

Proportionality or majoritarianism? In search of electoral equity*

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Abstract:

Finding an electoral system both equitable and efficient represents a desideratum for every electoral democracy. The electoral system is at the cornerstone of democracy and has important consequences upon the constitutional and political system as a whole. Through this approach, I bring the spotlight on the old dispute over proportional representation and majoritarian voting systems. Thus, I will determine which of these main electoral systems is closer to the ideal of electoral equity.

Keywords: electoral systems, proportional representation, majoritarian systems, electoral equity, representativeness, government effectiveness

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Referring to the importance of the regulation of the electoral system, Royer - Collard stated that “an electoral law is a Constitution. Depending on how good or bad the law is, the governments resulting from it are strong or weak”². Choosing a certain electoral system is of great significance and there are several aspects that must be considered, such as the influence it has on political parties, on government formation and last, but not least, on voting behaviour. Besides, each state must take into account its own historical and political background and also the social and economic particularities, when designing the electoral system. Nevertheless, in my opinion, the principle that should guide the “electoral engineering” is that of equity and fairness. Unfortunately, most of the times, the electoral systems are the result of political opportunism because political parties are more interested in winning the election than in pursuing electoral equity.

As I have mentioned, my aim is to determine which of the electoral systems, majoritarian or proportional ones, best complies with the principle of electoral equity. In order to do that, a definition of the concept of “electoral equity” is required. Therefore, before analyzing the virtues and deficiencies of both proportional representation and majoritarian voting systems, invoked by their advocates and opponents, I will configure the notion of “electoral equity” and also establish the criteria by which one could appreciate the fairness (equity) of an electoral system.

The concept of electoral equity. Criteria for assessing the equity of an electoral system

The notions of equity and fairness are usually invoked in the debate over proportional representation and majoritarian systems, the electoral systems based on proportional representation being regarded as fairer than the majority and plurality systems. The concept of fairness is used more frequently than the concept of equity, even though they are considered to be synonymous. However, the exact meaning of these two notions is not that clear and this can lead, as it was highlighted³, to problems for evaluating electoral systems.

In John Rawls’ conception, the principles to be applied to the basic structure of society are justice and efficiency. He claimed that “justice is the first virtue of social institutions, as truth is of systems of thought”⁴ and it “denies that the loss of freedom for some is made right by a greater good shared by others”⁵. Hence, Rawls believed that justice as fairness is the guiding principle for social systems and institutions. In an attempt to identify which are the principles of justice as fairness in the context of a liberal society, based on his own version of social contract theory, Rawls concluded that the principles of justice are equal freedom for all (*the liberty principle*) and a scheme in which the economic and social inequalities favor the most disadvantaged members of society, under conditions of fair equality of opportunity (*the difference principle*). By a social institution, he understood a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like. Since the voting system represents the entirety of legal and technical rules designed to turn the votes into seats, I believe that an electoral system can be considered a social institution. Following Rawls’ judgement, among other qualities that it may have, an electoral system must, be, first of all, fair and equitable. Thus,

2 Royer -Collard, in Ihl, O., *Le vote- 2^e édition*, Paris, Montchrestien, 2000, p. 50.

3 Blau, A., “Fairness and Electoral Reform” , *The British Journal of Politics & International Relations*, Vol. 6, (pp. 165-181), p. 165.

4 Rawls, J., *A theory of justice*, Cambridge, Massachusetts, The Belknap Press of Harvard University Press, 1971, p. 3.

5 Idem.

the design of an electoral system has to be in accordance with the principles of equal freedom and equal opportunities. It is easy to observe that fairness and equity have almost the same meaning for John Rawls.

Still, the concept of fairness is much more complex and, as Adrian Blau points out, the meaning of electoral fairness is not self-evident and there are several conceptions of fairness that are to be contemplated when discussing the matter of electoral systems⁶: the equality conception, the populist conception, the winner-takes-all conception, the majority conception and the plurality conception of fairness. The equality conception is a reflection of the principle “one man, one vote, one value” which requires that each citizen and party should be treated equally. The populist conception of fairness implies that voters, not party leaders, should choose governments. Thus, elections should be the decisive stage in choosing a government and not the post-elections deals between party leaders. In accordance with the winner-takes-all conception, the winner should take the spoils and the other participants shouldn't enjoy the winnings. The majority conception states that the majority of voters or the majority party deserve to win and the plurality conception means that the largest group of voters, or the plurality party, deserves to win. Considering these different conceptions, one can note that “like most political concepts, fairness is matter of degree, not all-or-nothing”⁷. To avoid this conceptual confusion, I will use the concept of electoral equity.

