of state and local elections make it very much easier for the men on the spot to exert control than for national officials to do so. In organization, and party finance, all highly strategic matters for party leaders are passed and enforced by state governments" (Dahl, p. 259).

<sup>98</sup> Dahl here contrasts Britain, "... with ancient and strong traditions of hierarchy and centralization" (p. 260). Other Community Member States may be placed in contrast here as well.

<sup>99</sup> Dahl, p. 260.

tional party organization will take in a directly elected European Parliament.

The fourth characteristic, flowing from its predecessors, is the anomaly of American Congressional party disunity, contrasted with the high party cohesion in the Member States' Parliamentary systems. While party discipline is the major factor in Congressional voting there exist many other cleavages reflecting decentralized concerns and producing constantly shifting intra- and inter-party Congressional coalitions <sup>100</sup>.

The fifth characteristic modifies the first. While each party draws its votes from every socio-economic stratum (here, again, a difference with European systems), there have existed classical differences in party followings, and these, in turn, have been both cause and effect of differences in party rhetoric and issue emphasis. In this century the Democrats have generally drawn support from the lower middle and working class urban populations and have represented equality and welfare state values, whereas the Republicans have drawn support from the upper middle and wealthier groups and have represented the property values of these groups and the decentralization of governmental welfare functions.

The sixth characteristic is the unusual durability of the major parties and of the two-party system. Fundamental contributors are said to be the parties' flexibility and adaptability in representing changing policies and programs and the generational quality of voter-supporter loyalties.

#### 4. *Party Nominations: From Caucus to Convention to Primary*

From the early days of the Republic until the Jacksonian era the congressional and state legislative caucus was the method by which all national and state candidates were nominated. The 1820s was the first decade of reformation of nomination procedures. With the rise of General Andrew Jackson of Tennessee as Presidential candidate came the substitution of the party nominating convention for the legislative caucus. The convention was born of the practical realiza-

<sup>100</sup> Dahl, p. 261, citing Julius Turner, *Party and Constituency: Pressure on Congress* (Baltimore, 1951), p. 23.

tion of Jackson's supporters that their man could never make headway in the closed caucuses of the Democratic-Republican party's congressional and state legislative establishments. Jackson's popularity and party strength were such that following his presidential triumph in 1828 the national and state convention became the established institution for party nomination to elective office. This more democratic means of candidate selection came to be used at the national level for the nomination of Presidential and Vice-Presidential candidates and at the state level for the nomination of federal Senate and House candidates as well as candidates for state governmental office. This procedure endured throughout the 19th century and until the reform era comprising the first two decades of this century. By that time the long forgotten vices of Jackson's day had yielded to a new system of establishment control and corruption. The convention became a symbol of this decadence and a target for change. In the generation of the progressive and populist movements it was replaced by the uniquely American direct primary election as the major institution for the nomination of party candidates. By the time of the American involvement in the First World War in 1917 the direct primary was fast becoming the accepted method of candidate nomination.

The direct primary reform came at the time of the Constitutional reforms granting equal suffrage to women and direct popular election of the federal Senate and of local governmental experimentation with city manager, non-partisan and proportional representation schemes. The Southern Democratic establishment reacted to the attempt of the Progressive-Populist elements to encourage Black and poor white electoral participation with programs of legal, economic, physical and psychological harrassment, including the use of anti-registration laws, the literacy test, the poll tax and the "white primary".

The white primary was one manifestation of the fact that the primary method of party candidate selection is especially important in the American system in those districts, states or regions in which one of the two major parties is dominant and in which, therefore, victory in the party primary is tantamount to victory in the November general election.

This has been and is still especially true in the century-plus Democratic party domination of Southern politics. The Democratic party primaries have traditionally been the only significant elections

in the southern region, and the history of the southern primary is the history of national recognition of and involvement in the business of primary elections.

The Supreme Court first struck down state statutes which flatly forbade negro voting in party primaries and which condoned their exclusion by action of the parties themselves in *Nixon v. Herndon*, 273 US 536 (1927) and *Nixon v. Condon*, 286 US 73 (1932). The authority in both cases was the equal protection of the laws guarantee of the 14th Amendment. But it upheld purely party legislated racial restrictions on membership, i.e., discrimination without trace of supporting "state action" (*Grovey v. Townsend*, 295 US 45 (1935)). Then came the years of change in Supreme Court membership and philosophy, reflected in this field by two landmark cases, the first holding that primary elections are an integral part of American electoral processes generally and the second that when parties conduct primaries under state statutory authority they become state organs and may not enforce racial restrictions upon participation: *United States v. Classic*, 313 US 299 (1941); *Smith v. Allwright*, 321 US 649 (1944). The authority of the 15th Amendment's protection against racial discrimination in *all* voting could now be added to that contained in the equal protection clause of the 14th Amendment. Finally, the Texas process of excluding Blacks from participation in a "purely private" Democratic party "pre-primary" election, whose results always produced the eventually elected official, was struck down by the High Court in *Terry v. Adams*, 345 US 461 (1953).

Note, again, the spark of race and region which eventually ignites federal action – and that it is the federal judicial branch which initiates the national governmental involvement.

The problem of white and black in the South has focused national legal attention upon the institution of the party primary, but the effects of the primary method of candidate selection extend far beyond that problem in considering the American electoral universe as a whole. It must be remembered that it is by the party primary process of candidate selection that most nomination processes for federal and state office in most of the states are now carried out. While some state convention systems for the selection of US Senate and important statewide candidates survive, the most important survivor is the national Presidential nominating convention. But even this most spectacular "relic" is now conditioned by the operation of state party primary processes. Most delegates to the national con-

ventions are now elected in primaries. More and more states are conducting Presidential candidate preference primaries which are held concurrently with the convention delegate primaries and which have become, as influence upon the party conventions' decisions, much more than "beauty contests". The state processes are more and more looked upon as precedents for eventual replacement of the national nominating conventions by direct national Presidential primaries.

The most important primary participation rule has traditionally been that only *bona fide* registered party members can vote in their party's primary. The idea is, of course, the maintenance of the two-party system. But in an age in which about 1/3 of the actual electorate is avowedly "independent" there is mounting pressure to change the traditional state-made rules. The problem is highlighted by the fact that one-party dominated districts, states and regions are as plentiful as (some think more plentiful than) jurisdictions in which there is meaningful two-party competition. The important general political result is that participation in primary elections may very well be the most meaningful form of electoral involvement there is in the system — that, in short, the Democratic party primary in the South is but an illustration of a major operative fact in the American electoral system as a whole. Thus the importance of the continuing party registration requirement and of the "closed" primary procedure.

Some states do have "open" primaries, especially in their Presidential preference primaries, but they are the exception to the rule.

The American nomination processes, primary or convention, are fully distinguishable from those of the Member States, which are either party-professional centralized or at most involve a small percentage of party supporters. On its face, therefore, the American evolution would seem to have produced generally more broadly based nomination processes.

### 5. *Third Parties and Independents*

Third party and independent candidate access to the ballot is and has always been most effectively thwarted by the very nature of the

hegemonic two-party system itself<sup>101</sup>. But third party, renegade and independent movements have been and may again become important at certain times and in certain places<sup>102</sup>. Thus the constitutional breathing room allowed them is relevant.

There are no flat federal or state constitutional bans on third parties or independent candidacies. The question again involves state legislative schemes<sup>103</sup>. The first major national jurisprudence was made in the presidential election year of 1968, when the forces of third-party candidate Governor George Wallace of Alabama were attempting to contest both major parties in a majority of states. The Supreme Court struck down the state of Ohio's complex and restrictive election law provision making it virtually impossible for parties other than the Democratic and Republican to get on the ballot. The Court rested upon the First Amendment guarantee of free association and the Fourteenth Amendment guarantee of Equal Protection of the Laws (*Williams v. Rhodes*, 393 US 23 (1968)). But three years later the Georgia third-party scheme was upheld as non-discriminatory (*Jenness v. Fortson* 403 US 432 (1971)). The specifics of the differing state access schemes are therefore still important for those engaged in the local political wars and from the standpoint of federal judicial review, which constitutes, as in so many other electoral areas, the major ongoing source of national involvement<sup>104</sup>.

<sup>101</sup> Dahl notes "the crushing inertia of established party loyalties": "In the United States, not only in national but also in state elections, the single-member district and the winner-take-all system has depressing consequences for a third party trying to make its way against the two existing giants. For a third party to cross the magic threshold to major party status is a formidable, discouraging, and probably hopeless task" (Dahl, pp. 412-13).

<sup>102</sup> E.g., in the two-party breakdown before the Civil War; in the Republican Party split just prior to WWI, which made way for the election of Woodrow Wilson to the Presidency; in the turn of the century populist and progressive state party movements in the South and West; in the "secession" or "revolt" of Southern Democrats during the 1948 Presidential campaign; and in the rise of the George Wallace and John Anderson Presidential candidacies in 1968 and 1980.

<sup>103</sup> "The Equal Protection Clause of the Fourteenth Amendment and the right of association guaranteed in the First Amendment impose limitations upon a state legislature's freedom to restrict political parties in their access to the ballot" (Claude, p. 268).

<sup>104</sup> High filing fees constitute an unconstitutional abridgement of independent candidacy rights - *Bullock v. Carter*, 405 US 134 (1972); person having voted in immediately preceding major party primary election may be barred from ballot as independent candidate - *Storer v. Brown*, 415 US 724, (1974); requirement that independents obtain signatures of 3-5% of voters in last general election and help out state practice of printing only the names of the candidates of the two major parties on absentee ballots held unconstitutional - *American Party of Texas v. White*, 415 US 267 (1974); high filing fees abridge indigent independent candidates' rights - *Lubin v. Panish*, 415 US 709 (1974); *Cassidy v. Wallis*, 419 US 1042 (1974); State can require a party to display "broad" state-wide acceptance as pre-requisite to ballot access - *MacDougal v. Green*, 335 US 281 (1948). See Antieau, *Commentaries*, p. 250.

Many states attempt to ban access to the ballot by "subversive" parties and candidates by requiring of them affidavits to the effect that they do not advocate the violent overthrow of the Government<sup>105</sup>. Some such laws have been declared violations of state constitutions by state courts<sup>106</sup>. In the early 1950s the Maryland law was upheld by the Supreme Court<sup>107</sup>, but in a leading recent case the court voided the State of Indiana's like requirement under the free speech and association guarantees of the First Amendment<sup>108</sup>.

The existence of the Congressional Subversive Activities Control Board was upheld against Communist Party suit charging that this creature of Congress was an unconstitutional attempt to punish and to outlaw the party<sup>109</sup>.

Thus, on balance it may be said that those parties or individuals challenging the two dominant parties have constitutional breathing room but that the practical politics of the situation – the two-party scheme; the single-member district; the major/plurality method – constitutes the effective third-party and independent ban. It is to the larger workings of the political system, such as the modern trend toward an electorate fully 1/3 of which is avowedly independent, to which we must look for any meaningful future 3rd or multiple party and/or independent candidacy.

## 6. Media

Of primary importance in the national governmental regulation of the electoral system is control of the broadcast media<sup>110</sup>. The Congress, acting under Art. I, Sec. 8, Cl. 3, the Commerce Clause,

<sup>105</sup> Note, *Virginia LR*, vol. 34 (1948) p. 450; Note, 21 *Notre Dame Lawyer*, vol. 21 (1949) p. 319.

<sup>106</sup> *Communist Party of US v. Peek*, 22 Cal. 2d 536, 137 P 2d 889 (1949). Statute upheld, *Field v. Hall*, 201 Ark 77, 143 SW 2d 567 (1940).

<sup>107</sup> *Gerende v. Board of Supervisors*, 341 US 56 (1951).

<sup>108</sup> *Communist Party of Indiana v. Whitcomb*, 414 US 441 (1974).

<sup>109</sup> *Communist Party of the United States v. Subversive Activities Control Board*, 367 US 1 (1961).

<sup>110</sup> "The revolution in political campaign techniques, primarily the emergence of television as the principal channel of communication between candidate and voter, has robbed the party of one of its basic functions – the organization and management of campaigns" (N. Glazer and I. Kristol (eds.), *The American Commonwealth*, 1976, p. 283.

"Elections are now waged through the mass media which have supplanted political parties as the major intermediary between office seekers and the electorate" (T.E. Patterson and R.P. Abeles, "Mass Communication and the 1976 Presidential Election", *Items*, published by the Social Science Research Council, June 1975, p. 13).



and Cl. 18, the "Necessary and Proper" or "Elastic" Clause, has delegated to a Federal Communications Commission (FCC) the power to license and to supervise the operation of all public and private television and radio broadcasting <sup>111</sup>.

In America, unlike in Europe, the major television and radio networks, the National, Columbia and American Broadcasting Companies, are privately owned and controlled, although licensed by the national government through the FCC. The 1970s saw the birth of the first quasi-public Public Broadcasting System <sup>112</sup>.

Under Section 315(a) of the Communications Act <sup>113</sup>, the so-called "equal time" provision, any broadcast media station that allows any person who is a legally qualified candidate for any public office to use its facilities (i.e., to buy time) must afford an equal opportunity to all other such candidates for that office. But the attempt by unknown minor party and independent candidates to make use of the opportunity presumably opened up to them has been met by a restrictive Congressional reaction in defense of the two-party system. The Congress amended Section 315(a) in 1959 in order to exempt normal news coverage, interviews, documentaries and "live" coverage of news events <sup>114</sup>, including electoral conventions, from the reach of the equal time doctrine. Further, when politically feasible, the Congress or the Commission suspend Section 315(a) altogether, thus allowing the major party candidates access without introducing the "troublesome complication" of other voices. Such action was taken by the Congress in 1960 in order to allow the Kennedy-Nixon debates and by the Commission in 1976 in order to allow the Ford-Carter debates.

The guarantees of the First Amendment to the Constitution form the framework for campaign access to all media and to public and/or private premises, and regulate electoral conduct generally <sup>115</sup>.

<sup>111</sup> Communications Act of 1934, 48 Stats. 1064, as amended, 47 U.S.C.A. 151 *et seq.* Its forerunner was the Radio Act of 1927, 44 Stats. 1162.

<sup>112</sup> The Supreme Court has now banned all *prospective* interlocking ownership arrangements between newspapers/magazines and T.V./radio stations (*Federal Communications Commission v. National Citizens Committee for Broadcasting*, 98 S. CT 2096 (1978)).

<sup>113</sup> 48 Stats. at 1088; as amended, 47 U.S.C.A. Sec. 315(a).

<sup>114</sup> The House of Representatives, following the Canadian lead, has now permitted the first experimental live radio and television broadcasts of its plenary (but not committee) sessions (11 Congressional Record H 5293-4, 5385, 5397-99; E 3259, 3261, 3361 (12-23.VI.78)).

<sup>115</sup> The free speech, press, assembly, association and petition clauses of the First Amendment apply directly to the national government, and to the states through the 14th Amendment, to limit authority to regulate electioneering (*Gitlow v. New York*, 268 US 652 (1917); *De Jonge v. Oregon*, 299 US 353 (1937)). See also: Nelson and Teeter, *Law of Mass Communica-*

### 7. Campaign Finance

“Politics has got so expensive that it takes a lot of money to even get beat with.” (Will Rogers, 28 June 1931).

The movement to secure public funding of at least a part of federal campaign costs was begun in 1966 when the Congress adopted the first working proposal for a Presidential Election Campaign Fund. But partisan debate postponed enactment of the law until 1971, when final authorization was given to establish the fund from public tax revenues (Revenue Act of 1971, Amendments, PL 92-178). Each taxpayer now has the option of designating that \$1.00 of his annual income tax payment is to be set aside for the use of the Presidential candidate of the party of his choice, or that it is to be put into a general campaign fund to be proportionally divided among all eligible Presidential candidates. The law also authorizes the distribution of an amount equal to 15 cents multiplied by the number of citizens over the age of 18 years to the Presidential candidate of each “major party”, defined as one which obtained 25% of the total votes cast in the immediately preceding Presidential election (i.e., the Democratic and Republican Parties). It also prohibits the major parties from privately financing their Presidential campaigns if 1) they formally choose public financing and 2) their entitlement under the above formula cannot be met by the amounts accumulated under the \$1.00 individual income tax payment option. The major parties are now prohibited from spending more than their total dollar entitlement under the 15 cents-x-number-of-citizens-18-or-older formula. The law provides for civil and criminal penalties against candidates or campaign committees which violate any of these new rules of the game. The law also provides for proportional distribution of the public fund monies to minor party presidential candidates, i.e., to any party whose Presidential candidate received more than 5% but less than 25% of the immediately preceding Presidential election vote total. (Governor Wallace’s American Independent Party, which amassed 13.5% of the national Presidential popular vote total in 1968, would have been eligible for public funding in the 1972 election under this provision — had the \$1.00 tax check-off provision gone into effect before 1973! It is instructive

*tions*, chapter i; Antieau, *Modern constitutional law*, i.4 *et seq.*; Claude, p. 268. Specifically, see *Mills v. Alabama* 384 US 214 (1966); *Golden v. Zwickler* 394 US 103 (1969); *Talley v. California*, 362 US 60 (1960).

to note that Wallace's 1968 effort was the best national showing of its kind in recent American electoral history). The law also allows for public payment for the re-imbusement of any new party whose Presidential candidate receives enough votes to give it minor-party status. Finally, the law liberalizes tax credit and deduction provisions for private contributions to candidates for office at all governmental levels.

According to the figures of the Federal Internal Revenue Service taxpayer participation in the new scheme is running at an average annual rate of about 25% of all tax returns filed. According to the statistics amassed by the Federal Election Commission the fund received a total of about 100 million dollars in its first four years of existence and disbursed a total of about 80 million dollars in the 1976 Presidential election year <sup>116</sup>.

Thus, the first public campaign finance laws reach only the Presidential election and not the Congressional elections; are currently securing the participation of only about 25% of the tax-paying citizenry; accounted for only about 1/5, at most, of total campaign spending in the most recent Presidential election; and have inspired only about 1/3 of the state legislatures to similar action as regards state election campaign financing. The tentative conclusion must be, therefore, that the historical private financing of American elections is still very much the case. Claude, however, feels that "the laws give immense new power to the federal government over the local parties" <sup>117</sup>.

Although the scope involved in the American case is greater, the practice of private campaign financing is as much alive in most of the Member States as it is in the United States <sup>118</sup>.

In 1971 came the first serious congressional attempt since 1925 to limit and regulate private federal campaign donations and disbursements and to inform the public of them. The Federal Election Campaign Act of 1971 (PL 92-225) begins by defining "election" more broadly than ever before, so as to include not only general, but special, primary and run-off elections, nominating conventions and caucuses, delegate selection and presidential preference primaries and constitutional conventions as well <sup>119</sup>.

<sup>116</sup> Diamond, *Congressional Quarterly's Guide to Congress*, pp. 544-545.

<sup>117</sup> Claude, p. 272.

<sup>118</sup> Inter-Parliamentary Union, *Parliaments of the World*, 1976, Table 7.

<sup>119</sup> It proceeded, in its original version, to place unprecedented communications media spending limitations upon all candidates for federal office. No candidate could spend more

All candidate and campaign committee contributions and expenditures are to be reported to the appropriate federal supervisory officers in full detail. Finally, federal civil and criminal penalties are provided for.

The 1972 elections highlighted definitional and tax problems giving rise to the inevitable temptation to ignore or circumvent the attempted regulation. It also created an "unmanageable" paperwork load for candidates and for the appropriate federal receiving officers. Close scrutiny of the new "paper mountain" was impossible in practice and calls were heard for the creation of a new administrative agency which could be assigned to this now "full time" task.