Unlike the notion of fairness, “electoral equity” has been defined in a study conducted by the Organization of American States in collaboration with the International Institute for Democracy and Electoral Assistance, which provides that electoral equity entails “the existence of conditions of impartiality and freedom in the pre-electoral period, the day of the elections, and the post-electoral period so that all candidates can participate in a level-playing field for political office”⁸. This definition, which I consider very accurate and comprehensive, reveals that electoral equity aims to equal opportunities of candidates and also to fair representation of the electorate, these two aspects being in a close connection. In fact, electoral equity represents a reflection of justice in the electoral field, which is a supreme value in any democratic state. Moreover, electoral equity is closely linked to the principle of equal participation of citizens in state politics, which implies that “all citizens are to have an equal right to take part in, and to determine the outcome of, the constitutional process that establishes the laws with which they are to comply”⁹. This principle also imposes an equitable representation of citizens in the legislative body and the compliance with the principle one man, one vote. The latter principle requires for each vote to have approximately the same weight in determining the outcome of elections, which entails a clear and balanced distribution of seats among constituencies. For the same purpose, the design of the electoral constituencies should be done according to an objective procedure and predetermined standards and, if possible, by an independent authority. It remains to be seen which of the current electoral systems meets to the greatest extent these requirements. To make such an assessment, it is necessary to establish the criteria by which the equity of an electoral system can be evaluated.

6 Blau, A., *op.cit.*, p. 167.

7 Ibid, p. 168.

8 Munoz-Pogossian, B., “*The Responsibility to expose: Incorporating a gender perspective into OAS Electoral Observation Missions (OAS/EOMs)*”, Electoral Studies and Projects Section Department for Electoral Cooperation and Observation, Organization of American States in collaboration with IDEA, December, 2011, p. 4. The study can be consulted at <http://www.idea.int/democracydialog/upload/IDEA-Gender-and-Elections-Betilde.pdf>

9 Rawls, J., *op.cit.*, p. 194.

When voting, citizens accomplish two things at once: they contribute to forming a government and an opposition, and confer legitimacy to governors, who will represent their interests and preferences. Thus, the elections are not just a “race” that some gain at the expense of others, but a means by which voters participate in creating a representative authority. H. F. Pitkin sketched out the generic features of political representation in a constitutional democracy, stating that for representatives to be “democratic” (a) they must be authorized to act; (b) they must act in a way that promotes the interests of the represented and (c) people must have the means to hold their representatives accountable for their actions¹⁰. In order for these features of democratic representation not to remain just simple ideals, the electoral system should ensure, as far as possible, the reflection of citizens’ electoral choices in parliament, and also, compliance with the principle of equal suffrage.

Because of the fact that electoral equity is a broad and rather intricate concept, the scholars in the electoral field were quite reluctant to establish clear criteria according to which one could evaluate the equity of electoral systems. In most cases, the fairness (equity) of an electoral system was appreciated in terms of comparison with other voting system and not by specific criteria.

An interesting approach can be found in Pierre Martin’s research on electoral systems, who, under the premise that proportional representation is based on the idea of a fairer electoral system, believes that the equity of an electoral system (*la justice d’un système électoral*) should be assessed according to three criteria¹¹: representativeness index, monotonicity and proportionality. In fact, Martin addresses the issue of electoral equity from the perspective of the translation of votes into seats and he even compares the electoral systems based on proportional representation between them.

The representativeness index designates the ratio of voters effectively represented, i.e. those who voted for candidates or party lists that have obtained seats, and all voters. The data showed that, from this point of view, proportional representation systems have a much higher index of representativeness in relation to other electoral systems.

Regarding the monotonicity, an electoral system is monotonic or not depending on how it complies with the hierarchy of votes cast, when allocating seats. It is, therefore, expected for a party who obtains a greater number of votes to receive more seats than a party that is voted by fewer electors.

As far as the criterion of proportionality is concerned, supporters of proportional representation-Victor d’Hondt and Sainte-Lague had different views about the disproportionality index. Thus, d’Hondt proposed as disproportionality index, the maximum of the ratio between the percentage of seats and percentage of votes (seats/votes) obtained by a party. In contrast with d’Hondt, Sainte-Lagüe suggests as disproportionality index for all political parties participating in elections, the sum of the squares of differences between the percentage of seats and percentage of votes obtained by each party, that is $\Sigma (\text{seats-votes})^2 / \text{votes}$. Both methods aim to ensure the distribution of seats in a fair manner and in accordance with the will of the electorate, but as M. Gallagher highlights every method of seat allocation generates its own measure of disproportionality, and many measures of

10 Pitkin, H. F., *The Concept of Representation*, Berkeley, University California Press, 1967, in Nadia Urbinati and Mark E. Warren, “The Concept of Representation in Contemporary Democratic Theory”, *Annual Review of Political Science*, 2008 (11:387–412), p. 393.

11 Martin, P., *Les systèmes électoraux et les modes de scrutin*, Paris, Montchrestien, 1997, p. 92.

disproportionality implicitly endorse a method of seat allocation¹². For this reason, the diverse PR methods should not be regarded as being more proportional or less proportional than each other, but as embodying different ideas as to what maximizing proportionality means. Thus, the d'Hondt method aims to avoid a large number of voters being represented by a small number of seats, while Sainte-Laguë tends to minimize the number of unrepresented voters.

Besides these two indices, there are other methods employed to measure disproportionality, such as the Loosemore- Hanby index, Rae index and the Least- squares (Gallagher) index. These three indices concentrate on the absolute difference between a party's seats and votes, while d' Hondt and Sainte- Lagüe focus on the ratio between a party's seats and its votes. The Loosemore-Hanby index has been the most widely used measure of disproportionality and it implies calculating the overall disproportionality of an election by adding the absolute values of the vote-seat difference for each party and dividing the total by 2 . However, this index proved to be vulnerable to paradoxes, such as the `new state` paradox (known in the USA), in which an allocation between two states is disturbed by the arrival of a newcomer and this vulnerability is caused by the fact that the Loosemore-Hanby index is based on the largest remainders method. Unlike the Loosemore-Hanby index, the method designed by Rae measures the total disproportionality per party and not by election. Thus, it consists of adding the vote- seat differences for each party winning more than 0.5 per cent of the votes, and then dividing the sum by the number of parties that fit this criterion. Despite being more sensitive to the number of parties participating in an election, the Rae index has its drawbacks because it can overstate the proportionality of multi-party systems if there are many small parties that manage to pass the 0.5 percentage¹³. The least squares index (also known as Gallagher index) entails squaring the vote-seat difference for each party, adding these values, dividing the sum by 2 and taking its square root. It measures the overall disproportionality of an election and it is considered to be a happy medium between Loosemore-Hanby and Rae index. The index weights the deviations by their own value, creating a responsive index, ranging from 0 to 100. The lower the index value, the lower the disproportionality. Unlike the Loosemore-Hanby index, the least squares method is more sensitive to a few large discrepancies than to a plethora of small ones. Nevertheless, Gallagher sustains that it is superior to the `adjusted Loosemore-Hanby` index, created by Arend Lijphart who measures the amount of disproportionality per party and not per election, just like Rae method. The difference consists in the fact that the total is divided by the `effective number of political parties` and not by the actual number. In spite of being superior to Rae index, as Gallagher himself points out, it is more complicated to calculate than the least squares index and overcompensates for the parties involved¹⁴.

However, it cannot be stated that all the disproportionality encountered in an election is caused by the use of a certain electoral formula. There are other factors that can enhance the disproportionality level, such as: district magnitude, the distribution of votes between parties, malapportionment and also, electoral thresholds. Gallagher reaches the same conclusion in his study regarding the measuring of disproportionality after running an empirical test of the disproportionality indices, based on parliamentary elections from

12 Gallagher, M., "Proportionality, disproportionality and electoral systems" , *Electoral Studies*, 1991, 10: 1 (pp. 33-51), p. 38

13 For a thorough analysis of the merits and demerits of Rae index and also of the other disproportionality indices, please consult Gallagher, M, *op. cit.*, pp. 38-43.

14 Idem, p. 41.

1979-1989 in 23 countries. Thus, he observes that the various methods of measuring disproportionality give different rankings of the countries involved in the analysis and that the d'Hondt index correlates rather weakly with the other indices and can lead to highly deviant rankings. In the end, he concludes that the soundest of all measures of disproportionality is the Saint-Laguë index due to its invulnerability to paradoxes and that besides the seat allocation formula, a very strong determinant of the proportionality level of an election is the district magnitude.

Hence, even though the electoral systems based on proportional representation are regarded as being fairer, it is difficult to identify among them the system that presents the highest level of proportionality, because other factors such as district magnitude, multi-tier seat allocation, malapportionment and electoral thresholds may have a stronger effect on the level of proportionality than the electoral formula itself.