But most importantly it was the Watergate scandals which stimulated further national governmental intervention in the campaign processes. The 1974 Federal Election Campaign Act Amendments (PL. 93-443) expanded legal control over contributions and expenditures; expanded the possibilities for public tax financing to include major, minor and new party convention costs and to include matching funds for presidential preference primary expenses; made more strict the public disclosure aspects of the 1971 legislation; and created a Federal Election Commission to oversee and enforce this new federal governmental involvement.

The political issues involved in the unprecedented national governmental involvement in campaign finance became legal ones in the case of *Buckley v. Valeo*, 424 US 1 (1976). A curious alliance of liberal and conservative forces argued to the Supreme Court that the campaign finance laws unconstitutionally restrained the freedom of expression guaranteed by the First Amendment and that they unconstitutionally discriminated against minor parties and lesser-known and independent candidates and in favour of the major parties and their better-known and incumbent candidates. The Court agreed

than 10 cents per eligible voter in the relevant constituency – congressional district (House), State (Senate), nation as a whole (Presidency) – on all media forms – radio and television, newspapers, magazines, billboards and automatic telephone equipment – during any one campaign. Candidates could spend no more than 60% of the total amount of campaign money allotted them on broadcast media time. These provisions were later nullified by Supreme Court decision, and by legislation.

Candidates for federal office were limited in the amount of personal or immediate family money they could spend on their own campaigns. Presidential and Vice-Presidential candidates were limited to \$50,000, senatorial candidates to \$35,000 and House candidates to \$25,000. These provisions also met the fate of the media spending provisions.

with the first contention and declared that all of the legislatively enacted campaign spending limitations were unconstitutionally impermissible violations of the First Amendment guarantee of the freedom of expression. Of course, much criticism has been levelled at this part of the decision and it has been hailed as a triumph for the traditionally dominant politically monied forces and as a reversal of the first serious national attempt to democratize American campaign financing <sup>120</sup>.

The decision forced the Congress to return to the work of campaign finance reform during the election year 1976. The result was the Federal Election Campaign Act Amendments of 1976 (PL. 94-283) in which the Federal Election Commission was reconstituted; spending limitations revised (e.g., in the case of presidential candidates accepting public funding); corporation and labor union contributing curtailed; presidential campaign public funding reaffirmed; a prohibition against political contribution by foreign nationals introduced; public disclosure and reporting rules applicable to all federal candidates and their campaign committees tightened; and civil and/or criminal penalties for violations stiffened.

Thus, the 1970s has seen the first possibly meaningful national governmental involvement in the basic problems of money in its electoral campaign processes. The new laws establish public tax financing of the presidential campaigns (but fail to do so for congressional election campaigns); place some spending limitations on presidential candidates when they have accepted public funding; place ceilings on private campaign contributions to federal candidates; require public disclosure and reporting of contributions and expenditures; and create the first federal electoral enforcement machinery. "In a period of less than five years, Congress has rewritten the manual of financing federal elections" <sup>121</sup>.

The methodology of change as exemplified in this area of electoral law bears relevance to Europe for it shows how "the existence and operation of a Federal System exerts a gradual influence by example on the political ethos of the States" <sup>122</sup>. By the beginning of the 1970s eight states had enacted "comprehensive" campaign

<sup>120</sup> The Court upheld the new law's contributions limitations and disclosure requirements and its establishment of a public funding operation for presidential campaigns.

<sup>121</sup> Diamond, *Congressional Quarterly's Guide to Congress*, p. 5.

<sup>122</sup> Pole, p. 380.

finance laws imposing spending limitations and requiring expenditure disclosure. Thirty-three states had enacted less comprehensive measures and nine had none. Prosecution for violation of state campaign finance laws were rare. The Watergate scandals and the Congressional reaction to them have changed at least the formal legislative statistics. All but one state legislature have enacted statutes requiring the public disclosure of campaign financing; nearly one third of the states now have some provision for public financing of state elections; half of the states have set limitations upon private campaign contributions; four-fifths of the states now require all elected officials to disclose their personal finances; all of the states now require the registration of interest and lobby group representatives attempting to influence the state legislature and one half have enacted stronger lobbying regulations; and more than one half of the states now require the open meetings of public agencies under so-called "sunshine" laws <sup>123</sup>.

To this date, then, there exist, on the books at least, an unprecedentedly comprehensive array of national and state regulations upon the vital matter of electoral "getting and spending". Note, however, that while the Congress has exercised its Constitutional power to regulate elections it has stayed the exercise of any theoretically analogous power over state and local elections. It should be borne in mind as well that the public financial regulation of campaigning is a new and untested phenomenon in American electoral history; that the acceptance of, obedience to and enforcement of these kinds of legal rules are factors impossible at this point to predict; and that it may safely be said that the American electoral campaign financing "system" continues to operate according to the traditional private customs and forces. Nonetheless, a new avenue of national electoral involvement has been opened.

### 8. *Administrative Costs*

The latest study, compiled by the Library of Congress and published by the Federal Election Commission, reveals that the costs of administering American elections rival the enormous costs of the

<sup>123</sup> Diamond, *Guide to Congress*, p. 542; Council of State Governments, *1976-1977 Book of the States*, pp. 204-6.

campaigns themselves. According to the Bureau of the Census, which conducted the study, the total cost of administering all the elections that took place within the four-year cycle 1970-73 (i.e., one Presidential, two Congressional and numerous State and local elections) approximated one billion dollars. A more revealing statistic, from the point of view of federal decentralization, is that *all* but approximately 5% of these costs were borne by the local units of government – the towns, cities and counties – and that nearly all of the remaining 5% were borne by the States *collectively*. The national government, then, to all past and present effects, at least, has little direct role in election administration financing <sup>124</sup>.

### 9. *The Electoral Calendar*

The “electoral year” takes its shape from a combination of legal and cultural forces. There is no legal regulation of campaign duration. Traditionally, primary and convention nominating procedures take shape through the winter, spring and summer months and the general election campaign is waged in September and October and in the last several crucial days in November.

Under Art. I, Sec. 4 of the Constitution the “Times” for holding Congressional elections are “...prescribed in each state by the Legislature thereof...”. But the Congress, in its power under this section to supersede state authority, has enacted uniform legislation in the matter of day and date. The Congress regulates the day and date of presidential and coinciding congressional elections under Art. II, Sec. 1, Cl. 4 of the Constitution: “The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States”. Thus are all federal elections, both congressional and Presidential, held on the first Tuesday after the first Monday in the month of November <sup>125</sup>. State elections which coincide with federal are also held on this day, but the states are free to regulate the matter of day and date for their own elections.

The Congress has decided that in the Presidential election year (every fourth year) the official election of the President and Vice-President

<sup>124</sup> Council of State Governments, *1976-1977 Book of the States*, p. 208.

<sup>125</sup> The relevant federal Statutes are 2 USC 7 and 3 USC 1 (1964).

by the Electoral College under the 12th Amendment to the Constitution is to take place in mid-December. Under the 20th Amendment to the Constitution (1933) congressional terms begin early in the new calendar year (i.e., in early January). Presidents by tradition give their constitutionally required "State of the Union" message to Congress at this same time. Presidential terms begin on the 20th of January under the 20th Amendment. The state-level succession of events is analogous.

### 10. *Day and Date of Elections*

The day and date of national elections is regulated by congressional statute under Art. I, Sec. 4 of the Constitution.

The opening and closing times of the polls on election days is, however, an aspect of electoral regulation which has survived congressional pre-emption under that section <sup>126</sup>. This is due, of course, to the acknowledgement of the complexity of and the variety of local differences within a continental-sized federal system. But the dictates of nature and of logic operate to uniformize opening and closing times. Thus on national election days, the first Tuesday after the first Monday in November of every even numbered year for the election of a new federal house and one third of the federal Senate and every fourth year for the election of a President and Vice-President, the polls are open, as a general rule, from circa 6-7 a.m. until circa 9-10 p.m. These are considered to be enough hours to allow maximum participation without sacrificing human strength and efficiency in supervision of the polls and the count following their closing. Purely state and local general election day hours will more or less parallel this state of things, as will primary day and special by-election day hours.

### 11. *Election Day*

Supervision of the polls on election day is a matter of State law and of local custom. Because there are so many voting precincts

<sup>126</sup> In some states postcard notification of day and date, of opening and closing times of the polls and of the location of the neighborhood poll is mailed to the individual citizen – but such is the exception and not the rule.



there are generally an insufficient number of regular election boards or county employees to cover each one. Therefore, in most places there has evolved a system whereby two representatives of each of the two major parties are chosen by their party and recommended to the county clerk to serve in the paid position of election judge. In addition to these four officials at each polling station there are poll watchers from each party and representatives of the candidates. The judges are charged by the state with making sure that only those persons whose names appear on the register may vote and to that end require the voter to produce his voting registration card, all-purpose police identification card, drivers license or other valid identification (Americans not being required to carry a standard personal identification card with them) and to countersign the register.

Campaigning on election day itself is not prohibited, except in the immediate vicinity of the polls, but in practice "active" campaigning is replaced by "quieter" strategic election day activities. The day is a state legal holiday in about half the States and schools and many businesses are closed. Employers remaining open for business are required by most state laws to allow employees paid time off to vote during the day if it is impossible or difficult for them otherwise to reach the polls. Vendors of alcoholic beverages must cease operations during polling hours under most state laws <sup>127</sup>.

## 12. *The Ballot*

Most urban and suburban voters now vote by lever machine, punch cards, optical scanners or experimental electronic and computer equipment. But the paper ballot, though overtaken by the "machine age", is not unknown. The American state adaptations of the "Australian" ballot can and do differ in every and any imaginable detail <sup>128</sup>. They will separately identify each office to be filled

<sup>127</sup> See Reitman, Chapter 3, for greater detail.

<sup>128</sup> "The structure of the American ballot differs widely from state to state. An American ballot will inevitably be more complicated than in a British setting, where the voter's choice is limited to a single set of candidates for a single legislative seat. In contrast with European practice the American ballot has always included both the names of the candidates and the party to which each adheres. While there is much variation in format, two basic types predominate. 1) The *party-column* ballot — simply a consolidation of the party "tickets" that were in universal use before the Australian ballot reform of ca. 1890 — in which all offices are grouped by party and it is normally possible and simple for the voter to cast a single "straight-ticket" vote. 2) The *Office-block* ballot, in which candidates for office are grouped by each

and the name of the candidate of each party for that office. The symbol or logo of each party may appear on the ballot, but the voter will find no identification of the candidates other than their names – no photos, no biographical data. The position of offices and of parties and their candidates on the ballot is a matter of State law. Offices will usually be listed in order of constitutional importance. The position of the party column of candidates for each office will be determined by lot for each election, or preference may be decided according to the vote totals gained by the parties in the last previous election for statewide offices. There are usually provisions for “write-in” candidates. Only in a primary election preceding the general election would the ballot be printed with lists of candidates of the same party running for the same office. The states have various methods for determining in this instance how the names of candidates are to be positioned: they may be alphabetical, the incumbent, if there is one, may be listed first, lots for positions may be drawn, or it may be left up to the discretion of a State or local official.

### 13. *Validation of Election*

When the polls have closed the official vote count is taken from the machine’s registers at the polling stations themselves by the local official judges, party poll watchers and candidates’ representatives. Where paper ballots are still in use the judges will make the tally under the watchful eyes of the party and candidate poll watchers. The totals for each electoral jurisdiction, usually called the precinct or ward, are verified and certified to by the judges and immediately sent to the local Board of Elections. At the Board the precinct or ward counts are totalled and then sent, as completed town, county or city results, to the State election officials. At the same time the count is being made at the candidates’ and parties’ headquarters and at the print media’s offices and broadcast media’s studios. By this naturally developed cross-check method, involving the government, the parties and the press, a comprehensive and accurate result usually emerges before the wee hours of the next morning.

Instance of dispute as to the validity of votes, void ballots or the

individual office; as a rule, a voter desiring to vote a straight party ticket must make a separate mark for each of his party’s candidates”. (Burnham. pp. 680-1).

honesty and accuracy of the count are, considering the scope, complexity and regularity of American elections, negligible<sup>129</sup>.

Shortly after election day official certification and proclamation of all federal and/or state and local returns will be made under state law by the state's chief elections' officer or by the judges of the State's highest court. The figures will be finally validated by the state's Governor. The winners are issued their certificates of election and accompanying credentials.

All of this notwithstanding, there is a further constitutional requirement which comes into play in congressional elections. Under Art. I, Sec. 5, Cl. 1 "Each House shall be the Judge of the Elections, Returns and Qualifications of its own members...". Thus the Senate and the House are the ultimate and exclusive arbiters of all disputes as to any and all elements of the elections of their respective memberships and are, therefore, the final validating authorities<sup>130</sup>.

While the States are the initial validating authorities and in the overwhelming number of cases the "final" authorities in practice (because very few final electoral outcomes are thus contested), the federal legislature does not share the final approval of its membership with the states. This is another example of the classical federal electoral balance at work — the states are the initial controlling authority in practice, but the Congress is the ultimate authority if it chooses to act. We see here an operational analogy to Art. I, Sec. 4 of the Constitution by which the "Times, Places and Manner" of holding the national legislative election is a matter for the individual state legislatures, but by which the Congress may legislate uniformity.

Although the power to and the process by which to judge these electoral results are judicial or quasi-judicial in nature, they are lodged in the legislature by the Constitution itself and are not, therefore, to be shared with the federal or state courts. Each House acts as a judicial tribunal and is empowered with traditional "judicial" constitutional, statutory and common law powers. It may sec-

<sup>129</sup> Substantive voiding grounds include unofficial paper; plural vote; known voter; blank ballot; formal errors.

"Every election does reveal scattered instances of corruption and dishonesty, even a few which may alter the result of the election. But happily these have decreased markedly over the years, especially as the strength of big political machines has dwindled and voters have demonstrated a more independent turn of mind. Today it can fairly be claimed that American election results are on the whole free from serious distortion due to chicanery or downright fraud" (Reitman, p. 3).

<sup>130</sup> *Keogh v. Horner*, 8 F. Supp. 933, 935 (S.D. Ill. 1934).

ure relevant information by the necessary and appropriate procedures of subpoena and sworn testimony; may conduct its own recount of the votes, taking possession of the ballots and tally-sheets; and its power has been adjudged to extend to the examination of primary election campaigns<sup>131</sup>.

This power has its origins, of course, in the struggle for English parliamentary independence. The American Constitutional Convention made sure to include it among the independent powers of the new legislature and by doing so to insulate its electoral continuity from the interference of the other national governmental branches or of the states. It copied by analogy from the English parliamentary insulation of the final judgment of its returns from the interference of the Crown<sup>132</sup>. Likewise, the new European Parliament will have to address itself to this question of ultimate judgment as to the validity of the election of its members. In considering its role *vis à vis* the other Community organs and the Member States it should bear the Anglo-American precedents in mind.

#### 14. Mandates

No elected American official is constitutionally or statutorily required to fulfill any imperative mandate. Mandates, are, in the American system, divined from the "deeper meanings", if they can be found, of the electoral results themselves. While the stability of the constitutional and party system usually can assure most elected officials something more than the briefest of stays in Washington,

<sup>131</sup> Power not shared with States or courts: *Sevilla v. Elizalde*, 72 App DC 108, 112 F 2d 29 (1940); *Application of James*, 241 F Supp 858 (DC NY 1965). Each house acts as judicial tribunal: *In re Loney*, 134 US 372 (1890); *Reed v. County Commissioners of Delaware County*, 277 US 376 (1928). Power extends to primary election campaigns: 6 Cannon's *Precedents of the House of Representatives*, Secs. 72-74, 180 (1936). Cf. *Newberry v. United States* 256 US 232, 258 (1921). See Claude, pp. 37-40, on related issues in the case of *Powell v. McCormack* 395 US 486 (1969).

<sup>132</sup> "Each colonial Assembly, each State legislature, and the new national Congress made itself in the image of the British House of Commons in the sense that it quickly established control over that vital factor, its own composition, claiming as the Commons had done under James I the power to judge the credentials of its own members" (Pole, p. 505). But note: "The American situation is similar to that which prevailed in Britain prior to 1868. In that year, Parliament enacted a law under which disputed elections were decided by the courts. The present British system appears superior to that which prevails in America. Though according to the Supreme Court, the House and Senate, in judging elections, act as judicial tribunals, (*Barry v. U.S. ex. rel. Cunningham*, 279 US 597 (1929)), too frequently this has been purely a matter of legal theory. In practice, contests over seats in the Congress all too often tend to be decided in favor of the candidates of the dominant party" (Schwartz, p. 324).

political and constitutional possibilities exist by which the people's representatives may be turned out of office between elections <sup>133</sup>.

There exist analogous impeachment, expulsion and resignation possibilities under the state constitutions and rules of the state legislatures for state and local executive, legislative and judicial elected officials.

### 15. *Vacancies*

Vacancies in House and Senate seats due to death, impeachment and conviction, expulsion, or resignation, are filled at special by-elections called by the Governor of the State within which the vacancy occurs (Art. I, Sec. 2 for the House of Representatives; Amendment 17, paragraph 2, Cl. 1 for the Senate). The timing of such by-elections is therefore a matter of state process (subject always to the possibilities of Congressional power under Art. I, Sec. 4). In the case of Senate vacancies the state legislature is given the discretion to empower the Governor to fill vacancies by appointment "... until the people fill the vacancies by election as the legislature may direct", i.e., until the next special or by-election called by the legislature, or until the constitutionally or statutorily mandated next general election (Amendment 17, paragraph 2, Cl. 2).

Vacancies in the Presidency and Vice-Presidency are systematically treated by the 25th Amendment (1967).

As a general rule, vacancies in State and local elected positions are filled at special by-elections in like manner, i.e., by the issuance of a Writ of Election by the Governor, with the specific timing decided by the State Legislature, all under the aegis of state constitutional rules.

## V. REGULATION OF VOTING QUALIFICATIONS AND FRANCHISE EXPANSION

The regulation of the electorate's qualifications to vote in both national and state elections has traditionally been the province of the states <sup>134</sup>. However, in the twentieth century the abolition and reg-

<sup>133</sup> The Watergate and related scandals dramatically highlighted the effects of the combined political and constitutional possibilities for removing nationally elected officials from office between elections.

<sup>134</sup> "Until recently it had been supposed that action of the state legislatures, either

ulation of qualifications to vote in federal and indeed in all elections has come to be more the province of the national government, though both the national and state entities today still share this power.

### 1. *Nationality and Citizenship*

The operative national law in this sphere comprises Article I, Section 8, Cls. 4 and 18. They give Congress plenary power over citizenship and alienage. The Congress may, therefore, confer political participation rights upon aliens or not, as it chooses. As it has throughout American history chosen not to, and as the Supreme Court has ruled that there is no other constitutional source for the proposition that aliens have a right to vote or to run for office, it may be stated that American citizenship is a condition precedent to the voting franchise and of course to the federal office holding privilege<sup>135</sup>. In 1976 ineligible aliens constituted 2.3% of the total voting age population<sup>136</sup>.

But the Congress may devolve upon the States that portion of its plenary power as it sees fit, so that the States may, e.g., "... confer the right of suffrage upon resident aliens who have declared their intention to become citizens..."<sup>137</sup>.

An American citizen cannot lose his or her citizenship because he or she has voted in a foreign election<sup>138</sup>.

### 2. *Age*

This qualification was historically within the purview of the States with regard to both federal and state elections (Constitution, Art. I,

through ratification of federal constitutional amendments or through legislative action for the state, was necessary to bring about changes in the franchise" (Burnham, p. 661).