In my opinion, the criteria devised by Pierre Martin are not sufficient in order to determine the equity of an electoral system. I believe that the criteria that should be considered when analysing the equity of an electoral system are the following:

- the extent to which the distribution of seats reflects the rankings of the candidates after election;
- the degree of representativeness of the elected authorities;
- the compliance with the principle one man, one vote;
- the representation of minority groups;
- the psychological freedom of voters when casting their votes.

I believe that other aspects envisaged by the architects of electoral systems, such as government stability and efficiency, by creating a majority government following the election, although justified, are outside the notion of electoral equity. Regarding the criteria I have set out, I think that special attention should be paid to the representativeness of the elected authorities and to the exigency of minority representation.

“Democratic representation is fair or just representation insofar as it involves issues of advocacy and representativity; issues of a meaningful presence, not simply presence alone, in the game of discord and agreement that is democracy”¹⁵. Therefore, ensuring the representativeness of the elected officials lies at the heart of democracy, every citizen having the right to make his voice heard in the legislative forum. It was even stated that “representation constitutes a third, political dimension of justice, alongside the (economic) dimension of redistribution and the (cultural) dimension of recognition”¹⁶. Following this judgement, ensuring equal suffrage and fair representation of voters is only one of the political dimensions of justice.

15 Urbinati, N., *Representative Democracy: Principles and Genealogy*, Univ. Chicago Press, Chicago, 2006, p. 42, apud. Nadia Urbinati and Mark E. Warren, *op. cit.*, p. 397.

16 Fraser, N., “Identity, exclusion, and critique: a response to four critics”, *European Journal of Political Theory* 6 (305–338), 2007, p. 314.

Minority representation constitutes an important aspect of electoral equity, being also imposed by the principle of pluralist democracy. It is important for the members of the minority groups to have their interests represented by people who share the same values and traditions, because “fair representation requires some relationship of trust between individuals and representatives, based on shared experiences, perspectives, and interests”¹⁷. I must note that providing political representation for persons belonging to national minorities implies several aspects: on the one hand, the electoral law must guarantee equal opportunities for candidates regarding the submission of candidacies and, on the other hand, the electoral system must be designed in such a way that candidates of minority organizations have a real and effective chance to get into Parliament. In countries where there are national minorities, authorities have appealed to various institutional mechanisms to ensure their political representation, either by adopting an electoral system based on proportional representation, or by reserving seats for minority organizations. For example, the Romanian Constitution provides in Article 62 par. (2) that “The organizations of citizens belonging to national minorities which fail to obtain the number of votes to be represented in Parliament, have the right to one Deputy seat, in the conditions established by the electoral law”. Even though the reserved seats procedure has been criticized because it can lead to certain inequalities, the Code of Good Practice in Electoral Matters of the Venice Commission provides at paragraph I.2.4. b) that “special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage”. Minority participation in political life is guaranteed by several international legal instruments, such as the Convention for the Protection of Human Rights and Fundamental Freedoms, whose First Protocol enshrines at art. 3 the free expression of the opinion of the people in the choice of the legislature, and the art. 14 of the Convention provides that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. The protection of national minorities is also guaranteed by the International Covenant on Civil and Political Rights (art. 25) and The Framework Convention for the Protection of National Minorities which provides that “The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities” (section II, art. 4, paragraph 2).

As one can see, the issue of minority representation has received special attention, as there are many legal safeguards to protect citizens belonging to national minorities. We will see along this approach what electoral system encourages the political representation of minority groups and what steps can be taken to create all the necessary conditions to ensure it.

17 Urbinati, N., Warren, M. E., “The Concept of Representation in Contemporary Democratic Theory”, *Annual Review of Political Science*, 2008 (11:387–412), p. 394.

Government efficiency versus parliamentary representation

If in the past electoral systems were considered among the most stable democratic institutions, since 1990, with the emergence of new European democracies, debates on electoral reforms have been high on the political agenda in most democratic states. The core of the debate is the dilemma of choosing either a majority voting system that favours the formation of a stable government, effective and accountable, or a system based on proportional representation, which promotes greater fairness for minority parties and greater diversity in the political representation of social groups.

These two main types of electoral systems embody the two visions of democracy (majoritarian and proportional), as they were outlined by Bingham Powell¹⁸. A proportional democracy is characterized, first of all, by proportional elections to the legislature, elections being regarded as an instrument of influencing policymaking. Thus, in accordance with the proportional vision, the power is dispersed and all political parties are proportionally represented in parliament, which means that all groups in the society will exert an influence on the policymaking, at all levels. In contrast, a majoritarian democracy entails the use of a majoritarian voting system and the concentration of power in the hands of the incumbent government. Hence, the opposition is kept out from policymaking and the incumbents are left alone with the responsibility of governing, which facilitates accountability and mandate. In this context, voters control, rather than influence, the policymaking, holding the government accountable for its decisions.