<sup>135</sup> *Harisiades v. Shaughnessy*, 342 US 580 (1952); Schwartz, *Commentary*, Pt. III, Vol. 11, pp. 522, 890; Constitution, Art. I, Section 2, Cl. 2; Section 3, Cl. 3; Art. II, Sec. 1, Cl. 5. (N. B. that the right to vote is extended "only" among "US citizens" in Amendments 14, 15, 19, 24 and 26).

<sup>136</sup> Bureau of the Census, *Statistical Abstract*, 1977, p. 490.

<sup>137</sup> Small, pp. 300-1, citing two very early state court cases: *Spragins v. Houghton*, 3 Ill. 377 (1840); *Stewart v. Foster*, 2 Binn. (Pa) 110 (1809).

<sup>138</sup> *Afroyim v. Rusk*, 387 US 253 (1967); Antieau, *Modern Constitutional Law*, i.660-1; see also Reitman, pp. 8-9.

Sec. 2; Amendment 17; Art. II, Sec. 1, Cl. 2). Prior to World War II no state-set voting age was below 21 years. Georgia broke ground in 1943 because of the disparity in fighting and voting ages and lowered its age to 18. Kentucky followed suit, but only in 1955. The newly admitted States of Alaska and Hawaii adopted minimum ages of 19 and 20, respectively, in 1959.

The modern federal reform effort began with a proposal by the Eisenhower administration in 1954 to amend the Constitution to give 18-year-olds the vote, but the proposal failed in the Senate. In the Voting Rights Act of 1970 (Public Law 91-285) the Congress attempted to lower the age to 18 for all elections but its power to do so was ruled appropriate only as regards federal elections in the case of *Oregon v. Mitchell*, 400 US 112 (1970). This decision set the stage for the final uniformization of the voting age via the Twenty-sixth Amendment, ratified and made operational in 1971. This most recent addition to the Constitution secures the vote to all citizens "who are 18 years of age or older" in all elections.

Among the causative factors may be cited four of relevant importance. The first is the increasingly broad role of the increasing number of younger people in American life generally. The second is the potential vote-gain calculations by the political parties. The third was the pressure to counteract the fighting/voting age disparity which manifested itself nationally during the Vietnam War era, much as it had in Georgia during World War II. The fourth factor reflects the larger problem of administrative disparity in a federal system in which decisions like *Oregon v. Mitchell* are possible. Without the 26th Amendment, many states with a state voting age other than 18 would have been faced with the cost and administrative difficulty of keeping separate registration books, ballots and voting apparatus for federal and for state and local elections<sup>139</sup>.

### 3. Residence

The states have traditionally imposed minimum durational residence requirements as prerequisites to the exercise of the franchise. Usually these have encompassed not only a requirement of residence in the state but also of fixed residence in a specific county or equi-

<sup>139</sup> Diamond, *et.al.*, p. 537; Reitman, p. 8.

valent electoral subdivisional jurisdiction, albeit for a shorter time period in the latter<sup>140</sup>. The rationale for these voting obstacles is that they prevent unintelligent electoral participation by newcomers who are presumed ignorant at least of state and/or local affairs. In addition, anti-black southern state systems historically imposed longer than average residence requirements for obvious reasons. The historical national average was one year; the deep South average was two years. In 1970 the residence requirement was one year in 33 states, 6 months in 15 states and 3 months in 2 states.

The federal Voting Rights Act of 1970 (Section 202) extended the franchise to an estimated 5 million people who might otherwise have been disqualified from participating in the 1972 national elections by setting a national 30 day minimum durational residency requirement for participation in Presidential elections. That is, the prospective voter is required to have maintained a state and electoral jurisdiction residence for only the 30 days immediately preceding the election<sup>141</sup>. The Supreme Court upheld the congressional statute in *Oregon v. Mitchell*, 400 US 112 (1970).

Recognition of the "mobile society"<sup>142</sup> and of the "information revolution" combined with a renaissance of the federal constitutional rights to travel and to vote to produce the landmark Supreme Court judgment of *Dunn v. Blumstein*, 405 US 330, in 1972. The Court ruled that the national Constitution prohibited the States from restricting the franchise only to those who had lived in the State for at least one year and in the county for at least three months. The deci-

<sup>140</sup> *Blake v. McClung*, 172 US at 256 (1898); Small, p. 780; Antieau, *Commentaries*, p. 582.

<sup>141</sup> If a transient voter moves to another state within 30 days before the election, he or she may now – in all states – obtain an absentee ballot up to a week before the election from the state of prior residency and cast that ballot (Reitman, p. 68).

<sup>142</sup> Three scholars have shown the strong correlation between the stringency of residence requirements and voter turnout. They conclude that "registration requirements are a more effective deterrent to voting than anything that normally operates to deter citizens from voting once they have been registered, at least in presidential elections": S. Kelley, Jr., R.E. Ayres and W.G. Bowen, "Registration and Voting: Putting First Things First", *American Political Science Review* Vol. 61 (June 1967) 359, 362. See also *Drueding v. Devlin*, 234 F. Supp. 721 (1946), *aff'd.*, 380 US 120 (1965) and Claude, pp. 276-277.

"About 18% of the national population, 36.2 million persons, moved during the March 1970-March 1971 period. The Census Bureau estimates that five and one-half million Americans were disenfranchised each election because of their failure to fulfill state durational residency provisions. When county and district residency requirements are counted, the problem becomes more acute. In his book, *Principles of Demography* (1969), Donald Bogue estimated that one of every five persons was changing residence every year; 27.8 million were crossing county borders" (Reitman, p. 70).



sion caused all the States to change their laws. Currently, nearly half the States have no minimum requirements and the other half, exercising a discretion allowed them under the 1973 case of *Marston v. Lewis*, 410 US 679, which upheld a state 50-day durational residency as "necessary to promote the State's overriding interest in accurate voter lists", now require 60 day of residence at the most <sup>143</sup>.

It is certain that the American problems of residence and mobility take on analogous relevance in an expanding and dynamic Community in which there is the cross-national movement of workers, businessmen, civil servants, soldiers and tourists annually numbering in the millions.

#### 4. *Property and Tax Qualifications*

American colonial property holding and tax-paying restrictions on the franchise, inherited from the Mother Country, survived the Revolution. Seven of the original States required ownership of a life estate in land as a qualification for voting; the other six required at least the ownership of specified amounts of personal property or the payment of taxes. These facts, among many others, support the thesis that it was indeed the intent of the conservative Founding Fathers to limit the franchise to "propertied" white adult males. It has been argued that these original qualifications made ineligible to vote up to one-half of even this rather narrow category of human beings.

These obstacles gave way within a few generations. The principle of universal manhood suffrage blossomed in the new States during the decades before the Civil War under the aegis of the westward settlement and of the politics of Jacksonian democracy <sup>144</sup>. Gradually the original states substituted tax paying for property owning as a franchise qualification. By mid-nineteenth century the taxpaying qualification had mostly dropped away. But in some jurisdictions both property holding and taxpaying qualifications survived the 20th century and brought into play the national government's expanding electoral supervisory power.

<sup>143</sup> Diamond, *et.al.*, p. 512; Antieau, *Commentaries*, p. 582.

<sup>144</sup> "Historically, then, the reform of property and tax qualifications was effected with little reference to legal change at the national level" (Claude, pp. 252-3).

The most important relevant survivor was the poll tax. This restrictive tax was a phenomenon of the post Civil War South. The post-war Southern poll tax is generally considered to have been a part of the "program" introduced by the white Democratic Party leadership as a reaction to the grass-roots-based agrarian "revolution" inspired by the Populist Party and other political reform elements in the decades just preceding and following the turn of the century. It was used, therefore, to restrict poor white as well as black voting. With the waning of the Populist movement came the voluntary dropping of the requirement in half of the South and there followed, predictably, a generally increasing voter participation and, again predictably, a waxing of the Democratic party's fortunes.

National governmental involvement began in the crucial middle of the Roosevelt Presidency/New Deal years. In 1937, the year in which the political processes were to change the complexion of the Supreme Court and to begin to "modernize" and "nationalize" its rulings, the Court upheld the poll tax — as long as it was not an instrument of deliberate disenfranchisement of any particular ethnic or social group!<sup>145</sup> Reaction to this ruling, as to many others of the "old" court, began to stimulate national liberal initiative. Congressional debate began in 1939. But while the Congress had the power to eliminate this qualification in connection with its own election under Art. I, Sec. 4 it was considered not to have had analogous power over presidential elections. Under Art. II, Sec. 1, Cl. 2 each state has the power to control the method of election of the state's members of the Presidential Electoral College. Unlike Art. I, Sec. 4 it contains no possibility of superseding national control. As Congress, therefore, could not thoroughly dispose of the federal election poll tax obstacle by its own Act, recourse to constitutional amendment was deemed necessary<sup>146</sup>.

A full generation later the Twenty-Fourth Amendment, banning "any poll tax or other tax" in all federal electoral processes, was approved by the Congress and by the constitutionally necessary three-quarters of the state legislatures. The Congress, in working up the Amendment, produced a time-honoured "compromise" and did not disturb the states' poll tax power in their own elections.

<sup>145</sup> *Breedlove v. Suttles*, 302 US 277 (1937).

<sup>146</sup> House of Representatives Report No. 1821, 87th Congress, 2nd Session, pp. 3, 5 (1962); Small, p. 1383.

That initiative, like many national initiatives in the electoral sphere, had to come from the national judges. The Supreme Court, on the authority of the new Amendment, unanimously struck down state poll taxes and any and all impairments to vote hinging on the failure to pay such taxes, *vis-à-vis* national elections, in the case of *Harman v. Vorsenius* (380 US 528 (1965)). It then declared all electoral poll taxes an unconstitutional abridgement of the Equal Protection of the Laws Clause of the Fourteenth Amendment to the Constitution<sup>147</sup>.

Finally, in a series of recent cases the Supreme Court has practically abolished all state legislated property qualifications for voting in local elections. These have been the most widely used of such qualifications that have survived to the present day. The constitutional ground upon which the court has stood has once again been the guarantee to all of the equal protection of the laws contained in the first section of the Fourteenth Amendment<sup>148</sup>.

### 5. *Women's Suffrage*

The new United States inherited and kept alive the woman's traditional legally disadvantaged position in the English common law. Women were disenfranchised by the states at all electoral levels, the national constitution having entrusted all federal electoral qualifications to the states under Art. I, Sec. 2 (House of Representatives) and Art. II, Sec. 1, Cl. 2 (Presidential elections). (The Senate was not directly elected until after the enactment of the 17th Amendment in 1913; the states were free to set any disqualification they wished in their own elections).

The women's suffrage campaign began in the 1830s, during the Jacksonian era's participational reforms. It was, at first, closely related to northern movements for the abolition of slavery. Early victories were gained in school elections in some northern, border and western states. The first national Woman's Rights convention was held in New York State in 1848. Some few militant women

<sup>147</sup> *Harper v. Virginia State Board of Elections* and *Butts v. Harrison*, 383 US 663 (1966), overruling the 1937 *Breedlove* decision.

<sup>148</sup> *Cipriano v. Houma*, 395 US 701 (1967) – right to vote on municipal revenue bonds; *Kramer v. Union Free School District*, 395 US 621 (1969) – right to vote in school district elections; *Phoenix v. Kolodziejski*, 399 US 204 (1970) – right to vote at a general bond-revenue raising election; *Hill v. Stone*, 421 US 289 (1975) – right to vote in a municipal bond election.

attempted to vote after the Civil War. Famed suffragist Susan B. Anthony voted in the 1872 national elections, in her home city of Rochester, New York, and was tried and convicted of the crime of "voting without having a lawful right to vote". Congressional action on a constitutional amendment was not forthcoming and the Supreme Court ruled that the states had the power to deny women the right to vote (*Minor v. Happersett*, 27 Wall. (U.S.) 162 (1875)). Until the First World War, especially during the height of the pre-war Progressive and Populist movements, the suffrage forces focused upon the states and enjoyed considerable success in the newer western states. Once again American electoral history is seen to turn upon the operation of larger contemporary forces, in this case the mixed influence of the frontier and of the turn-of-the-century "renaissance" of democratic economic and political ideals, which brought forth, in addition to the female suffrage, the direct election of United States Senators, the direct primary, the possibilities of direct democracy through the initiative, referendum and recall at the state level and a host of local electoral reforms and experiments.

Further, the relationship of war to the electoral system once again comes into play. The Union victory in the Civil War made possible the continued existence of the American political experiment and gave rise to unprecedented centralizing opportunities through the law in the form of the 13th, 14th and 15th amendments to the Constitution. The First World War brought with it an increased role for the National Government in domestic and international affairs, and changes in the electoral system. The war greatly increased the participation of women in the world of work, for example, as it increased their interaction in society as a whole. Suffragettes and their supporters concomitantly undertook to run candidates for Congress across the country. They also took to dramatic demonstrations in Washington, the publicity from which helped to "arouse the conscience of the nation". Thousands of women demonstrators were arrested, mishandled, brought to trial. During these events the nation was presented with the discrepancy between its stated universal war ideals and the denial of basic democratic rights to fully one-half of its own population<sup>149</sup>. A year after active

<sup>149</sup> Note the analogy between this increasingly persuasive argument and those used in the campaigns to lower the voting age in Georgia during World War II and nationally during

American participation in the war had begun President Wilson was persuaded. The newly elected Congress met in special session to debate the issue, adopted his proposed suffrage Amendment and sent it to the States for ratification. The Nineteenth Amendment, guaranteeing the vote in all elections against denial or abridgement "by the United States or by any State on account of sex", was proclaimed in 1920.

### 6. Literacy Tests

Newly arrived immigrants and Blacks, together comprising a respectable portion of the population, were the target of state literacy requirements for voting which were enacted, at one time or another in American history, by fully half of the States. The first of such requirements were enacted shortly before the Civil War, in the great period of central and western European immigration. They were later adopted throughout the South in the attempt to thwart the potential Black electorate, enfranchised by the three Civil War Amendments, the 13th, 14th and 15th.

Nineteen states imposed a reading requirement, fifteen of those imposing an ability to read a legal document or a passage from the State or Federal Constitution, four of those expressly requiring reading with "understanding". Fourteen states imposed a writing requirement. Literacy tests non-discriminatory on their face and in their enforcement were upheld by the Supreme Court in *Williams v. Mississippi*, 170 US 213 (1898) and in *Lassiter v. Northampton Board of Elections*, 360 US 45 (1960).

The congressional consensus, reflecting ascendant conservative constitutional and political forces, was opposed to federal action on the familiar ground that the states were the intended regulators of the electorate's qualifications to vote (Art. I, Sec. 2 (Federal House), Amendment 17 (Senate), Art. II, Sec. 1, Cl. 2 (President), Amendment 10 (Reserved powers of States)).

But these requirements were among those electoral obstacles doomed by the post-World War II political and racial "awakening".

the Vietnam War. Note also the analogous use of active protest in the women's and later in the Blacks' voting rights struggles. These analogies point up the simultaneous uses of "reason" and of force in American history in general and in American electoral development in particular.

Their use in southern anti-black voter discrimination finally aroused congressional majorities, the results being the literacy test provisions of the larger Civil Rights Acts of 1957, 1960 and 1964. The constitutional bases relied upon were the due process of law guarantee of the 2nd section of Amendment 14 and the prohibition against voter discrimination based upon race or color of Amendment 15.

These were also the legal bases for the congressional supervision of all literacy tests in communities where the federal courts could find that they were used for the purpose or with the effect of denying or abridging voting on a racial basis. Such provisions were a part of the comprehensive Voting Rights Act of 1965<sup>150</sup>, upheld by the Supreme Court in the case of *South Carolina v. Katzenbach*, 383 US 301 (1966). The result was the suspension of the tests throughout the South. The Act provided for federal administration of elections in the South in the event of state non-compliance with its provisions<sup>151</sup>.

The 1970 Voting Rights Act suspended all state literacy tests, regardless of discriminatory intent or administration, for a five-year period to end in Summer, 1975. This step, upheld by the Supreme Court in *Oregon v. Mitchell*, 400 US 112 (1970), potentially enfranchised two million citizens in 12 states. Congress extended the Voting Rights Act in 1975 for an additional seven years and included new provisions applicable to language minorities. If more than 5 percent of the citizens of voting age in a State or political subdivision are members of a single language minority and the illiteracy rate in English of such persons, as a group, is higher than the national illiteracy rate, then election materials, including registration forms, voter information pamphlets and ballots must be printed in the minority language as well as in English. State and local jurisdictions covered by the Voting Rights Act extensions are required to submit changes in election procedures – ranging from re-districting to the change of a polling place location – to the Justice Department for review<sup>152</sup>.

Analogy to the Community's "guest worker" phenomena comes readily to mind.

<sup>150</sup> 79 *United States Statutes at Large* 437.

<sup>151</sup> See *Allen v. Virginia Board of Elections*, 393 US 544 (1969); *Hadnott v. Amos*, 394 US 358 (1969).

<sup>152</sup> 1976-1977 *Book of the States*, p. 208.

## 7. Registration

All voters for all American elections must be properly registered. The Register is compiled and kept at the local (i.e., county or city) level and is the ultimate responsibility of each state's chief elections officer, who is usually the Lieutenant (Vice) Governor, the Secretary of State or the Chief of the State Board of Elections. Unlike practice in most Community Member States, American registration is not automatic. Personal application must be made by the prospective voter, who must meet the threshold qualifications. The Register is usually open all-year-round, except for the 30 days immediately preceding the general election<sup>153</sup>. Registration lists in the various States are kept up to date in a number of different ways. A few States provide for a house-to-house or mail canvass at some time prior to an election. In other States, registrars watch for death notices in papers or are notified by other public officials when death certificates are issued. In a few states public utility companies report regularly to local election officials when persons move. In some states postcard notification of lapse of registration is mailed to the individual citizen — this, however, being the exception and not the rule. Legal objections to omissions and to inaccuracies in the Register may be undertaken by the citizen-voter and/or political party "challenger" through the local election bureaucracy's procedures

<sup>153</sup> "The most significant remaining area of diversity in the legal facilitation of voting and the area in which the most disenfranchisement of voters now exists is that of registration procedures. These may broadly be classified under three headings: 1) Procedures for automatic enrollment of eligible voters by state officials somewhat approximate normal European procedures. 2) In the overwhelming majority of states personal registration is required. It is up to the individual who wishes to vote to prove that he is a legally qualified elector and to present himself at a registry bureau prior to the last legal date. The latter can vary from a time very shortly before the date of election — the practice in most states — to as much as nine months before. The burdens of personal registration are increased if the procedure is also periodic, i.e., if the individual is required to register every year or every several years. In the overwhelming majority of states personal registration is permanent, albeit subject to cancellation if the individual has failed to vote within a specified period. 3) In a number of rural areas no personal-registration procedure of any kind exists. As was nearly universally the case in nineteenth-century America, the voter in such places appears at the polls and votes without further ado. Sometimes lists of voters are prepared by election officials in such areas and sometimes not. Voting participation in such areas, not surprisingly, tends closely to correspond with the very high level set in the country as a whole before 1900" (Burnham, p. 683).

"The introduction of extensive mail registration systems has marked a major departure from the personal registration systems in most States and from the permissible mail registration alternatives previously available. By late 1975, 14 States and the District of Columbia — containing more than 40 percent of the voting age population of the Nation — had adopted legislation providing for mail registration" (1976-1977 *Book of the States*, p. 203).

or in more difficult cases through the state and federal court systems.