The choice of an electoral system is very important, given the consequences it has on the strategies of political parties and on the electoral behaviour. As it was stated, an “electoral system is closely linked to democracy, because it expresses its values, thereby constituting an indicator of the democratic nature of society, and it also contributes to strengthening democracy”¹⁹. Unfortunately, the election of a particular voting system is dictated more by partisan interests and political opportunism than by the principles governing electoral equity. This fact was also pointed out by Jean Cotteret and Claude Emeri who asserted that: “despite the fact that electoral laws contain many figures and technical expressions, they cannot be appreciated outside the political context in which they will be applied. They are elaborated by existing parliaments and rather than equity and fairness, the today elected officials are more concerned about their election, on the day of tomorrow”²⁰.

Considering these aspects, I will analyse the arguments and counter-arguments invoked by the supporters of majoritarian electoral systems and of those who promote proportional representation.

18 Powell, G. B. Jr., *Elections as instruments of democracy- Majoritarian and Proportional Visions*, London, Yale University Press, New Haven, 2000.

19 Masclet, J. Cl., *Le droit des elections politiques*, Paris, P.U.F., 1992, p. 6.

20 Cotteret, J. M., Emeri, C., *Les systemes electoraux*, Paris, Presses Universitaires de France, 1988.

Stability and Government Accountability

The main argument in favour of majoritarian voting systems is that the outcome of the election is a stable and consistent parliamentary majority that reflects on the effectiveness of governance. This effect is even more pronounced if there is a two-party system, because the winning party's electoral success is enhanced by the majority vote, as it receives a much larger number of seats compared to the percentage of the votes it obtains. Thus, the stronger party wins an absolute majority of seats with a simple majority of votes. It is argued that a government which relies on a parliamentary majority is not only efficient, but also more responsible for the decisions it makes, given that a small change in the electoral preferences of citizens may result in the loss of future elections. So, whereas during its term the government receives all the necessary support in order to accomplish its political program, at the end of the mandate, if its decisions were not consistent with the interests and preferences of the voters, the latter can easily sanction the incumbent government. This advantage of the majoritarian electoral systems was placed in opposition to the effects of proportional representation, which generally leads to the creation of a governing coalition which is not characterized by the same degree of stability and durability.

However, as shown in the electoral literature²¹, there are many examples that contradict these ideas, such as Spain and Japan who had a single party government, although they practiced modified versions of proportional representation, or Germany and Denmark, where we find stable and lasting governing coalitions. Thus, government stability is determined not only by a certain electoral formula, but also by other factors equally important, such as the stability and discipline within each political party, the inclusion of minority interests by the existent parties and also by the government, and the willingness of political parties (especially when they have different positions on the political spectrum) to reach a compromise for the sake of a good governance.

It is true that proportional representation does not favour the formation of a coherent parliamentary majority, but this does not necessarily amount to government instability. Furthermore, a coalition government is not necessarily inferior to a single party government and doesn't lead to conflictive and blocked governance, in all circumstances. As Sartori alleges, the ability of a coalition government to effectively govern depends a great deal on the overall polarization of the political system²². Thus, in a strongly polarized society, the coalitions will be heterogeneous and the governing parties will find it difficult to cooperate with each other. On the contrary, in a relatively non polarized society, the coalitions will be homogeneous and due to their loosely defined ideologies, the political parties will easily reach an agreement. Still, in order to avoid excessive political fragmentation of the parliament and therefore instability, the states that practice an electoral system based on proportional representation have established electoral thresholds. Even though electoral thresholds diminish the proportionality of an electoral system, they represent, as long as they are not too high, an efficient mechanism to prevent an excessive fragmentation of the party system.

21 Hix, S., Johnston, R. and McLean, I., "*Chosing an electoral system. A research report prepared for the British Academy*", British Academy Policy Centre, March- 2010, p. 17.

22 Sartori, G., *Ingegneria constiutzionale comparata*, Bologna, Il Mulino, 2004, p.74.

An important plus for proportional representation is the fact that it reduces the number of wasted votes, as all votes are taken into consideration and also leads to a fairer ratio between the percentage of votes obtained by the candidates and the percentage of assigned seats. Therefore, even though sometimes generates a mosaic of parliamentary parties, proportional representation has a series of advantages that largely compensate for its deficiencies and which bring it closer to the ideal of electoral equity.

It is incontestable that majoritarian systems are simpler and more easily understood by voters than the various types of proportional representation, but, in my opinion, these qualities do not represent sufficient arguments to justify opting for such a system. In the following section, I will address the virtues of proportional representation and, in the same time, the reasons why it is regarded as being more equitable than majority voting systems.

Representativeness and legitimacy

The main quality invoked by the supporters of proportional representation is that it tends towards electoral justice as it allows representation of all currents of opinion and ensures the minority representation in parliament. Thus, proportional representation realizes a “radiography” of the political physiognomy of a state, reflecting the various trends and opinions existing in society, which represents one of the functions of elections. Showing his support for proportional representation, Joseph Barthélémy claimed that “the principle of proportionality responds, consequently, to an elementary sense of justice, to a fundamental need for loyalty and truth. There will come a day when we consider the proportionality principle as important as the principle of universal suffrage”²³. By ensuring the representation of most citizens’ preferences, the electoral systems based on proportional representation lead to the formation of a parliament with a higher degree of representativeness than in the case of majoritarian voting systems. Increasing the representativeness of parliament implicitly results in enhancing its legitimacy.

As I argued in the previous section, the representation of national minorities is of particular importance because it also influences the legitimacy of parliament. Unlike the majoritarian voting systems, especially plurality voting (the winner-takes-all), proportional representation favours minority representation and also the representation of minor parties. In the single-member district majority systems, the geographic concentration of the voters belonging to national minorities is crucial for the outcome of the election. In contrast, in the case of proportional representation, when the district magnitude is high, the results of the election will be more proportional and more equitable. As J. S. Mill argued, nonproportional counting as occurs in majoritarian systems is a violation of quantitative equity, whereas proportional representation “secures a representation, in proportion to numbers, of every division of the electoral body: not two great parties alone”²⁴. Consequently, proportional representation, with all its variants is more favorable to the representation of minority voices. However, even within the different forms of proportional representation, there are large discrepancies regarding the degree to which the representation of small parties is encouraged. The most equitable of all proportional

23 Barthélémy, J., *L'organisation du suffrage et l'expérience belge*, Giard et Brière, 1922, p. 530, apud. Gilia, C., “Reformarea sistemului electoral românesc. Consideratii privind noile reglementări în materie electorală”, Bucharest, Studii de Drept Românesc, an 20 (53), nr. 3–4, p. 291–308, iulie–decembrie 2008, p. 304.

24 Mill, J. S., *Considerations on representative government*, in *On Liberty and Other Essays*, ed. J. Gray, pp. 205–470. Oxford, UK: Oxford Univ. Press, 1991, p. 310, apud. Nadia Urbinati and Mark E. Warren, *op. cit.*, p. 395.

systems is considered by some scholars to be Sainte-Laguë because is the most appropriate method for the allocation of seats within the geographical units, as it does not disadvantage small administrative units²⁵. Others, like Arend Lijphart²⁶, believe that the electoral formula which renders the most proportional results is the largest remainders method using the Hare quota. In Lijphart's conception, the modified Sainte-Laguë represents an intermediate category and d' Hondt is the least proportional system, because it favours larger parties. As for me, I subscribe to the first opinion because despite the fact that the largest remainders with the Hare quota tends to be slightly more generous to less popular parties, it can also lead to paradoxes (like the Alabama paradox), violating one of the fundamental qualities of fair electoral system, namely monotonicity.

Another issue that was pointed out in the electoral theory is that proportional representation tends to strengthen national unity (or rather national uniformity), while majoritarian systems exacerbate local differences²⁷. The consequences of this phenomenon are fortunate or unfortunate depending on the particularities of each country. So, whereas in France, proportional representation deepened the tendency towards centralization and uniformity, which was unfortunate, in Belgium it mitigated the rivalry between Flemings and Walloons²⁸, avoiding the appearance of two parties with an autonomist nature. In the USA, majority voting unfortunately strengthened the opposition between North and South.