The national government's role in the registration process is predicated upon Congressional authority under the Fourteenth and Fifteenth Amendments and Art. I, Sec. 4, the "Times, Places and Manner" clause. There is, as yet, no national uniform registration law<sup>154</sup>. The traditional, state-organized registration processes outlined above are constitutional when reasonable and non-discriminatory but unconstitutional under the 14th and 15th Amendments when they deny the opportunity to vote by arbitrary, unreasonable, irrational or unjustifiable methods. The leading cases have dealt with the anti-black literacy tests (*United States v. Mississippi*, 380 US 145 (1965))<sup>155</sup>.

Congress may also control federal elections registration processes in the States under the constitutional authority of Art. I, Sec. 4. It can require States to keep registration records; can authorize federal courts to declare persons qualified to vote and to order their registration; and can empower federal Courts to appoint voting registrars to insure against racial or other unjustified discrimination.

The modern national governmental involvement arises in the main because of the special problems of race relations in the southern region<sup>156</sup>. In the case of *United States by Katzenbach v. Original Knights of KuKlux Klan* (250 F. Supp. 330 at 353, 354 (DC La 1965)), a lower federal Court used expansive language to suggest that the national reach may extend to any and all political activities bearing a rational relationship to the federal political process, and cited as example registration rallies, voter education classes "... and other activities intended to encourage registration".

Early in the 1970s, Congress began work on proposals to estab-

<sup>154</sup> Proposal for Universal Voter Registration Administration, S. 2457, 92nd Congress, 1st Session, 1971.

<sup>155</sup> "Public law pertaining to personal-registration requirements that is not obviously racially discriminatory is very much in its infancy. It seems probable that the egalitarian trend found in other areas of voting-rights doctrine will begin to make itself felt in this area as well. There is one recent case in point: the invalidation of the 1966 Texas registration statute in early 1971 by a federal district court as in violation of the equal-protection clause of the Fourteenth Amendment. The court relied heavily on the quantitative testimony of political scientists in its determination that the combination of the law's requirements - that registration be accomplished by January 31 and that it be repeated annually - disenfranchised well over a million Texans who were otherwise qualified to vote" (Burnham, p. 684).

<sup>156</sup> *United States v. Wood*, 295 F. 2nd 772 (CA 5 Miss., 1961); *United States v. Manning*, 215 F. Supp 272 (DC La. 1963); *United States v. Louisiana*, 225 F. Supp 353 (DC La, 1963), aff'd. 380 US 145 (1965); *United States by Katzenbach v. Original Knights of KuKlux Klan*, 250 F. Supp. 330 (DC La 1965).



lish a uniform nationwide system of voter registration for federal elections by mail. This movement was a reflection of the increasing awareness that the strict personal registration requirements of the States, the constitutionality of which seems to be beyond serious or widespread dispute, create a considerable block to increasing levels of voter participation. But these proposals have yet to be enacted. Further, and most illustrative, is the fact that in 1976 the proposals were seriously weakened by action withdrawing the specific proposal that the national postal service mail simple voter registration postcard forms to every household in the country. The amended proposal provided only that such postcard forms be made available in post offices and other public buildings. Thus, the classical American self-help notions may be said to be alive and healthy in the legal attitude toward voter registration, re-registration and absentee balloting<sup>157</sup>.

#### 8. *Nationals Resident Abroad*

In 1976, the Congress enacted legislation (Public Law 94-203) providing for uniform national voting procedures for American citizens resident abroad. The law reflects the traditional federal separation of functions and therefore applies only to federal elections. The relevant constitutional provisions are Art. I, Sec. 4 for Congressional elections and Art. II, Sec. 1, Cl. 4 for Presidential elections. An estimated one million Americans living abroad now have the right to vote by absentee ballot in federal elections in the state in which they had their last voting address. The law, of course, imposes the usual criminal penalty possibilities upon conviction of voter fraud.

Most States permit personal and/or postal absentee voting in their own primary and general elections for members and dependents of the armed forces and government employees, as well as for their citizens not in the constituency or country on election day.

<sup>157</sup> "Although little constitutional objection can be offered to federal administration of voter registration in federal elections (see *South Carolina v. Katzenbach* and *Oregon v. Mitchell*), the central problem of these suggestions' practicality still remains. Certainly the present registration system can be improved. And the solutions should lie in federal laws directed at existing state systems. A federal statute mandating certain minimum state procedures, such as maintaining a fixed number of registration centers, opened a specified number of hours and at times convenient for the community, appears to offer the best response to present registration inadequacies" (Reitman, p. 38).

As with registration and re-registration the initiative in all absentee cases must be taken by the citizen-voter, who will be dealing with the state and local election bureaucracy. The application can be as simple as an informal letter – but it must reach local officials in time for them to process it and to mail a ballot which will, in turn, be returned by election day or whatever terminus date the State has set.

Some states provide by law for blind, physically handicapped or hospitalized persons to vote by proxy with the assistance of election officials.

### 9. *Continuing State Qualificatory Power*

While the right of suffrage is established and guaranteed by the Constitution it is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed <sup>158</sup>.

Thus, while the modern American federal electoral balance is tipping decidedly toward national uniformization the States still have their role to play in qualifying the electorate <sup>159</sup>.

The following is a summary of still valid state-law disqualifications: Almost every American jurisdiction disqualifies voters after conviction of a felony. Twenty-eight states disqualify voters for non-felony convictions, most of which are related to the conduct of the specific election in which participation is denied <sup>160</sup>. Mental deficients, idiots, the insane and those under legal guardianship are disqualified from voting in forty-six states and the District of Columbia upon appropriate formal recognition <sup>161</sup>.

<sup>158</sup> Douglas, J., in *Lassiter v. Northampton County Board of Elections*, 360 US 45 (1960).

<sup>159</sup> "Despite the general trend away from untrammelled state authority in voting matters, where voter qualifications are concerned, the law of each state is supreme" (Reitman, p. 27).

<sup>160</sup> "Congress has shown some interest in legislation to restore voting rights, at least in federal elections, to convicted felons who have completed their sentences. However, the issue is muddled somewhat because such federal enactments would involve Congress further in the matter of establishing voter qualifications, a power which generally has been reserved to the states" (Theis, p. 90).

<sup>161</sup> Inter-Parliamentary Union, *Parliaments of the World*, 1976, p. 300; see Reitman, pp. 27-30. According to the Census Bureau the ineligible institutionalized population (prisons and mental hospitals) numbered some one half million persons in 1976 (*Statistical Abstract of the U.S.*, 1977, p. 490).

## VI. SUMMARY AND CONCLUSIONS

1. The American electoral system is an evolution over time. It is, as is every other system, in the process of continual change. Likewise, a European electoral system must evolve. It cannot be created whole and entire, static, finished.

However, Europe is not obligated to suffer a two-century unfolding of united electoral development. Great potential lies in the desire to view and to mold the system as a whole from the beginning. In contrast, the American electoral system has never been considered holistically. In this way Europe can benefit from its consciousness of a shortened timetable.

2. The American development shows that there can be a workable and generally acceptable harmony of electoral processes without a centrally imposed or uniformity or identity. There can be a good measure of diversity.

3. Neither harmony nor diversity are goals in themselves. A unified electoral system should serve the following ground goals:

i) It should at once mirror and contribute to a higher degree of understanding and interdependence in the polity as a whole. A directly elected European Parliament's "awareness building" functions become especially crucial in this regard.

Also relevant here for Europe are the unified concepts of citizenship evolving from higher levels of electoral integration. The American residency and registration reforms suggest themselves<sup>162</sup>.

ii) It should at once mirror and contribute to a legitimacy based upon expanding participation. The American franchise and nominating procedure developments emerge here.

iii) It should contribute to both the sense and the forms of democracy, equality and fair treatment. Here note the American developments in apportionment and districting, franchise expansion, public financing of campaigns, expanded access to the ballot and nominating procedures.

iv) It should complicate as little as possible simplicity, practi-

<sup>162</sup> H. J. Spiro, in G. Ionescu, ed., *Between Sovereignty and Integration*, at p. 143 et seq.

cality and efficiency of administration, remembering however that this quality is itself subservient to the substantive ground goals. The American voting age reform suggests itself as example here.

4. The avenues of change are as numerous as the imagination is inspired. In America they have mostly been Constitutional Amendments, central executive leadership and legislative action, individual state imitation of central action and collective state initiative through the circulation of Model Codes. The role of the national judiciary merits emphasis <sup>163</sup>.

The analogous Community processes suggest themselves: legislative action under Articles 100 and 235; Member State Conventions under Article 220; the Article 236 Treaty Amendment procedure. The potential of the Community Court is highly relevant in this regard.

5. In looking at American developments Europe can learn as much if not more from mistakes as from unhindered achievements. The immigration, regional, racial and language minority problems should, if anything, be felt more acutely in the Community of the future.

6. The American electoral system is a mix of central and dispersed authority, of law and politics, of failure and achievement. The European electoral system will be a mix as well. For electoral systems do not and cannot operate in a vacuum. They are immediately and indirectly shaped by the movement of the larger societal forces of which they are but a part. As it cannot be otherwise, it pays very much to bear the perspective in mind.

<sup>163</sup> Violence has played its part in American electoral change in both direct and indirect ways. The Civil War, the two World Wars, and the Vietnam War were major factors in setting the stage for societal changes with further direct impact on electoral law. The movements for the expansion of voting rights to women, the young and to the racial and language minorities have been conditioned not only by the wars but by accompanying domestic struggle as well.

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## APPENDIX II

### SECTION II

*Howard C. Yourow and Guido van den Berghe*

#### SYNTHESIS: COMPARISON BETWEEN THE ELECTORAL SYSTEMS OF THE UNITED STATES AND CANADA

##### I. CONTEXT

1. The most important joint contextual point is that there exists a very definite context within which the electoral systems in the United States and Canada <sup>164</sup> have developed. In Canada one could speak of the degree of integration conducive to a uniform electoral law, while the United States paper focuses upon Herbert J. Spiro's 'consciousness of interdependence' theory. In short, there is no development in a vacuum. Furthermore, there are no 'outside' factors. There is only a relationship between and among factors, *all* of which are or can somehow become 'relevant'.

2. While basic cultural ties bind the United Kingdom to both North American countries, and each one of them to the other, there emerges from the details no automatic, across-the-board electoral system overlapping. Each system very definitely stands on its own (see Part II, *infra*).

<sup>164</sup> The Canadian part is based on an unpublished mimeo by Michael Soltys, Stiftung Europa-Kolleg, Hamburg, 1979.



3. Regional, racial and language groupings have played a highly significant part in influencing both United States and Canadian electoral history – as both cause and effect of ‘successful’ electoral integration.

4. The nature of federalism in both countries has shaped the structure and functioning of electoral law. The reverse is true as well. The respective original federal compacts were themselves shaped by the compromising of positions as to the nature of representation in the federal legislature. The creation of ‘modern, welfare state federalism’ in North America (dating from the Depression, Second World War and Post War periods) has, in its wake, greatly advanced the flow of electoral regulatory power to the respective national capitals. Thus have the North American federal and electoral systems been in interdependent relationship <sup>165</sup>.

5. Electoral law itself has in part perpetuated the development of non- or uni-ideological two party systems in North America. The party systems have, in turn, greatly influenced the development of electoral law and have had, at one and the same time, both centripetal and centrifugal effects within each system. The phenomenon of generationally inherited loyalties and behaviour continues to thwart lasting national party movements. In these respects the North American party systems resemble the British antecedents and distinguish themselves sharply from ideological, multi-party politics in the other Member States of the European Communities.

6. Bearing in mind the relative historical/cultural, racial/regional/linguistical/federal and political context, it can be said that Canadian electoral integration *per se* was begun in an early, and was “completed” within a compact, time frame. This frame comprises the half-century plus from the founding of the Confederation through the First World War. Moreover, the march of events in this century has “dictated” a further integration through the auspices of the central authority. This is not to say, however, that provincial power, custom and tradition in Provincial elections no longer exist. Electoral regulation in Canada remains a partitioned function. Elec-

<sup>165</sup> However, it is to be noted that Canada is, in fact, a confederation; there is a basic difference in its evolution as a result of the anomaly whereby each province is meant to retain a considerable degree of independence.

toral integration *per se* in the United States was begun at a much later point in time in its history – and, in fact, is yet far from ‘complete’. The United States frame comprises the full two centuries of its existence, but especially the second, beginning with the consolidation of central authority which was the result of the Civil War, and continuing through the overall growth of central power and influence in the twentieth century.

The Canadian conclusion is that electoral integration has ceased to be an issue. The United States conclusion is that the great recent period of activity is *beginning* to tilt the scales towards a ‘definite’ centrally dominated electoral system, that the federal re-alignment is continuing and that local, state and regional power and influence are far from negligible.

7. Within the realm of North American electoral integration *per se* arises the special issue of the historical treatment of the franchise right. The issue has been and is important not only in and of itself, but because it is linked to larger notions of the movement of persons, citizenship and integration. The early determination and expansion of franchise rights was a mixed and heavily decentralized affair in both North American countries, so that it may be fairly stated that the concept of ‘federal elector’, independent of and in fact superior to that of state/provincial elector, was a long time in the making. In Canada it evolved through Parliamentary struggle; in the United States, through bitter Civil War, continuing racial and regional antagonism, and resultant Constitutional Amendment, Supreme Court decision and national legislation. Along with it, in both cases, came broader companion concepts of national citizenship, mobility and the reach of federal law. North Americans never undertook holistic appraisal of either their electoral systems or of parts thereof, so it is no surprise that franchise rights and corollary mobility, immigration and citizenship issues have always been dealt with in a patchwork manner.

It is hoped that the following contextual summary will indicate issue relevance for the European Community in a study of North American electoral integration histories.

## II. COMPARISON BETWEEN THE ELECTORAL SYSTEMS USED IN THE UNITED STATES AND CANADA

1. The *electoral systems* themselves are based on the plurality (or relative majority) vote, winner-take-all principle. There is some little, but no appreciable, experimentation with the PR-principle in North America.

2. The *polling method* used is that of the single vote for a single candidate.

3. *Vote counting* is done on the plurality or relative majority basis.

4. *Seat allocations* are made on the constituency basis.

5. No *obligation to vote* exists in either country.

6. The *minimum voting age* is 18 in both countries. But a more 'perfect' uniformity has been achieved in the United States, where the age question has been dealt with by national Constitutional Amendment (No. 26 (1971)). Provincial differences still exist in Canada, e.g., British Columbia maintains a minimum voting age of 19.

7. The *nationality requirement* in both countries is that of home citizenship. Canada's historical links to the United Kingdom resulted in its granting the vote in national elections to British citizens until 1975, when the practice was repealed. But British citizens may still vote in British Columbia's provincial elections.

In the United States, the Congress is constitutionally empowered to grant federal voting rights to aliens. It has not done so, but has allowed some leeway to the States *in re* resident aliens participating in state and local elections.

8. A constituency *residential obligation* operates in both countries. In the United States a high degree of uniformity has been achieved through recent Supreme Court decisions, based upon the rights to vote and to travel, which have all but eliminated lengthy state residential requirements for all elections. The Canadian provinces, on the other hand, exercise autonomy in this matter in provincial elections.

9. All United States *nationals resident abroad* are guaranteed the right to vote in national elections under recent Congressional legislation. Canadian coverage is not as broad, extending only to the armed services (postal vote) and to those people in public service and to their dependents (postal vote or voting at Embassy). Both States and provinces, respectively, are free to make regulations on this point *in re* their own elections (see point 32).

10. The *non compos mentis*, electoral crimes, prisoner and other standard *disqualifications from voting* are common to Canada as well as to the United States. However, the U.S. does not share the Canadian practice of disqualifying selected public officers, such as the Governor-General, judges or Returning Officers. In the U.S., the individual States retain the disqualifying power, with no supersession by Congress to date.

11. In both countries *entitlement to vote* is formalized by entry into the electoral register.

12. The *minimum age of eligibility* is 18 in Canada. The minimum age of eligibility is 25 for the United States House of Representatives, 30 for the Senate and 35 for the Presidency. The minimum age requirements for State and local elections vary according to the individual State constitutions.

13. Home citizenship constitutes the *nationality requirement of eligibility* in both countries.

14. *Disqualification from election* for office holding incompatibility is common to both countries. But the Canadian contractual/conflict-of-interest and electoral offenses disqualifications do not operate in American Constitutional law.

15. The *authorities for adjudicating on disqualifications for election* in both countries are the local (state-provincial) electoral authorities and the courts. In the United States the Congress is the ultimate constitutional disqualifying authority for its own elections. The United States practice thus distinguishes itself from the Canadian.

16. Legal *thresholds* do not exist in Canada or the United States.

17. There are no *party bans* 'as such' in either country. But both political systems work to the detriment of 'new', 'third', or 'alternative' minor party initiatives. In Canada this is accomplished legally

through the party registration procedure at the federal level. All parties have to apply for registration with the Chief Electoral Officer. This registration procedure has to be renewed for each election. In the United States, this is accomplished through state schemes involving signature petitions and the payment of registration fees.

18. The *determination of constituencies* in both countries is a decentralized function. In Canada the lines are drawn by provincial boundary commissions. In the United States, this is done by the State legislatures, except for the United States Senate boundaries, which are fixed at state boundary lines. The United States witnesses also an increasing involvement of the *national* judiciary in apportionment and boundary determining processes.

19. In both countries the *Constituency Criteria* of population, geography and number of seats are set by legislation, but in the United States also by judge-made rules. Again, the United States Senate is an exception to this rule. Limitations on population and boundary variances have increasingly been imposed by the central authorities in both countries. (See the role of the U.S. federal courts).

20. (See points 34 and 36). While the chief *electoral authorities* in Canada are national civil servants, in the United States they are local and state appointed and elected officials.

21. The *deciding authority* for the *polling date* is centralized in national elections. In the United States, the States regulate the polling dates for their own elections.

22. The national *polling date* is a Monday in Canada, or a Tuesday if the appropriate Monday is a holiday. In the United States, it is the first Tuesday after the first Monday in November. State elections in the United States usually follow suit in those years in which the elections overlap the federal.

23. The electoral *registers* are overseen centrally in Canada, but at the local level for *all* elections in the United States. The channels of objection in both countries are the local officers and courts, in the first instance, but encompass the federal courts in the United States.

24. The *form of candidate nomination* is individual in both countries.

25. *Nomination procedures* are decentralized in both systems. They involve the collection and timely submission of signatures (Canada: minimum 25) and of a deposit (Canada: 200 dollars) and the appropriate declarations by the nominees' agents. Nominations are made at local party meetings and state or provincial conventions in both countries, but the 20th century development of the direct primary election distinguishes the United States from the Canadian system. Nominee acceptance is legislated in Canada and ritualized in the United States.

26. The *public financing of campaigns* is much further advanced in the United States, at both the national and state levels, than it is in Canada, where no federal party financing exists. The same conclusion applies to *campaign financing regulation* as well.

27. Neither Canada nor the United States has enacted rules regulating the *duration of campaigns*.

28. In Canada the *broadcast media* are publicly, and in the United States privately, owned and controlled. But mixed effects operate in each of the systems, and neither can be neatly labeled for comparative purposes. Canada does not have a formal equal time provision. The United States does, but this can easily and conveniently be suspended. Neither country has campaign media spending limitations. Much of Canadian media is dominated by U.S. stations and cable systems.

29. *Other electoral conduct rules* are similar in both systems. (E.g., the limits of free expression as against libel law; politicking and poster placement restrictions, alcohol and campaigning restrictions on election day). The scope of restrictions depends on the cast of mind of the legislators and, in the United States case, of the judges. In the United States, these regulations are the task of local and state legislative bodies, but become the task of the federal judges when constitutional rights are allegedly infringed. In Canada, national electoral conduct rules are a *centralized* affair, whereas only provincial electoral conduct rules are locally determined.

30. The determination of *polling hours* is a decentralized function in the United States, even in national elections for which day and date are centrally regulated. In Canada, this function is hori-

zontally partitioned. United States hours (c. 6 a.m. to c. 9-10 p.m.) are longer than the normal Canadian hours (c. 8 a.m. to 7 p.m.).

31. The possibilities of *postal voting* are more extensively guaranteed in United States national elections, due to recent Congressional legislation, than they are in Canada.

32. *Proxy voting* for all elections is determined on a state-by-state basis in the United States, but is a matter for appropriate legislation in Canada. The categories of persons for whom a proxy may be exercised overlap in the case of seamen, invalids, illiterates and the blind and handicapped, but there is still much variance in treatment of such groups as students, military and civil servants and/or private citizens abroad (see point 9).

33. Both countries' practice is to extend the vote to those in *hospitals* but not to those in *prisons* on election day. In the United States these are state matters. In Canada, they are centrally regulated for national elections, *provincially* determined for provincial elections.

34. (See points 20 and 36). The *vote counting authorities* in the United States are local and state, and in Canada federal. But the U.S. Congress can exercise final constitutional authority in the case of important disputes concerning the election of its members or of the President and Vice-President.

35. Grounds for the *voiding of ballots* are wide and overlap in the Canadian and the United States systems: use of unofficial paper; plural voting; identified voter; blank ballot; other formal errors; misuse of machine. Variations depend on state law in the United States; on national law for national elections, and on provincial law for provincial elections in Canada.

36. (See points 20 and 34). The *ballot authorities* in the United States are the local and state, and in Canada the federal officials.

37. The *validation of election* is by the federal elections officials in Canada, but by the highest state official. (The Governor or his/her chief elections officer) in the United States. In the United States, important disputes can be finally resolved by the national legislature itself.

38. In both systems, *results* can be formally *contested* within the (first local and then federal) courts if agreement cannot be reached within the elections administration bureaucracy. Note again the possible role of the United States Congress (see point 34).

39. *Casual Vacancies*. If a seat falls vacant, a by-election is called by the central authority (Governor-General) in Canada. In the United States, it is a state authority (Governor) who calls the by-election. Vacancies in the office of the President of the United States are filled by Congress.

40. In Canada, legislators are *seated* a week after their election is validated. In the United States, they are normally elected in early November and seated a full two months later, except in the case of by-elections.

41. Canadian M.P.s can *lose* their seats for the commission of treason or misdemeanors. United States constitutional language is similar and specifies the procedure for loss of federal office upon conviction following a trial of impeachment. Elected persons in both systems can resign. They are liable, in both systems, to expulsion, suspension or censure by the Chamber in which they sit. In addition, many of the States of the United States provide for a direct democratic recall procedure whereby elected members of state and local bodies can be removed from office by popular vote. The dissolution-of-Chamber ground is relevant to Canada but not to the United States.

42. The maximum duration of the *legislative term* is five years in Canada. However, with some rare exceptions, a four-year term has become normal. Members of the United States House of Representatives are elected for two-year terms. The United States Senators are elected for six-year terms. Most state legislative terms, in the United States range from a two-year minimum to a four-year maximum period.



## APPENDIX III

*David A. Brew*

### EXAMPLES OF METHODS OF COUNTING USED IN DIFFERENT SYSTEMS OF PROPORTIONAL REPRESENTATION

#### 1. *D'Hondt Highest Average Method*

Under the D'Hondt system, the vote polled by each group is divided by the divisors 1, 2, 3, etc. Seats are allocated in turn to the highest quotients until the total number of seats has been exhausted.

#### 2. *St. Lagüe Method*

The St. Lagüe system operates in a similar manner to the D'Hondt system. The vote polled by each group is divided by the divisors 1, 3, 5 etc. Seats are allocated in turn to the highest quotients until the total number of seats has been exhausted.

#### 3. *Modified St. Lagüe Method*

The Modified St. Lagüe system operates in exactly the same way as the normal St. Lagüe method, except that the first divisor is modified to 1.4. The vote polled by each group is therefore divided by the divisors 1.4, 3, 5, 7, etc. Seats are allocated in turn to the highest quotient until the total number of seats has been exhausted.

TABLE 1. - Example of Count: D'Hondt

Total Vote: 600,000 - Seats: 60

Divisor/Party	A	B	C	D	E	F	G
1	16418 <sup>34</sup>	56503 <sup>9</sup>	103219 <sup>4</sup>	124832 <sup>2</sup>	66406 <sup>6</sup>	226051 <sup>1</sup>	6571 <sup>0</sup>
2	8209	28252 <sup>19</sup>	51610 <sup>10</sup>	62416 <sup>7</sup>	33203 <sup>15</sup>	113026 <sup>3</sup>	
3	<u>1</u>	18834 <sup>29</sup>	34406 <sup>14</sup>	41611 <sup>12</sup>	22135 <sup>24</sup>	75350 <sup>5</sup>	
4		14126 <sup>40</sup>	25805 <sup>21</sup>	31208 <sup>17</sup>	16602 <sup>33</sup>	56513 <sup>8</sup>	
5		11301 <sup>51</sup>	20644 <sup>26</sup>	24966 <sup>22</sup>	13281 <sup>43</sup>	45210 <sup>11</sup>	
6		9417	17203 <sup>32</sup>	20805 <sup>25</sup>	11068 <sup>52</sup>	37675 <sup>13</sup>	
7		<u>5</u>	14796 <sup>38</sup>	17833 <sup>30</sup>	9487 <sup>59</sup>	32293 <sup>16</sup>	
8			12902 <sup>44</sup>	15604 <sup>36</sup>	8301	28256 <sup>18</sup>	
9			11469 <sup>48</sup>	13870 <sup>41</sup>	<u>7</u>	25117 <sup>20</sup>	
10			10322 <sup>55</sup>	12483 <sup>46</sup>		22605 <sup>23</sup>	
11			9384	11348 <sup>49</sup>		20550 <sup>27</sup>	
12			<u>10</u>	10403 <sup>54</sup>		18838 <sup>28</sup>	
13				9602 <sup>58</sup>		17389 <sup>31</sup>	
14				8917		16147 <sup>35</sup>	
15				<u>13</u>		15070 <sup>37</sup>	
16						14128 <sup>39</sup>	
17						13297 <sup>42</sup>	
18						12558 <sup>45</sup>	
19						11897 <sup>47</sup>	
20						11303 <sup>50</sup>	
21						10764 <sup>53</sup>	
22						10275 <sup>56</sup>	
23						9828 <sup>57</sup>	
24						9419 <sup>60</sup>	
25						9042	<u>24</u>

TABLE 2. — Example of Count: St. Lagüe

Total Vote: 600,000 - Seats: 60

Divisor/Party	A	B	C	D	E	F	G
1	16418 <sup>19</sup>	56503 <sup>6</sup>	103219 <sup>3</sup>	124832 <sup>2</sup>	66406 <sup>5</sup>	226051 <sup>1</sup>	6571 <sup>45</sup>
3	5473 <sup>55</sup>	18834 <sup>16</sup>	34406 <sup>9</sup>	41611 <sup>8</sup>	22135 <sup>13</sup>	75350 <sup>4</sup>	2190
5	3284	11301 <sup>28</sup>	20644 <sup>14</sup>	24966 <sup>12</sup>	13281 <sup>24</sup>	45210 <sup>7</sup>	<u>1</u>
7	<u>2</u>	8072 <sup>37</sup>	14796 <sup>21</sup>	17833 <sup>17</sup>	9487 <sup>32</sup>	32293 <sup>10</sup>	
9		6278 <sup>48</sup>	11469 <sup>26</sup>	13870 <sup>22</sup>	7378 <sup>40</sup>	25117 <sup>11</sup>	
11		5131 <sup>59</sup>	9384 <sup>33</sup>	11348 <sup>27</sup>	6037 <sup>51</sup>	20550 <sup>15</sup>	
13		4346	7940 <sup>38</sup>	9602 <sup>31</sup>	5108 <sup>60</sup>	17389 <sup>18</sup>	
15		<u>6</u>	6881 <sup>43</sup>	8322 <sup>36</sup>	4427	15070 <sup>20</sup>	
17			6072 <sup>50</sup>	7343 <sup>41</sup>	<u>7</u>	13297 <sup>23</sup>	
19			5433 <sup>56</sup>	6570 <sup>46</sup>		11897 <sup>25</sup>	
21			4915	5944 <sup>52</sup>		10764 <sup>29</sup>	
23			<u>10</u>	5427 <sup>57</sup>		9828 <sup>30</sup>	
25				4993		9042 <sup>34</sup>	
27				<u>12</u>		8372 <sup>35</sup>	
29						7795 <sup>39</sup>	
31						7292 <sup>42</sup>	
33						6850 <sup>44</sup>	
35						6459 <sup>47</sup>	
37						6109 <sup>49</sup>	
39						5796 <sup>53</sup>	
41						5513 <sup>54</sup>	
43						5257 <sup>58</sup>	
45						5023	<u>22</u>

TABLE 3. - Example of Count: Modified St. Lagüe

Total Vote: 600,000 - Seats: 60

Divisor/Party	A	B	C	D	E	F	G
1.4	11727 <sup>25</sup>	40359 <sup>8</sup>	73728 <sup>4</sup>	89166 <sup>2</sup>	47433 <sup>5</sup>	161465 <sup>1</sup>	4694 <sup>0</sup>
3	5473 <sup>54</sup>	18834 <sup>16</sup>	34406 <sup>9</sup>	41611 <sup>7</sup>	22135 <sup>13</sup>	75350 <sup>3</sup>	
5	3284	11301 <sup>28</sup>	20644 <sup>14</sup>	24966 <sup>12</sup>	13281 <sup>23</sup>	45210 <sup>6</sup>	
7	<u>2</u>	8072 <sup>37</sup>	14796 <sup>20</sup>	17833 <sup>17</sup>	9487 <sup>32</sup>	32293 <sup>10</sup>	
9		6278 <sup>47</sup>	11469 <sup>26</sup>	13870 <sup>21</sup>	7378 <sup>40</sup>	25117 <sup>11</sup>	
11		5137 <sup>58</sup>	9384 <sup>33</sup>	11348 <sup>27</sup>	6037 <sup>50</sup>	20550 <sup>15</sup>	
13		4346	7940 <sup>38</sup>	9602 <sup>31</sup>	5108 <sup>59</sup>	17389 <sup>18</sup>	
15		<u>6</u>	6881 <sup>43</sup>	8322 <sup>36</sup>	4427	15070 <sup>19</sup>	
17			6072 <sup>49</sup>	7343 <sup>41</sup>	<u>7</u>	13297 <sup>22</sup>	
19			5433 <sup>55</sup>	6570 <sup>45</sup>		11897 <sup>24</sup>	
21			4915	5944 <sup>51</sup>		10764 <sup>29</sup>	
23			<u>10</u>	5427 <sup>56</sup>		9828 <sup>30</sup>	
25				4993		9042 <sup>34</sup>	
27				<u>12</u>		8372 <sup>35</sup>	
29						7795 <sup>39</sup>	
31						7292 <sup>42</sup>	
33						6850 <sup>44</sup>	
35						6459 <sup>46</sup>	
37						6109 <sup>48</sup>	
39						5796 <sup>52</sup>	
41						5513 <sup>53</sup>	
43						5257 <sup>57</sup>	
45						5023 <sup>60</sup>	
47						4810	

#### 4. *Hagenbach-Bischoff Method*

The Hagenbach-Bischoff method is a highest average method using the Droop quota in its first stage. The Droop quota is found by taking the total of the valid votes cast, dividing by the total number of seats to be allocated plus one and rounding up the quotient thus obtained to the integer immediately above. The vote polled by each group is then divided by the Droop quota. Each group wins as many seats as the quota is contained in the group's vote, ignoring the remainders.

At the second stage, the vote polled by each group is divided by the number of seats it has already won plus one. One seat is allocated to the highest quotient thus obtained and the calculation is repeated until all the seats available have been allocated.

#### 5. *Modified Highest Average Method*

The Modified Highest Average method mirrors the Hagenbach – Bischoff method at its first stage. The Droop quota is found by taking the total of the valid votes cast, dividing by the total number of seats to be allocated plus one, and rounding up the quotient thus obtained to the integer immediately above. The vote polled by each group is then divided by the Droop quota. Each group wins as many seats as the quota is contained in the group's vote, ignoring the remainders.

At the second stage, the vote polled by each group is divided by the number of seats it has already won plus one. The remaining seats are allocated in order to the highest quotients thus obtained. The calculation is *not* repeated.

#### 6. *Highest Remainder Method*

The Highest Remainder method consists of dividing the vote polled by each group by a quota. Each group wins as many seats as the quota is contained in the group's vote. Any seats left unallocated are awarded in order to the highest remainders. This process may also be thought of as dividing by the quota and then rounding up

TABLE 4. — Example of Count: Hagenbach-Bischoff

Total Vote: 600,000 - Seats: 60 - Quota: 9,836

Party	A	B	C	D	E	F	G	Seats allocated
Stage 1	$\frac{16418}{9836} = 1.67$	$\frac{56503}{9836} = 5.74$	$\frac{103219}{9836} = 10.49$	$\frac{124832}{9836} = 12.69$	$\frac{66406}{9836} = 6.75$	$\frac{226051}{9836} = 22.98$	$\frac{6571}{9836} = 0.67$	56
Stage 2 a)	$\frac{16418}{1+1} = 8209$	$\frac{56503}{5+1} = 9417$	$\frac{103219}{10+1} = 9384$	$\frac{124832}{12+1} = 9602$	$\frac{66406}{6+1} = 9487$	$\frac{226051}{22+1} = 9828 *$	$\frac{6571}{0+1} = 6571$	57
b)	8209	9417	9384	9602 *	9487	$\frac{226051}{23+1} = 9419$	6571	58
c)	8209	9417	9384	$\frac{124832}{13+1} = 8917$	9487 *	9419	6571	59
d)	8209	9417	9384	8917	$\frac{66406}{7+1} = 8301$	9419 *	6571	60
Seats	$1 + 0 = 1$	$5 + 0 = 5$	$10 + 0 = 10$	$12 + 1 = 13$	$6 + 1 = 7$	$22 + 2 = 24$	—	

TABLE 5. - Example of Count: Modified Highest Average

Total Vote: 600,000 - Seats: 60 - Quota: 9,836

Party	A	B	C	D	E	F	G	Seats allocated
Stage 1	$\frac{16418}{9836} = 1.67$	$\frac{56503}{9836} = 5.74$	$\frac{103219}{9836} = 10.49$	$\frac{124832}{9836} = 12.69$	$\frac{66406}{9836} = 6.75$	$\frac{226051}{9836} = 22.98$	$\frac{6571}{9836} = 0.67$	56
Stage 2	$\frac{16418}{1+1} = 8209$	$\frac{56503}{5+1} = 9417^{60}$	$\frac{103219}{10+1} = 9384$	$\frac{124832}{12+1} = 9602^{58}$	$\frac{66406}{6+1} = 9487^{59}$	$\frac{226051}{22+1} = 9828^{57}$	$\frac{6571}{0+1} = 6571$	60
Seats	$1 + 0 = 1$	$5 + 1 = 6$	$10 + 0 = 10$	$12 + 1 = 13$	$6 + 1 = 7$	$22 + 1 = 23$	—	

TABLE 6. - Example of Count: Highest Remainder

Total Vote: 600,000 - Seats: 60

a) Natural Quota = 10,000 (600,000 ÷ 60)

Party	A	B	C	D	E	F	G	Seats allocated
Stage 1	$\frac{16418}{10.000} = 1.64$	$\frac{56503}{10.000} = 5.65$	$\frac{103219}{10.000} = 10.32$	$\frac{124832}{10.000} = 12.48$	$\frac{66406}{10.000} = 6.64$	$\frac{226051}{10.000} = 22.61$	$\frac{6571}{10.000} = 0.66$	56
Stage 2	16418 - (10.000 × 1) = 6418 <sup>59</sup>	56503 - (10.000 × 5) = 6503 <sup>58</sup>	103219 - (10.000 × 10) = 3219	124832 - (10.000 × 12) = 4832	66406 - (10.000 × 6) = 6406 <sup>60</sup>	226051 - (10.000 × 22) = 6051	6571 - (10.000 × 0) = 6571 <sup>57</sup>	60
Seats	$1 + 1 = 2$	$5 + 1 = 6$	$10 + 0 = 10$	$12 + 0 = 12$	$6 + 1 = 7$	$22 + 0 = 22$	$0 + 1 = 1$	

b) Droop Quota = 9,836

(600,00 ÷ 61 rounded up to next integer)

Party	A	B	C	D	F	F	G	Seats allocated
Stage 1	$\frac{16418}{9836} = 1.67$	$\frac{56503}{9836} = 5.74$	$\frac{103219}{9836} = 10.49$	$\frac{124832}{9836} = 12.69$	$\frac{66406}{9836} = 6.75$	$\frac{226051}{9836} = 22.98$	$\frac{6571}{9836} = 0.67$	56
Stage 2	16418 – (9836 × 1) = 6582	56503 – (9836 × 5) = 7323 <sup>59</sup>	103219 – (9836 × 10) = 4859	124832 – (9836 × 12) = 6800 <sup>60</sup>	66406 – (9836 × 6) = 7390 <sup>58</sup>	226051 – (9836 × 22) = 9659 <sup>57</sup>	6571 – (9836 × 0) = 6571	60
Seats	1 + 0 = 1	5 + 1 = 6	10 + 0 = 10	12 + 1 = 13	6 + 1 = 7	22 + 1 = 23	—	

c) Imperiali Quota = 9,677

(600,00 ÷ 62 rounded up to next integer)

Party	A	B	C	D	E	F	G	Seats allocated
Stage 1	$\frac{16418}{9677} = 1.70$	$\frac{56503}{9677} = 5.84$	$\frac{103219}{9677} = 10.67$	$\frac{124832}{9677} = 12.90$	$\frac{66406}{9677} = 6.86$	$\frac{226051}{9677} = 23.36$	$\frac{6571}{9677} = 0.68$	57
Stage 2	16418 – (9677 × 1) = 6741	56503 – (9677 × 5) = 8118 <sup>59</sup>	103219 – (9677 × 10) = 6449	124832 – (9677 × 12) = 7708 <sup>60</sup>	66406 – (9677 × 6) = 8344 <sup>58</sup>	226051 – (9677 × 23) = 3480	6571 – (9677 × 0) = 6571	60
Seats	1 + 0 = 1	5 + 1 = 6	10 + 0 = 10	12 + 1 = 13	6 + 1 = 7	23 + 0 = 23	—	



the quotients with the highest fractions and rounding down the quotients with the lowest fractions such that the exact number of seats is allocated.

Different variants of the Highest Remainder system use different quotas:

— the natural or Hare quota is found by dividing the total of the valid votes cast by the total number of seats to be allocated and rounding up the quotient thus obtained to the integer immediately

above —  $\frac{\text{votes}}{\text{seats}} + \dots$ ;

— the Droop quota is found by dividing the total of the valid votes cast by the total number of seats to be allocated plus one and rounding up the quotient thus obtained to the integer immediately

above —  $\frac{\text{votes}}{\text{seats} + 1} + \dots$ ;

— the Imperiali quota is found by dividing the total of the valid votes cast by the total number of seats to be allocated plus two and rounding up the quotient thus obtained to the integer immediately

above —  $\frac{\text{votes}}{\text{seats} + 2} + \dots$

*N. B.* Where the Imperiali quota is used, provision must be made to revert to the Droop quota should division by the Imperiali quota succeed in allocating more seats than are available.