Besides the fact that it ensures the representation of the full range of citizens' political preferences, proportional representation leads to a fairer ratio between the percentage of votes obtained by the parties and the percentage of seats they win, which constitutes, as I have asserted in the previous section, one of the criteria for assessing the equity of an electoral system. Furthermore, unlike the two-round runoff voting, it avoids the "electoral kitchen" and the false alliances between the two rounds. It is true that the fairness of proportional representation is diminished by setting electoral thresholds, but as I stated before, thresholds are necessary in order to avoid an excessive fragmentation of the political scene. In their absence, the consequences could be disastrous, the Weimar Republic being a clear example in this respect. However, in a judgment delivered on 9 November 2011 (BVC 4/10, 2 REB 6/10, 2 REB 8/10), the German Federal Constitutional Court ruled that the legal provision setting a threshold of 5% to obtain mandates, which was applied for the 2009 European Parliament elections, violates the principle of equal suffrage and the principle of equal opportunities for all political parties²⁹. The same legal provision was subject to constitutional review in 1979, when the Court held that the imposition of 5% threshold is consistent with the fundamental law as it is necessary and appropriate to avoid fragmentation of the European Parliament in a large number of parties.

In the 2011 decision, the Court emphasized the importance and the increased prerogatives of Parliament in the European institutional framework and also the imperative that every vote has the same weight on the outcome of elections. For these reasons, the Court considered that the 5% threshold entails the waste of votes cast for parties that have not obtained the minimum percentage of votes, those voters having no influence on the

25 Gilia, C., *Sisteme si proceduri electorale*, Bucharest, Editura C. H. Beck, 2007, p. 88.

26 See Farrell, D. M., *Electoral Systems. A comparative introduction-2nd Edition*, London, Palgrave Macmillan, 2011, p.73.

27 Duverger, Maurice, *Les partis politiques*, Paris, Librairie Armand Colin, 1976, p. 503.

28 *Ibidem*.

29 Reflets no. 2/2011, Brief information on legal developments of Community interest, Library, Documentation and Research Directorate; <http://www.juradmin.eu/en/reflets/pdf/Reflets%202011%20No%202.pdf>. For the content of the decision, consult www.bundesverfassungsgericht.de/entscheidungen/cs20111109_2bvc000410.html

electoral process, and it also implies a violation of the principle of equal opportunities for political parties. Moreover, the Court held that the violation of these principles cannot be justified by the general and abstract argument that the large number of political parties would prevent the shaping of a political will of the European Parliament. In the Court's view, the large number of existing parties (at the time, over 160) in the European Parliament doesn't affect the proper functioning of the institution, but is consistent with its specific character, especially considering the important role of political groups. In addition, the Court stated that the high number of political parties has not generated the inability of political groups to reach an agreement and that, anyway, the difficulty of creating a majority is not a strong enough reason to violate the principles of equal suffrage and equal opportunities. What is interesting in the Court's rationale is that, when comparing the threshold set for the European elections with the electoral threshold provided for the national elections (5%), it assesses that there is a significant difference between the two types of elections, whereas the European Parliament doesn't have to designate a government that needs the support of a stable majority. The Court's argumentation seems somewhat contradictory since it claims that for national elections the diminishing of electoral equity is justified in order to ensure a certain degree of stability and efficiency, while for European elections the need to create a majority doesn't have the same importance. In the invoked decision, there were two separate opinions of judges Di Fabio and Mellinshoff, who appreciated that the 5% threshold is complementary to the electoral system based on proportional representation, any violation of the principle of equal suffrage being justified. Moreover, they argued that the fundamental law doesn't impose any type of electoral system, which means that even a majoritarian system could be adopted, despite the fact that it would affect to a larger extent the principle of equal suffrage.

In my opinion, even though electoral equity should guide the designing of an electoral system, the setting of a threshold it is necessary to guarantee a certain level of coherence in the legislative assembly. Usually, the electoral thresholds vary from 1% to 8%, being 3% (Spain), 5% (Germany and Romania) or 8% (Liechtenstein). The thresholds should be at a reasonable level so that they don't reduce drastically the proportionality of the system. In practice, it was proved that electoral thresholds can generate a level of disproportionality as high as the majoritarian systems, as happened in Romania's parliamentary elections, in 2000, when the disproportionality index was over 20%, or in Bulgaria, where a 4% threshold caused the loss of almost a quarter of the votes cast (24,9%).³⁰ Furthermore, the electoral thresholds may impede the minority representation, which is why some states have adopted various mechanisms to combat this phenomenon, either by establishing a fixed quota (the case of the Flemish minority in the regional parliament, in Bruxelles) or by the procedure of reserved seats if the electoral threshold is not reached, as in Romania.

Considering all these aspects, it can be assessed that even though proportional representation is closer to the ideal of electoral equity, has its own deficiencies. Dividing too much the representative assembly, it diminishes its efficiency, leaving the government without a strong support and unable to act promptly.³¹ Plus, it doesn't determine the emergence of a true general will and it confers far too much power to political parties, who establish the order of the candidates in the case of list voting systems.