TABLE 7. — *Résumé of results produced by different systems*

Total Vote: 600,000 - Seats: 60

Party	A	B	C	D	E	F	G
Vote	16,418	56,503	103,219	124,832	66,406	226,051	6,571
Seats awarded by:							
— d'Hondt	1	5	10	13	7	24	—
— Hagenbach-Bischoff	1	5	10	13	7	24	—
— Modified Highest Average	1	6	10	13	7	23	—
— Highest Rem. Imperiali Q.	1	6	10	13	7	23	—
— Highest Rem. Droop Q.	1	6	10	13	7	23	—
— Modified St. Lagüe	2	6	10	12	7	23	—
— St. Lagüe	2	6	10	12	7	22	1
— Highest Rem. Natural Q.	2	6	10	12	7	22	1

### 7. *Single Transferable Vote*

The single transferable voting system uses the Droop quota. The quota is found by taking the total of the valid votes cast, dividing by the number of seats to be allocated plus one and rounding up the quotient thus obtained to the integer immediately above.

Voting papers must be marked with a figure 1 in order to be valid; the voter may continue to number the candidates 2, 3, 4 and so on until he is indifferent. On the first count, only first preferences are taken into consideration.

Any candidate who has reached the quota is declared elected.

Beginning with the elected candidate who has obtained the highest number of votes, each surplus is transferred to other candidates. The surplus is found by subtracting one quota from the candidate's total vote. In order to transfer the surplus, all the votes given to the candidate are re-examined to determine their next preference among the candidates not yet elected or eliminated. The total number of transferable votes thus obtained is then divided into the surplus of the candidate to give the value of each transferable paper. The remaining candidates are then credited with the appropriate amounts.

In the system operated in the Republic of Ireland, as many voting papers are physically transferred at their whole value as correspond to the total value to be transferred. Thus, if 200 papers were to be transferred at a value of 0.5 each, 100 papers would be taken from the top of the pile and transferred at a value 1.0. In Northern Ireland, the 200 papers would be marked with a value of 0.5 and physically transferred in their entirety.

The process of thus transferring surplus votes continues until all surpluses have been exhausted, except that the process may be suspended when the transferable surplus drops below the value separating the bottom two candidates. Thereafter, the bottom candidate is eliminated and his votes are transferred at full value to the next available preference.

Candidates are eliminated and surpluses are transferred in the same way until all the seats have been filled. When the number of seats remaining to be allocated is only one less than the number of candidates remaining in competition, all but the bottom candidate are declared elected.

It should be noted that the counting procedure is usually

simplified by stipulating that where a candidate passes the quota as a result of votes transferred to him, only those votes transferred to him at the last stage of the count need to be examined in order to determine how any surplus should be transferred.

In the example given, counting stopped after the elimination of Burke, since the transfer of Kerrigan's surplus of 1,737 could not have taken Quill past French. Kerrigan and French were therefore declared elected.

TABLE 8. — Example of S. T. V. Count taken from Irish General Election, June 1977, Constituency of Cork City  
 Valid Votes: 51,461 - Seats: 5 - Quota: 8,577

Candidate	1st Preferences	Transfer of Lynch's Surplus	Transfer of Wyse's Surplus	Elimination of Black	Elimination of Tynan	Elimination of Allen	Transfer of Barry's Surplus	Elimination of Burke
Allen (F. G.)	2,850	+ 161 = 3,011	+ 10 = 3,021	+ 138 3,159	+ 124 3,283	- 3,283		
Barry (F. G.) <sup>+</sup>	6,923	+ 175 = 7,098	+ 19 = 7,117	+ 389 7,506	+ 60 7,566	+ 1,761 9,327	- 750	
Black (Ind.)	1,529	+ 177 = 1,706	+ 24 = 1,730	- 1,730				
Burke (F. G.)	3,082	+ 106 = 3,188	+ 7 = 3,195	+ 127 3,322	+ 87 3,409	+ 584 3,993	+ 641 4,634	- 4,634
French (F. F.) <sup>+</sup>	3,359	+ 2,998 = 6,357	+ 618 = 6,975	+ 211 7,186	+ 272 7,458	+ 139 7,597	+ 8 7,605	+ 201 7,806
Kerrigan (Lab.) <sup>+</sup>	5,254	+ 297 = 5,551	+ 26 = 5,577	+ 306 5,883	+ 692 6,575	+ 546 7,121	+ 93 7,215	+ 3,099 10,314
Lynch (F. F.) <sup>+</sup>	20,079	- 11,502						
Quill (F. F.)	2,262	+ 2,161 = 4,423	+ 421 = 4,844	+ 335 5,179	+ 304 5,483	+ 92 5,575	+ 8 5,583	+ 139 5,722
Tynan (S. F. W. P.)	1,661	+ 171 = 1,832	+ 16 = 1,848	+ 144 1,992	- 1,992			
Wyse (F. F.) <sup>+</sup>	4,462	+ 5,256 = 9,718	- 1,141					
Non-transferable				80	453	161		1,195

<sup>+</sup> Elected candidates.

## APPENDIX IV

*David A. Brew*

### ADDITIONAL SIMULATIONS BASED ON THE VOTING IN THE FIRST DIRECT ELECTIONS, JUNE 1979

As indicated in the text of chapter 5, above, it seemed desirable to supplement the simulations there given by some based on the voting figures for the first direct elections to the European Parliament in June 1979. For a variety of reasons, however, the Tables which follow do not precisely correspond to those in chapter 6. Amongst other things, differences in the way results were published and made available made exact comparison impossible. In the cases of Denmark and Luxembourg, only a single national constituency is used in the tables which follow; and in the case of Belgium the simulation has been confined to the single national constituency and two-constituency solutions. In the case of France, a regional breakdown was omitted, the point being, it was felt, sufficiently illustrated in chapter 5. It should be noted that the Italian table is based on the five-constituency distribution of: North-west, 22 seats; North-east, 15; Central, 16; South, 19; Islands, 9<sup>1</sup>. In all cases except that of Italy the same constituency structure has been assumed as in chapter 5.

<sup>1</sup> For details, see p. 264, n. 4, *supra*.

TABLE 1

BELGIUM: 24 seats

	FDF-RW	VU	PCB-KPB	PRL	BSP	PS-SP	PVV-ELD	PSC-PPE	CVP-EVP	Ecol
SINGLE NATIONAL CONSTITUENCY										
D'Hondt & H.-B.	2	1	—	2	3	3	2	2	8	1
Modified Highest Average	2	1	—	2	3	3	2	2	8	1
Modified St. Lagüe	2	2	—	2	3	3	2	2	7	1
St. Lagüe	2	1	1	2	3	3	2	2	7	1
Highest Remainder (Droop Quota)	2	1	1	2	3	3	2	2	7	1
Highest Remainder (Natural Quota)	2	1	1	2	3	3	2	2	7	1
TWO CONSTITUENCIES										
(Flanders + Dutch lists; Wallonia + French lists)										
D'Hondt & H.-B.	2	1	—	2	3	4	2	3	7	—
Modified Highest Average	2	1	—	2	3	4	2	3	7	—
Modified St. Lagüe	3	1	—	2	3	3	2	3	7	—
St. Lagüe	2	1	1	2	3	3	2	2	7	1
Highest Remainder (Droop Quota)	2	1	1	2	3	3	2	2	7	1
Highest Remainder (Natural Quota)	2	1	1	2	3	3	2	2	6	2

N. B. — If party lists were combined across language communities the PSC/CVP list would gain one more seat under the d'Hondt system at the expense of the Ecologists.

## KEY TO ABBREVIATIONS

FDF-RW Front Democratique des Francophones - Rassemblement Wal-  
lon  
VU Volksunie  
PCB-KPB Parti Communiste Belge - Kommunistische Partij van België  
PRL Parti de la Réforme et de la Liberté  
BSP Belgische Socialistische Partij (Vlaasme Socialisten)

PS-SP Parti Socialiste - Sozialistische Partei  
PVV-ELD Partij voor Vrijheid en Vooruitgang - Europese Liberalen en  
Demokraten  
PSC-PPE Parti Social-Chrétien - Parti Populaire Européen  
CVP-EVP Christelijke Volkspartij - Europese Volkspartij  
Ecol Europe-Ecologie

TABLE 2

## DENMARK: 15 seats

	A	C	E	F	M	Anti- Market	V	Y	Z
SINGLE NATIONAL CONSTITUENCY									
D'Hondt & H.-B.	4	2	—	—	1	4	3	—	1
Modified Highest Average	4	2	—	—	1	4	3	—	1
Modified St. Lagüe	4	2	—	1	1	4	2	—	1
St. Lagüe	3	2	1	1	1	3	2	1	1
Highest Remainder (Droop Quota)	3	2	1	1	1	3	2	1	1
Highest Remainder (Natural Quota)	3	2	1	1	1	3	2	1	1

## KEY TO ABBREVIATIONS

A	Socialdemokratiet
C	Det konservative Folkeparti
E	Danmarks Retsforbund
F	Socialistisk Folksparti
M	Centrum-Demokraterne
V	Venstre, Danmarks Liberale Parti
Y	Venstresocialisterne
Z	Fremskridtspartiet

TABLE 3

## GERMANY: 78 seats

*Results not altered by combined/separate CDU/CSU lists*

No threshold / 5% threshold	CDU	CSU	SPD	FDP	Grüne (Ecologists)
<b>SINGLE NATIONAL CONSTITUENCY</b>					
D'Hondt & H.-B.	31/32	8	33/34	4	2/—
Modified Highest Average	31/32	8	33/34	4	2/—
Modified St. Lagüe	30/32	8	32/33	5	3/—
St. Lagüe	30/32	8	32/33	5	3/—
Highest Remainder (Droop Quota)	31/32	8	32/33	5	2/—
Highest Remainder (Natural Quota)	30/32	8	32/33	5	3/—
<b>TEN LÄNDER CONSTITUENCIES</b>					
D'Hondt & H.-B.	32	10	34	2	—
Modified Highest Average	32	10	34	2	—
Modified St. Lagüe	32	9	34	3	—
St. Lagüe	32	9	33	4	—
Highest Remainder (Droop Quota)	32	9	34	3	—
Highest Remainder (Natural Quota)	32	9	31	6	—

*N. B.* — A 5% threshold excludes the Ecologists, whose seats are consequently won by the two largest parties. A «one quota» threshold would not so exclude the Ecologists.

## KEY TO ABBREVIATIONS

CDU	Christlich-Demokratische Union Deutschlands
CSU	Christlich-Soziale Union
SPD	Sozialdemokratische Partei Deutschlands
FDP	Freie Demokratische Partei
Grüne	Die Grünen



TABLE 4

FRANCE: 81 seats

	DIFE	UFE	PS-MRG	PCF	Eur.- Ecol.	Trotsky.	EEE	Déf. Interprof.	Euro- droite
SINGLE NATIONAL CONSTITUENCY									
(No threshold)									
D'Hondt & H.-B.	13	23	20	17	3	2	1	1	1
Modified Highest Average	13	23	20	17	3	2	1	1	1
Modified St. Lagüe	13	22	19	17	4	3	1	1	1
St. Lagüe	13	22	19	17	4	3	1	1	1
Highest Remainder (Droop Quota)	13	23	19	17	4	2	1	1	1
Highest Remainder (Natural Quota)	13	22	19	17	4	2	2	1	1
<i>5% Threshold</i>									
All systems with 5% threshold	15	25	22	19	—	—	—	—	—

## KEY TO ABBREVIATIONS

DIFE	Liste pour la défense des intérêts de la France en Europe (RPR)
UFE	Union pour la France en Europe (UDF)
PS-MRG	Parti Socialiste - Mouvement des Radicaux de Gauche
PCF	Parti Communiste Français
Eur. Ecol.	Europe-Ecologie
Trotsky.	Extrême gauche trotskiste
EEE	Emploi Egalité Europe
Déf. Interprof.	Défense interprofessionnelle
Eurodroite	Union française pour l'Eurodroite

TABLE 5

## IRELAND: 15 seats

	FF	FG	LAB	Indep.	SFWP
SINGLE NATIONAL CONSTITUENCY					
D'Hondt & H.-B.	5	6	2	2	—
Modified Highest Average	5	6	2	2	—
Modified St. Lagüe	5	6	2	2	—
St. Lagüe	5	5	2	2	1
Highest Remainder (Droop Quota)	5	5	2	2	1
Highest Remainder (Natural Quota)	5	5	2	2	1
FOUR CONSTITUENCIES					
D'Hondt & H.-B.	7	5	1	2	—
Modified Highest Average	7	5	1	2	—
Modified St. Lagüe	7	5	1	2	—
St. Lagüe	7	4	2	2	—
Highest Remainder (Droop Quota)	7	4	2	2	—
Highest Remainder (Natural Quota)	5	4	3	3	—
S.T.V.	5	4	4	2	—

## KEY TO ABBREVIATIONS

FF	Fianna Fáil
FG	Fine Gael
LAB	Labour Party
Indep.	Independents
SFWP	Sinn Féin The Workers Party

TABLE 6

ITALY: 81 seats

	DC	PCI	PSI	PSDI	PRI	PLI	Rad.	MSI	PdUP	DP
SINGLE NATIONAL CONSTITUENCY										
D'Hondt & H.-B.	31	25	9	3	2	3	3	4	1	—
Modified Highest Average	30	25	10	3	2	3	3	4	1	—
Modified St. Lagüe	30	24	9	4	2	3	3	5	1	—
St. Lagüe	30	24	9	4	2	3	3	4	1	1
Highest Remainder (Droop Quota)	30	24	9	4	2	3	3	4	1	1
Highest Remainder (Natural Quota)	30	24	9	4	2	3	3	4	1	1
Highest Remainder (Imperiali Quota)	30	24	9	4	2	3	3	4	1	1
FIVE PLURI-REGIONAL CONSTITUENCIES										
D'Hondt & H.-B.	35	28	10	2	—	1	1	4	—	—
Modified Highest Average	33	27	10	3	—	2	1	5	—	—
Modified St. Lagüe	34	26	10	4	—	1	1	5	—	—
St. Lagüe	30	25	10	4	1	2	4	5	—	—
Highest Remainder (Droop Quota)	31	25	10	4	1	2	3	5	—	—
Highest Remainder (Natural Quota)	30	24	10	4	1	2	5	5	—	—
Highest Remainder (Imperiali Quota)	33	26	10	4	—	2	1	5	—	—

## KEY TO ABBREVIATIONS

DC	Democrazia Cristiana	PLI	Partito Liberale Italiano
PCI	Partito Comunista Italiano	RAD	Radicali
PSI	Partito Socialista Italiano	MSI	Movimento Sociale Italiano
PSDI	Partito Socialdemocratico Italiano	PdUP	Partito di Unità Proletaria per il Comunismo
PRI	Partito Repubblicano Italiano	DP	Democrazia Proletaria

TABLE 7

## LUXEMBOURG: 6 seats

	PCS	PSD	POSL	PD
SINGLE NATIONAL CONSTITUENCY				
D'Hondt & H.-B.	3	—	1	2
Modified Highest Average	3	—	1	2
Modified St. Lagüe	3	—	1	2
St. Lagüe	3	—	1	2
Highest Remainder (Droop Quota)	3	—	1	2
Highest Remainder (Natural Quota)	2	1	1	2

## KEY TO ABBREVIATIONS

PCS	Parti Chrétien-Socialist
PSD	Parti Social Démocratique
POSL	Parti Ouvrier Socialiste Luxembourgeois
PD	Parti Démocratique

TABLE 8

## NETHERLANDS: 25 seats

	CDA	PvdA	VVD	CPN	D'66	SGP
SINGLE NATIONAL CONSTITUENCY						
D'Hondt & H.-B.	10	9	4	—	2	—
Modified Highest Average	10	8	5	—	2	—
Modified St. Lagüe	10	8	4	—	3	—
St. Lagüe	10	8	4	—	2	1
Highest Remainder (Droop Quota)	9	8	4	1	2	1
Highest Remainder (Natural Quota)	9	8	4	1	2	1

A threshold of one quota would exclude CPN and SGP

## KEY TO ABBREVIATIONS

CDA	Christen Democratisch Appèl
PvdA	Partij van de Arbeid
VVD	Volkspartij voor Vrijheid en Democratie
CPN	Communistische Partij van Nederland
D'66	Democraten '66
SGP	Staatkundig Gereformeerde Partij

TABLE 9

## UNITED KINGDOM

## i) GREAT BRITAIN: 78 seats

	CON	LAB	LIB	SNP	PC		CON	LAB	LIB	SNP	PC
SINGLE NATIONAL CONSTITUENCY						ELEVEN REGIONAL CONSTITUENCIES					
D'Hondt & H.-B. Modified Highest Average	41	26	10	1	—	D'Hondt & H.-B. Modified Highest Average	43	28	6	1	—
Modified St. Lagüe	40	27	10	1	—	Modified St. Lagüe	43	28	6	1	—
St. Lagüe	40	26	10	2	—	St. Lagüe	42	28	7	1	—
Highest Remainder (Droop Quota)	39	26	10	2	1	Highest Remainder (Droop Quota)	41	27	9	1	—
Highest Remainder (Natural Quota)	40	26	10	2	—	Highest Remainder (Natural Quota)	43	27	7	1	—
	39	26	10	2	1		40	27	10	1	—
THREE NATIONAL CONSTITUENCIES						SEVENTY-EIGHT SINGLE-MEMBER CONSTITUENCIES					
D'Hondt & H.-B. Modified Highest Average	41	27	9	1	—	Simple plurality: Liberals Plaid Cymru No seats Conservative 60 Labour 17 SNP 1					
Modified St. Lagüe	41	27	9	1	—						
St. Lagüe	40	27	10	1	—						
Highest Remainder (Droop Quota)	40	27	10	1	—						
Highest Remainder (Natural Quota)	41	26	10	1	—						
	40	27	10	1	—						

ii) *NORTHERN IRELAND*: 3 seats

	OUUP	LDUP	SDLP
D'Hondt & H.-B.	1	1	1
Modified Highest Average	1	1	1
Modified St. Lagüe	1	1	1
St. Lagüe	1	1	1
Highest Remainder (Droop Quota)	1	1	1
Highest Remainder (Natural Quota)	1	1	1
S.T.V.	1	1	1

iii) *UNITED KINGDOM*: 81 seats

	CON	LAB	LIB	SNP	PC	OUUP	LDUP	SDLP
D'Hondt & H.-B.	42	27	10	1	—	—	1	—
Modified Highest Average	40	26	11	2	—	—	1	1
Modified St. Lagüe	40	26	11	2	—	—	1	1
St. Lagüe	40	26	10	2	1	—	1	1
Highest Remainder (Droop Quota)	40	26	10	2	1	—	1	1
Highest Remainder (Natural Quota)	39	26	10	2	1	1	1	1

KEY TO ABBREVIATIONS

CON Conservative Party  
 LAB Labour Party  
 LIB Liberal Party  
 SNP Scottish National Party

PC Plaid Cymru  
 OUUP Official Ulster Unionist Party  
 LDUP Loyalist and Democratic Unionist Party  
 SDLP Social Democratic and Labour Party

## APPENDIX V

### PARTICIPANTS IN THE WORK OF THE DIRECT ELECTIONS GROUP AT THE EUROPEAN UNIVERSITY INSTITUTE

In addition to those mentioned in the Foreword, it is proper to record the names of others who were associated in various ways with the work. In the first place, there are those members of the European University Institute who were involved in the related seminar or in other activity connected with the Project:

Mario Amoroso (I).  
Jan Ulrich Clauss (D).  
Marinella Gualdesi Neri (I).  
Lars Nørby Johansen (DK) (Assistant in the Department of Politics).  
Thomas Kennedy (UK).  
Georges Kintzelé (Lux).  
Douwe Korff (NL).  
Julian Lonbay (UK).  
Dietmar Nickel (D) (Assistant in the Department of Law).  
Mari-Carmen Nickel-Lanz (CH).  
Pieter van Nuffel (B).  
Volker Schaub (D).  
Dick Seip (NL).

Secondly, there are the participants in special working groups and colloquies. (Where a person attended more than one of these, the name is listed only once, in connection with the first in time). From 14 to 17 March 1977 the group was joined by the following:

Professor D. Coombes, University of Loughborough.  
Professor W. Dewachter, Catholic University of Louvain (Leuven).

Mr. Lachmann, Ministry of Foreign Affairs, Copenhagen.  
 Mr. J. Mallet, Paris.  
 Mr. M. Steed, University of Manchester.

From 24 to 26 May 1977 there was similar assistance from the following:

Mr. J. Mestdagh, Council of the European Communities, Brussels.  
 Professor A. Philippart, Institut de Sociologie de l'Université Libre, Brussels.  
 Dr. R. Zintl, University of Regensburg.  
 Mr. J. J. Schwed, Head of Division, Secretariat of the Commission of the European Communities, Brussels.

On 18-20 May 1978 a fuller Colloquy was held at the Institute. In addition to some of those already mentioned the participants included:

Professor Amati, Federation of Liberal and Democratic Parties of the European Community, Rome.  
 Dr. L. J. Brinkhorst, Member of the Tweede Kamer, The Hague.  
 Professor D. Butler, Nuffield College, Oxford.  
 Professor E. Grabitz, Free University of Berlin.  
 Professor J. P. Jacqué, Dean of the Faculty of Law and Political Science, University of Strasbourg.  
 Dr. P. Karpenstein, Legal Service of the Commission of the European Communities, Brussels.  
 Dr. E. J. Kirchner, University of Essex, Adviser to the Economic and Social Committee of the European Communities, Brussels.  
 Mr. G. Martini, Deputy Secretary-General, Italian Association of the Council of European Municipalities.  
 Mr. D. Millar, Head of Division, Directorate-General for Research and Documentation of the European Parliament, Luxembourg.  
 Professor G. Negri, Adviser to the Camera dei Deputati, Head of Research, Legislation and Parliamentary Enquiries Department, Rome.  
 Mr. K. Schwaiger, Economic and Social Committee of the European Communities, Brussels.  
 Professor C. C. Schweitzer, University of Cologne.  
 Professor J. Thill, Government Adviser, Ministry of the Interior, Luxembourg.



Professor S. Traversa, University of Rome.

Mr. Troccoli, Camera dei Deputati, Rome.

Mr. P. Vesterdorf, Ministry of Foreign Affairs, Copenhagen.

These discussions were continued at a further meeting held at Rome on 1-3 October 1978 with the particular objective of considering the position of the three then candidate states. Several of those already mentioned attended together with the following:

Professor M. Cuadrado, Complutense University of Madrid.

Dr. G.-F. Giro, Director of the Information Office of the Commission of the European Communities, Rome.

Professor R. Machete, Catholic University of Lisbon.

Professor A. Truyol, Complutense University of Madrid.

A Greek participation was of course intended on this occasion, but, through a series of accidental circumstances, was not achieved.

## SUBJECT INDEX

The following abbreviations are used where necessary:

B	– Belgium	Gr	– Greece	P	– Portugal
DK	– Denmark	Irl	– Ireland	E	– Spain
F	– France	I	– Italy	UK	– United Kingdom
FRG	– Federal Republic of Germany	Lux	– Luxembourg	USA	– United States of America
		NL	– Netherlands		

- absentee voting 191-2, 226, 244-6,  
302-3, 396-7, 407  
Additional Member system 154  
age qualification 228, 385-6  
*see also* voting age  
aggregation, vote 56  
Alliance Party (UK) 273  
alternative vote, 34, 44-5, 52, 63, 120  
American Independent Party 373  
anti-system candidates 45  
apparentements system 38  
appeal possibilities 204-5  
Australia 287
- ballot papers 55, 290-1, 300, 322, 329,  
332  
*ballotage* 34, 60
- Basque Nationalist Party (E) 325-7  
Belgische Socialistische Partij 93, 256-7,  
425  
Belgium  
Accord Communautaire 87-8, 90, 92  
approach to European election 78-81,  
87-95  
electoral system 184-7, 200-20,  
228-31, 236, 238, 243-4, 248  
first European election 168-80  
parties in 93, 256-7, 425  
simulated results 256-8, 425  
voting system 78-81, 185-99, 213-14,  
287
- block vote 33  
blocked list 284  
Boeren Partij (NL) 271

- BP *see* Boeren Partij (NL)  
 BSP *see* Belgische Socialistische Partij  
 by-election 218-19  
*see also* vacancies
- Calvinist parties 148, 271  
 campaigns  
   financing of 208-9, 233-4, 325, 373-7, 409  
   rules 208-11, 232-4, 306
- Canada, electoral system 403-11  
 candidates 51-7, 67, 71-2, 206-7  
 Catholic People's Party (NL) 144  
 CDA *see* Christen Democratisch Appel (NL)  
 CDS *see* Social Democratic Centre (P)  
 CDU *see* Christlich-Demokratische Union (FRG)  
 Centre Democratic Union (E) 325-7  
 Centre Union (Gr) 335-6  
 Centrum Demokraterne (DK) 259, 426  
 changes in electoral systems 168-9, 172, 175  
*see also* proposals  
 choice of uniform voting system 275-92  
 Christelijke Volkspartij (B) 257, 425  
 Christen Democratisch Appel (NL) 12, 148, 271, 274, 431  
 Christian Democrats  
   FRG 100, 102, 106-7, 109, 261, 427  
   Italy 125-7, 130-1, 134-5, 267-8, 430  
   Netherlands 12, 148, 271, 274, 431  
 Christian Socialists  
   Belgium 93, 256-7, 425  
   FRG 261, 427  
   Luxembourg 140-3, 270  
 Christlich-Demokratische Union (FRG)  
   100, 102, 106-7, 109, 261, 427  
 Christlich-Soziale Union (FRG) 261, 427  
 citizens abroad *see* absentee voting  
 citizenship 190, 195, 239, 385, 398  
   European 222  
 Communist parties  
   Belgium 256-7, 425  
   Denmark 259  
   France 110-11, 113, 262-3, 428  
   FRG 261  
   Greece 336  
   Italy 125-7, 130-1, 136-8, 267-8, 430  
   Luxembourg 139-41, 270  
   Netherlands 271, 431  
   Portugal 329-30, 334  
   Spain 325-7  
 Communistische Partij van Nederland 271, 431  
 Communist Party of Spain 325-7  
 complex systems 56-7, 64-74  
 Conservative parties  
   Denmark 259  
   UK 26, 152, 154, 161, 163, 273, 432-3  
 constituencies 56, 168, 171-3, 179-80, 200  
   Belgium 78-9, 88-93  
   Canada 408  
   Denmark 67-8, 70, 97  
   France 59, 114-17  
   FRG 64  
   Ireland 61-2, 121-3, 126  
   Italy 75-6, 127-36  
   Luxembourg 63, 141  
   multi-member 40, 52, 61-3, 157  
   Netherlands 73, 146  
   Portugal 330  
   and plurality 40-1, 52  
   size 39-43  
   Spain 317-19  
   in uniform system 243, 254, 279-80, 288-92, 299-300  
   UK 59, 156-62  
   USA 359-64, 408  
 control of electoral registers 203-4  
 Council Act on direct elections (1976)  
   15-18, 26, 295, 307, 313  
*see also* uniformity  
 counting rules  
   examples 412-22  
   proposed 236, 292, 300-1, 310-13  
   in Spain and Portugal 323, 332  
   in USA and Canada 406, 410  
*see also* proportional representation  
 CPN *see* Communistische Partij (NL)  
 criteria for elections 201  
 cross-party voting 39, 54-6

- CSU *see* Christlich-Soziale Union (FRG)  
 cumul 64, 143-4, 169  
*see also* panachage  
 CVP *see* Christelijke Volkspartij (B)
- Danmarks kommunistiske Parti (DK)  
 259
- Danmarks Retsforbund (DK) 259, 426
- date of elections 202-3, 230-232
- DC *see* Democrazia Cristiana (I)
- Défense interprofessionnelle (F) 428
- Democraten '66 (NL) 271, 274, 431
- Democratic Pact for Catalonia 325-7
- Democratisch Socialisten '70 (NL) 271
- Democrazia Cristiana (I) 125-7, 130-1,  
 134-5, 267-8, 430
- Denmark  
 approach to European election 67-72,  
 95-100  
 electoral system 184-7, 200-20, 228,  
 231, 236, 243, 248  
 first European election 168-80  
 parties in 95-6, 258-9, 426  
 simulated results 258-9, 426  
 voting system 67-72, 78-81, 185-99,  
 213-14
- deposits, candidates' 115, 122, 148, 159,  
 175, 246
- Det konservative Folkeparti (DK) 259,  
 426
- Det radikale Venstre (DK) 259
- Deutsche kommunistische Partei 261
- devolution (UK) 150-2, 180
- d'Hondt *see* highest average method
- dictatorships 315-16
- DIFE *see* Liste pour la défense des inté-  
 rêts de la France en Europe (F)
- different voting systems, possible results  
 253-74
- direct elections, 10-20, 83-180  
*see also* Council Act  
 uniformity
- disqualifications 192-3, 196-7, 239, 304,  
 309, 407
- distortion, representational 33-6, 41, 59,  
 69, 77, 277
- district magnitude 40-3  
*see also* constituencies
- DKP *see* Deutsche kommunistische  
 Partei (FRG)
- domestic parliamentary concerns 92,  
 166-7
- double ballot 44-5, 169
- draft conventions on direct elections  
 10-20
- Droop quota  
 counting in 419-20  
 proposed 283, 291-2  
 in simulation 254-73, 424-33  
*see also* highest remainder
- D'66 *see* Democraten '66 (NL)
- DS '70 *see* Democratisch Socialisten  
 (NL)
- dual mandate 95, 99, 240, 307-8
- Dutch language groups in Belgium  
 87-93
- Ecologistes (F) 262  
*see also* Europe-Ecologie  
 Grüne, die
- EEE *see* Emploi Egalité Europe (F)
- elected candidates, designation 51-7
- elections  
 direct 10-20, 83-180  
 first 167-80, 223  
 results 234-5  
 timing of 95, 99, 305, 408-10  
*see also* Council Act  
 European elections  
 uniformity  
 voting
- electoral law, uniformity in 221-49
- electoral procedure, uniform 7-27
- electoral quotient 79, 146
- electoral systems 212-15  
 changes in 168-9, 172, 175  
 European 184-7, 200-20, 228-48, 281,  
 315-36  
 mixed systems 75-82  
 North American 337-411  
*see also* under individual countries
- eligibility 194-9, 228-30, 239, 308, 344,  
 352, 407
- Emploi Egalité Europe (F) 428
- Eurobarometer opinion polls 255
- Euratom Treaty 8

- Eurodroite party (F) 428  
 Europe-Ecologie (B) 425  
 Europe-Ecologie (F) 428  
 European Coal and Steel Community 8-9  
 European Court of Justice 20  
 European Defence Treaty 10, 111  
 European elections 13-15  
   approaches to 83-180  
   Belgium 87-95  
   Denmark 96-9  
   first 167-80, 223  
   France 110-18  
   FRG 100-10  
   Ireland 119-25  
   Italy 125-39  
   Luxembourg 139-44  
   Netherlands 144-9  
   simulations 256-74, 424-33  
   timing of 95, 99, 305  
   UK 149-66  
 European Parliament  
   approaches to European election 85-180  
   and electoral law 183-220  
   and proposals 221-49, 275-313  
   and simulations 256-74, 412-33  
   and voting systems 31-82  
   expenses *see* costs; finance  
 External Communist Party (Gr) 336  
  
 FDF *see* Front Démocratique des Francophones (B)  
 FDP *see* Freie Demokratische Partei (FRG)  
 Federal Republic of Germany  
   approach to European elections 64-7, 100-10  
   electoral system 184-7, 200-20, 228, 230-1, 236, 241, 243-4, 248  
   first European election 168-80  
   parties in 100, 102, 106-7, 109, 261, 427  
   seat allocation 278-9  
   simulated results 260-1, 427  
   voting system 64-7, 81, 185-99, 213-14  
 federalism 101-3, 337, 404  
  
 FF *see* Fianna Fáil (Irl)  
 FG *see* Fine Gael (Irl)  
 Fianna Fáil (Irl) 119, 122, 265, 429  
 financing of campaigns 208-9, 233-4, 325, 373-7, 409  
   *see also* costs  
 Fine Gael (Irl) 119, 123, 265, 429  
 first-past-the-post *see* plurality  
 France  
   approach to European elections 19, 59-61, 110-18  
   electoral system 184-7, 200-20, 228, 231, 236, 241-4, 246, 248  
   first European election 168-80  
   parties in 110-11, 113, 262-3, 428  
   simulated results 260, 262-4, 428  
   voting system 59-61, 82, 185-99, 213-14  
 franchise extension 168, 177-9  
   Canada 405  
   Denmark 98  
   France 115  
   Ireland 122, 124  
   Italy 127, 129-30, 133, 136-9  
   Luxembourg 143  
   Netherlands 147, 149  
   UK 159, 165  
   USA 384-97  
 franchise, proposed 302-4  
 Freie Demokratische Partei (FRG) 261, 427  
 Fremskridtspartiet (DK) 259, 426  
 French language groups  
   in Belgium 87-93, 256-7, 425  
   in Italy 126-7, 136-7  
 Front Démocratique des Francophones (B) 93, 256-7, 425  
  
 Gereformeed Politiek Verbond (NL) 148, 271  
 German language groups  
   in Belgium 87-93  
   in Italy 127, 136  
 Germany *see* Federal Republic of Germany  
 government draft bills on European elections *see* parliamentary debate  
 Greece 17, 238, 315-16, 334-6

- GPV *see* Gereformeerd Politiek Verbond (NL)
- Greenland 96-7, 99, 190
- Grüne, Die (FRG) 427
- Hagenbach-Bischoff method 36-7, 63, 73, 141, 169-70, 187  
counting in 416-17, 420  
in simulation 254-73, 282, 424-33  
*see also* Droop; Hare
- Hare (Natural) Quota 35, 128-31, 133, 139, 146, 169-70, 174  
counting in 418, 420  
proposed 236, 282  
in simulation 254-73, 424-33  
*see also* highest remainder
- highest average system (d'Hondt) 35-6, 39, 46, 140, 169-70, 412-20 *passim*  
Belgium 79-80, 91, 186  
Denmark 98-9  
France 115  
FRG 64-6, 102  
Italy 75, 128, 130  
Luxembourg 141  
Netherlands 73, 146, 187  
proposed 236-7, 282, 298, 301  
in simulations 254-73, 424-33  
UK 159  
*see also* proportional representation  
St Lagüe
- highest remainder (Quota) system 35-6, 39, 46, 53, 55, 61, 68, 71, 76-9, 169-70  
counting in 416, 418-20  
Denmark 68-9  
Italy 76-8, 128-9, 187  
Netherlands 74, 148  
proposed 236, 282-3, 298, 301  
in simulation 254-73, 424-33  
and thresholds 48-51  
*see also* proportional representation  
St Lagüe
- identity and uniformity 11
- Imperiali quota 48, 76, 128, 170  
counting in 419-20  
in simulation 254, 267-8, 424-33  
*see also* highest remainder
- incompatibility 196-7, 239, 309, 319-20, 330-1
- Independents party (Irl) 429
- indirect election 184
- ineligibility 319-20, 330
- integration, electoral (Canada) 403-5
- intra-party preferences for candidates 53-4
- Ireland  
approach to European elections 61-3, 119-25  
counting votes 423  
electoral system 184-7, 200-20, 228, 231, 236, 243, 246, 248  
first European election 168-80  
parties 119, 121, 123, 265, 429  
plurality, considered 120-1  
simulated results 264-5, 429  
STV in 61-3, 120-2, 168-9, 173, 175  
voting system 61-3, 81, 185-99, 213-14, 297
- Italy  
approach to European elections 7, 75-8, 125-39  
electoral system 184-7, 200-20, 228, 230-1, 236, 238, 243, 248  
first European elections 168-80  
parties in 125-7, 130-1, 133-8, 267-8, 430  
simulated results 266-9, 430  
voting system 75-8, 185-99, 213-14, 297
- Kommunistische Partij van België (B) 199, 256-7, 425
- KPB *see* Kommunistische Partij van België
- Kristeligt Folkeparti (DK) 259
- KVP *see* Catholic People's Party (NL)
- Labour Parties  
Ireland 119, 121, 123, 265, 429  
Netherlands 149  
UK 149-55, 161, 163, 165, 170, 237, 273, 432-3
- language groups  
in Belgium 87-93  
in Italy 126-7, 132, 136-7

- Left Alliance (Gr) 336  
 legislative term 220, 411  
 legitimization 23, 27  
 Liberal Parties  
   Belgium 256-7  
   Denmark 259, 426  
   FRG 102, 106, 261  
   Greece 336  
   Italy 125-6, 130, 133, 135, 137, 267-8, 430  
   Luxembourg 140  
   Netherlands 148  
   UK 26, 151-5, 161, 163, 169, 237, 273, 432-3  
 list order 285-7  
 list system 53-6, 172, 174, 184  
   Belgium 79, 93  
   Denmark 70-1  
   France 115, 174  
   FRG 66-7, 100-7, 174  
   Ireland 121  
   Italy 174  
   Luxembourg 63  
   Netherlands 74  
   UK 157-60  
 Liste pour la défense des intérêts de la France en Europe 428  
 Loyalist and Democratic Unionist Party (UK) 433  
 Luxembourg  
   approach to European election 23, 63-4, 139-44  
   first European election 168-80  
   electoral system 184-7, 200-20, 228, 231, 236, 238, 242-4, 248, 281  
   parties in 139-43, 270  
   seat allocation 278  
   simulated results 269-70, 431  
   voting system 63-7, 185-99, 213-14, 297  
  
 majority system 34-5, 40-52 *passim*, 59-61, 184, 326-7  
   *see also* plurality  
     United Kingdom  
 media, access to 210-11, 234, 306  
   North America 371-2, 409  
   Spain and Portugal 324-5, 331-2  
  
 Michel plan (B) 89  
 Mouvement des Radicaux de Gauche (F) 262, 428  
 Movimento Sociale Italiano (I) 125, 130, 267-8, 430  
 MRG *see* Mouvement des Radicaux de Gauche  
 MSI *see* Movimento Sociale Italiano  
 multi-member constituencies 40, 52, 61-3, 157  
  
 National Party (Gr) 336  
 nationalist parties 150-2, 273, 325-7, 432-3  
 nationals abroad *see* absentee voting  
 Natural Quota *see* Hare Quota  
 Nationaldemokratische Partei Deutschlands (FRG) 261  
 Neo-Liberals (Gr) 336  
 Netherlands (NL)  
   approach to European elections 72-4, 144-9  
   first European election 168-80  
   electoral system 184-7, 200-20, 228, 231, 236, 242-3, 246, 248  
   parties in 12-18, 148-9, 271, 274, 431  
   simulated results 269, 271, 431  
   voting system 72-4, 185-99, 213-14, 287  
 New Democracy (Gr) 335-6  
 nomination  
   in Europe  
     national systems 97, 99, 142, 159, 175-6, 206-7, 246  
     proposals for a uniform system 299-300, 308  
   in North America 366-9, 408-9  
 NPD *see* Nationaldemokratische Partei Deutschlands  
  
 obligatory voting 188, 237-8, 278, 285, 287, 304  
 Official Ulster Unionist Party (UK) 433  
 optional voting 237-8, 285  
 options for uniform voting system 253-92  
 OUUP *see* Official Ulster Unionist Party

- Pacifistisch Socialistische Partij (NL) 271
- panachage 39, 54, 63-4, 142-4, 169, 281, 288  
*see also* cumul
- Panhellenic Socialist Movement 335-6
- parliamentary debate on direct election  
 in general 83-180  
 Belgium 90-5  
 Denmark 96-9  
 France 114-18  
 FRG 103-10  
 Ireland 121-5  
 Italy 130-9  
 Luxembourg 141-4  
 Netherlands 145-9  
 UK 159-66
- Parti Chrétien Social (Lux) 140-3, 270
- Parti Communiste Belge 256-7, 425
- Parti Communiste Français 110-11, 113, 262-3, 428
- Parti Communiste (Lux) 139-41, 270
- Parti de la Réforme et de la Liberté (B) 256-7, 425
- Parti Démocratique (Lux) 270
- Parti Libéral (B) 256-7
- Parti Ouvrier-Socialiste (Lux) 270
- Parti Populaire Européen (B) 425
- Parti Social-Chrétien (B) 256-7, 425
- Parti Social Démocratique (Lux) 140-1, 143, 270
- Parti Socialiste Belge 93, 256-7, 425
- Parti Socialiste (F) 110-11, 113, 428
- Partij van de Arbeid (NL) 271, 274, 431
- Partij voor Vrijheid en Vooruitgang (B) 256-7, 425
- Partito Comunista Italiano 125-7, 130-1, 136-8, 267-8, 430
- Partito di Unità Proletaria per il Comunismo (I) 430
- Partito Liberale Italiano (I) 125-6, 130, 133, 135, 137, 267-8, 430
- Partito Radicale (I) 430
- Partito Repubblicano Italiano (I) 125-6, 130, 134, 267-8, 430
- Partito Socialdemocratico Italiano (I) 125, 130, 134, 267-8, 430
- Partito Socialista Italiano 267-8, 430
- parties  
 accessibility to direct elections of 168, 174  
 bans 199, 229, 305, 407-8  
 representation 32-57, 284-6, 366-9
- Pasok (Gr) 336
- Patijn Report 111, 120, 144
- PC *see* Parti Communiste (Lux)  
 Plaid Cymru (UK)
- PCE *see* Communist Party of Spain
- PCF *see* Parti Communiste Français
- PCI *see* Partito Comunista Italiano
- PCP *see* Portuguese Communist Party
- PCS *see* Parti Chrétien Social (Lux)
- PD *see* Parti Démocratique (Lux)
- PdUP *see* Partito di Unità (I)
- Pensionistpartiet (DK) 259
- Peoples Democratic Party (P) 329-30, 334
- Plaid Cymru (UK-Wales) 150-1, 273, 432-3
- PL *see* Parti Libéral (B)
- PLI *see* Partito Liberale Italiano
- plurality 32-3, 168-9  
 in Canada 406  
 and constituencies 40-1, 52  
 in Ireland, considered 120-1  
 and parties 44  
 and preferential voting 56-7  
 and thresholds 48-51  
 in UK 58-9, 153-6, 159, 164, 166, 168-9, 254, 296-7  
 in USA 358-9, 406  
*see also* majority
- Politieke Partij Radikalen (NL) 271
- polling *see* voting
- Popular Alliance (E) 325-7
- Popular Socialist Party (E) 325-7
- Portugal, electoral system 238, 315, 328-34
- Portuguese Communist Party 329-30, 334
- Portuguese Socialist Party 329-30, 334
- POS *see* Parti Ouvrier-Socialiste (Lux)
- postal voting 98, 124, 128-9, 136, 191-2, 410
- PPD *see* Peoples Democratic Party (P)



- PPE *see* Parti Populaire Européen (B)  
 PPR *see* Politieke Partij Radikalen (NL)  
 PR *see* proportional representation  
 preferential voting *see* voting  
 PRI *see* Partito Repubblicano Italiano  
 PRLW *see* Parti de la Réforme et de la  
   Liberté en Wallonie  
 Projets de Loi  
   2 Dec 1977 (B) 90-5  
   25 May 1977 (F) 115  
   9 Feb 1978 (Lux) 141  
 propaganda *see* media  
 proportional representation 35-9, 52,  
   184  
   Belgium 78-80, 90-1, 94  
   change from or to 81-2  
   complex systems 64-80  
   and constituencies 41-3  
   Denmark 67-72  
   formulae 35-7, 48  
   France 115-18  
   FRG 101-2  
   Greece 64-7, 334-5  
   Ireland 61-3, 119-21, 168-9, 173,  
     175  
   Italy 75-8, 128  
   Luxembourg 63-4, 142  
   Netherlands 72-4  
   and parties 45-7  
   Portugal 328-9  
   proposed 275-6, 298  
   simple 61-4  
   Spain 317, 319  
   and thresholds 48-51, 62, 66, 68-9,  
     73  
   UK 153-9, 162-4, 179  
   *see also* counting rules  
     highest average  
     highest remainder  
     St Lagüe  
     single transferable vote  
     voting  
 proposals for uniform procedure  
   221-49, 275-313  
 proxy voting 191-2, 410  
 PS *see* Parti Socialiste (F)  
 PSB *see* Parti Socialiste Belge (B)  
 PSC *see* Parti Social-Chrétien (B)  
 PSD *see* Parti Social Démocratique  
   (Lux)  
 PSDI *see* Partito Socialdemocratico  
   Italiano (I)  
 PSI *see* Partito Socialista Italiano (I)  
 PSOE *see* Spanish Socialist Workers'  
   Party (E)  
 PSP *see* Pacifistisch Socialistische Partij  
   (NL)  
   Popular Socialist Party (E)  
   Portuguese Socialist Party (P)  
 PvdA *see* Partij van de Arbeid (NL)  
 PVV *see* Partij voor Vrijheid en Voor-  
   uitgang (B)  
 Quota system *see* highest remainder  
 Rad *see* Partito Radicale Italiano (I)  
 radical parties 130, 262, 267-8, 271,  
   428, 430  
 Rassemblement pour la République (F)  
   114, 262-3  
 Rassemblement Wallon (B) 256-7  
 Republican Party (USA) 373  
 RPR *see* Rassemblement pour la Répu-  
   blique (F)  
 RW *see* Rassemblement Wallon (B)  
 St Lagüe method 35, 37, 39, 46, 69-70,  
   99, 186  
   counting in 412-13, 420  
   in simulations 254-73, 425-33  
   and thresholds 48-51  
   *see also* proportional representation  
 Sardinia 127, 137  
 Scottish Nationalist Party 150-2, 273,  
   432-3  
 SDLP *see* Social Democratic and La-  
   bour Party (UK-Northern Irl)  
 seat allocation 88-90, 186-7, 277-9,  
   300-1, 310-13, 335  
 SFWP *see* Sinn Féin Workers' Party  
 SGP *see* Staatkundig Gereformeerde  
   Partij (NL)  
 Sicily 127, 137  
 single-member constituencies 40, 52, 65,  
   75

- Single Transferable Vote (STV) 35,  
37-9, 42, 46, 52, 55  
counting by STV 421-3  
Ireland 61-3, 120-2, 168-9, 173, 175  
proposed 254, 280, 286, 298, 301  
in simulation 265, 424-33  
and thresholds 48-51  
UK 154, 157, 163-4  
*see also* proportional representation
- Sinn Féin Workers' Party (Irl)
- SNP *see* Scottish Nationalist Party
- social democratic parties  
Denmark 95-6, 258-9, 426  
FRG 102, 261, 427  
Italy 125-6, 130, 134, 267-8, 430  
Luxembourg 140-1, 143, 270  
Netherlands 271  
Portugal 329-30, 334
- Social Democratic and Labour Party  
(UK-Northern Irl) 273, 433
- Social Democratic Centre (P) 329-30,  
334
- Socialdemokratiet (DK) 95-6, 258-9, 426
- socialist parties  
Belgium 93, 256-7, 425  
Denmark 259  
France 110-11, 113, 428  
Greece 335-6  
Italy 125, 130, 267-8, 430  
Luxembourg 140, 270  
Netherlands 271  
Portugal 329-30, 334  
Spain 325-7  
*see also* labour and social democratic  
parties
- Socialistisk Folkeparti (DK) 259, 426
- Sozialdemokratische Partei Deutsch-  
lands (FRG) 102, 261, 427
- Spain 17, 315-28
- Spanish Socialist Workers' Party 325-7
- SPD *see* Sozialdemokratische Partei  
Deutschlands
- Staatkundig Gereformeerde Partij (NL)  
148, 271, 431
- STV *see* Single Transferable Vote
- Südtiroler Volkspartei (I) 136
- Supplementary seats 277-78
- SVP *see* Südtiroler Volkspartei (I)
- thresholds of representation 26, 60, 168,  
174-6, 198, 241  
France 117-18  
FRG 107-8  
Italy 130  
minimal and maximal 47-51  
Netherlands 146  
and plurality 48-51  
in proportional representation 48-51,  
62, 66, 68-9, 73  
proposed 283-4, 291, 310  
transferred vote 61-2, 74, 281, 288-9,  
310-13  
two-party system 338, 364-6, 404
- Überhangmandat 42, 65, 68, 103
- UCD *see* Centre Democratic Union (E)
- UDF *see* Union pour la Démocratie  
Française (F)
- UFE *see* Union pour la France en Eu-  
rope (F)
- uniformity of election procedure 11,  
16-19, 24-7  
framework for 221-49  
options for 253-92  
proposals for 221-49, 275-313  
*see also* Council Act
- Union pour la Démocratie Française  
262-3
- Union pour la France en Europe 428
- Union Valdôtaine (I) 136
- United Kingdom  
approach to European election 58-9,  
149-66  
first European election 168-80  
electoral system 184-7, 200-20, 228,  
231-2, 236, 242-3, 246, 248  
parties in 26, 149-55, 161, 163, 165,  
169-70, 273, 432-3  
simulated results 272-4, 432-3  
voting system 58-9, 81-2, 185-99,  
213-14, 296-7
- United Left (Gr) 335-6
- United States 337-411  
apportionment and districting 359-64  
black people 344, 350-2, 368  
centrifugal forces 339-41  
election conventions 166-9

- electoral calendar 378-80
- literacy tests 392-3
- mandates 383-4
- nationality requirements 385, 406-7
- presidential elections 347-9, 368-9
- primary process 367-9
- tax qualifications 388-9
- two party system 338, 364-6, 404
- women's suffrage 352, 390-2
- United Ulster Unionists (UK) 273
- UUU *see* United Ulster Unionists
  
- vacancies, filling 60-2, 64, 72, 74, 78, 80, 122, 160, 218-19
  - in North America 384, 411
  - proposed 247-8, 288-90, 292, 308
- validation of elections 217-18, 313, 381-3, 410
- Venstre, Danmarks liberale Parti (DK) 259, 426
- Venstresocialisterne (DK) 259, 426
- Volkspartij voor Vrijheid en Democratie (NL) 271, 274, 431
- Volksunie (B) 256-7, 425
- vote aggregation 56, 67, 72
- voting and elections 29-82, 168-71, 185-99, 213-14, 296-7
  - absentee 191-2, 226, 244-6, 302-3, 396-7, 407
  - age 91, 189, 224, 302, 319, 328, 334, 352, 406-7
  - Belgium 78-81, 287
  - in complex systems 64-74
  - cross-party 39, 54-6
  - Denmark 67-72
  - France 59-61
  - FRG 64-7
  - Greece 238
  - in hospitals 215, 410
  - Ireland 61-3
  - Italy 75-8
  - limited vote 33, 286
  - Luxembourg 63-4
  - method, proposed 298-303, 309-10
  - Netherlands 72-4
  - obligatory 188, 237-8, 278, 285, 287, 304
  - optional 237-8, 285
  - organisation of 185-9, 200-14, 230, 321-4, 331-5
  - postal 98, 124, 128-9, 136, 191-2, 410
  - preferential 39, 53-7, 70-1, 78, 80, 132, 142-4, 169, 285-91, 297, 310-13
  - in prisons 215, 410
  - proxy 191-2, 410
  - qualifications for 384-97
  - registration and registers of voters 193-4, 203-4, 244, 303, 394-6, 408
  - residence requirements 190-1, 225, 302, 386-8, 406
  - results 216
  - right to 224-28, 238-9
  - Single Preferential Vote 53
  - uniform, proposed 230-47, 253-97, 305-6
  - United Kingdom 58-9
  - United States 352, 373-7, 384-97, 408-10
  - wasted votes 36, 39, 47
  - see also* constituencies
    - counting
    - Single Transferable Vote
- VU *see* Volksunie (B)
- VVD *see* Volkspartij voor Vrijheid en Democratie (NL)
  
- West Berlin 108-9

## NAME INDEX \*

- Abeles, R. P. 371  
Antieau, C. J. 370, 373, 385, 387-8, 400  
Auken, S. 95  
Ayres, R. E. 387
- Balbo, G. 135  
Bangemann, M. 103, 105-6, 109  
Benn, A. 150  
Bettiza, V. 135-6  
Bieber, R. *vi*, 19, 21, 112  
Birke, W. 279  
Bleckmann, A. 108  
Bonnet, C. 113, 116-17  
Boorstin, D. J. 342, 400  
Bosscher, R. 144-5  
Bowen, W. G. 387  
Boyson, R. 162  
Brew, D. A. *v*, 29, 251, 412, 424  
Britton, F. S. 62  
Brugger, P. 136  
Buck, K. H. 110  
Buksti, J. 95  
Burban, J. L. 110, 116  
Burmeister, W. 341  
Burnham, W. D. 339-40, 347, 350, 358,  
381, 385, 394-5, 400  
Bussy, M. E. 111
- Calvo Sotelo, L. 320  
Carcassone, G. 318
- Chester, E. W. 341  
Chirac, J. 113  
Clark, J. S. 340, 400  
Claude, R. 341-4, 349-50, 353-60, 363,  
370, 373-4, 383, 387-8, 400  
Clauss, J. U. 87-8  
Craigien, J. 163  
Crandall-Hollick, J. 111
- Dahl, R. A. 364-6, 370, 400  
D'Angelosante, F. P. 136  
Davidson, R. B. 339, 401  
Debré, M. 111, 113, 116  
Dehousse, F. 10-11, 17, 19  
Del Pennino, A. 131  
Diamond, R. A. 351, 363, 374, 376-7,  
386, 388, 400  
Donnez, G. 116  
Douglas, J. 354, 397  
Dubois, P. 93-4  
Dunwoody, G. 162  
Duverger, M. 19, 44, 114, 339-40, 359
- Fairgrieve, R. 158  
Faure, M. 10  
Favoreu, L. 19, 112  
Fischella, D. 35, 45  
Fitzmaurice, J. 95, 150  
Flanigan, W. H. 343  
Foot, M. 150

\* Italicized page numbers indicate bibliographical references.

- Forman, J. 16  
 Fosson, P. 136
- Gardiner, G. 162  
 Georgel, J. *v.* 58, 67, 85, 140, 153  
 Ghini, C. 128  
 Gibberd, R. W. 47, 279  
 Giscard d'Estaing, V. 112-14  
 Glazer, N. 371  
 Grabitz, E. 101, 103, 108  
 Grodzins, M. 365  
 Gulick, L. H. 341  
 Gulmann, C. 96
- Haagerup, N. J. 96  
 Hahlen, J. 108  
 Hanby, V. 47  
 Hand, G. *v.* 58, 67, 85, 117, 140, 153  
 Heath, E. 163  
 Heffer, E. 158, 162  
 Hoyle, D. 162  
 Hrbek, R. 100, 103  
 Huber, Ch. H. *v.* 85, 117, 119-20  
 Hunt, J. 158, 163  
 Hurd, D. 158, 165
- Ionescu, G. 398  
 Irving, S. 163  
 Jacqué, J. P. 114, 116  
 Jay, D. 162  
 Johnson, L. 356
- Karamanlis, K. 316  
 Kelley Jr, S. 387  
 Kendall, M. G. 33  
 Kennedy, J. 355  
 Kintzelé, G. 140  
 Kovar, R. 19, 112  
 Kristol, I. 371
- La Palombara, J. 365, 401  
 Laver, M. 38  
 Lehmann Sørensen, C. 95  
 Lijphart, A. 47, 279  
 Lipset, S. M. 343, 401  
 Loewenstein, K. 342, 401  
 Loosemore, J. 47  
 Lynch, J. 122
- McDonald, C. 124  
 Mackie, T. T. 348, 401  
 Mancino, N. 135  
 March, J. G. 33  
 Marcilhacy, P. 117  
 Martinez-Cuadrado, M. 317  
 Martino, G. 9-11  
 Mauroy, P. 114  
 Maihofer, W. 106  
 Mendelson, J. 162  
 Meyer, T. 108  
 Miller, C. A. 348  
 Moate, R. 162  
 Moro, A. 131  
 Morrison, C. 163  
 Murphy, J. 124  
 Murswiek, D. 108
- Neels, L. 88, 93  
 Nelson, H. L. 372, 401  
 Newland, R. 62  
 Nohlen, D. 91  
 Nørby-Johansen, L. 97
- Patijn, S. 13-15, 20, 144, 148  
 Patterson, T. E. 371  
 Pelletier, J. 117  
 Phillip, L. 19, 112  
 Phillipart, A. 258  
 Phipps, C. 163  
 Pole, J. R. 337, 341, 376, 383, 401
- Rabier, J. R. 255  
 Rabl, K. 87  
 Rae, D. W. 31, 37, 40-2, 44, 47, 401  
 Rattinger, H. 106, 254  
 Rees, M. 158, 164  
 Reid, G. 163  
 Reitman, A. 339, 341, 350-1, 357, 380,  
 382, 385-7, 396-7, 401  
 Robertson, A. H. 8  
 Robinson, M. T. 122-4  
 Robson, C. 55  
 Rodgers, J. 158, 162  
 Rognoni, V. 136  
 Rokkan, S. 49, 343, 401  
 Rose, R. 339, 348, 401

- Sartori, G. 46, 364, 401  
Sasse, C. *v-vi*, 58, 67, 85, 140, 153  
Schwartz, B. 345, 383, 385, 402  
Schuyt, W. J. 12  
Shersby, M. 162  
Simon, D. 19, 112, 114  
Small, N. J. 349, 385, 387, 389, 402  
Smouts, M. C. 111  
Soltys, M. 403  
Spiro, H. J. 398, 402-3  
Steed, M. 152  
Stuart, A. 33  
Suárez, A. 320  
Subra de Bieusses, P. 318
- Tandler, G. 106  
Theis, P. A. 341, 348, 397, 402  
Thill, J. 142  
Thorpe, J. 163  
Tindemans, L. 89, 93  
Traversa, S. 129  
Tully, J. 121  
Turner, J. 366
- Urbany, R. 143
- Van de Copelloe, K. 148  
Van Den Bergh, G. 35, 38, 55  
Van Den Berghe, G. *v*, 7, 55, 87-8, 221,  
223, 226, 403  
Vesterdorf, P. 96-7  
Vialle, P. 364, 402  
Vlachos, G. 359, 402
- Wagner, W. 108  
Wallace, G. 370, 373-4  
Walsh, B. 55  
Weiner, M. 365, 401  
Wigley, D. 163
- Yourow, H. C. *vi*, 337, 403
- Zaccagnini, B. 131  
Zängle, M. 254  
Zintl, R. 254



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DICEMBRE 1981

















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