³⁰ Centru de resurse pentru Democratie al Asociației Pro Democratia, *25+2 modele electorale*, Bucharest, 2006, p. 7.

³¹ Dănișor, D. C. , *Drept Constitutional si Institutii politice*, Craiova, Editura Sitech, 2006, p. 388.

Choosing between a majoritarian system and a form of proportional representation ultimately equals opting for government stability and efficiency or for a more representative parliament and a fairer seat allocation. Although, I don't deny the importance of an effective and strong government for the good functioning of society, I strongly believe that electoral equity shouldn't be sacrificed in the name of good governance.

The impact of electoral systems on the psychological freedom of voters

As stated above, the psychological freedom of voters when casting their ballots is one of the aspects that should be taken into account when analysing the equity of an electoral system. The influence of electoral systems on voting behaviour has been the subject of many studies, which resulted in the enunciation of two main ideas, namely that majoritarian systems encourage strategic voting and proportional representation gives voters greater psychological freedom. Thus, the single round majority system determine voters of small parties to vote strategically by choosing between two mutually exclusive political trends, because they are aware of the fact that the parties they prefer have little chance to win the electoral competition. Therefore, in order not to waste their votes, the electors prefer to vote for one of the strongest parties, the vote being given mostly by virtue aversion towards the political opponents of the party they support. So, in these circumstances, the vote acquires negative valences. Because strategic voting doesn't reflect a political belief, there is a transfer of the manifestation of political nuances to the other associative structures of civil society, outside political parties, namely pressure groups³². The psychological impact of electoral system also reflects upon the level of polarization of the society, being proved that majoritarian systems favour the polarization of the electorate and causes the diminishing of the number of parties participating in elections³³.

In the context of two-round runoff voting, voter psychology is slightly different, as their freedom of choice is higher. In the first round, electors vote for their favourite candidate, even if they know he has no real chance to win, their vote being positive, communicative. The first round can be, therefore, a good predictor of a country's political physiognomy. Between the two rounds, various agreements may occur between political parties with similar doctrines, which will decisively influence voting behaviour. Consequently, if in the first round the voters enjoy a large freedom of choice, in the second round their psychological freedom is significantly reduced, as they may find themselves forced to vote strategically. Thus, if the candidates they prefer don't manage to get into the second round, the voters will have to vote either for the candidate who is closer to their political views, or for the candidate who stands more chances to prevent a candidate they resent to win the election. One of the supporters of the two-round system is Giovanni Sartori, who considers³⁴ that this system confers the voters not only a second chance to make a choice, but also the opportunity to make a rational choice. In addition, Sartori argues that the two round voting system tempers the political scene by determining the political parties to reach rational compromises after the first round of voting. However, as the same author states³⁵, the two round system punishes the ideological politics and rewards the pragmatic politics.

32 Nica, E. M., *Drept electoral*, Craiova, Editura Sitech, 2010, p. 220.

33 See the analysis of Andre Blais and R. K. Carty regarding the mechanical and psychological factors of electoral systems as they were defined by Maurice Duverger, in *The Psychological Impact of Electoral Laws: Measuring Duverger's Elusive Factor*, British Journal of Political Science, Vol. 21, No. 1 (Jan., 1991), pp. 79-93.

34 Sartori, G., *op.cit.*, p.79.

35 *Ibidem*.

The greatest drawback of this majoritarian system is that it can cause a distortion of the popular vote³⁶, because the transactions and the negotiations sometimes take place far away from the voters' eyes, the latter voting unwittingly.

Unlike the majoritarian systems, proportional representation provides voters with a greater psychological freedom, because the voters are aware of the fact that is more likely to be represented in parliament by the party they prefer. It is true that also in the context of proportional representation, if a certain electoral threshold is required, the vote may have a strategic character for the supporters of the parties who fail to pass the threshold. Moreover, opponents of proportional representation argue that in the case of list voting system, the freedom of choice is rather limited, depending on the list drawn up by the party leaders. I don't contest the drastic limitation of voters' psychological freedom when the lists are blocked, but there are several variants of proportional representation that don't have this effect, but rather extend citizens' freedom of choice. Of all the forms of proportional representation, the most equitable in terms of psychological freedom of the electorate is, in my opinion, the single transferable vote, which respects the individual candidacies and encourages parties to reveal any alliances or arrangements between them. The advantage of this type of voting consists primarily in that it allows the voter to choose his representative and, simultaneously, assures him that his vote for a certain candidate will not benefit another candidate of the same party, whom he doesn't want. Besides, the single transferable vote gives voters the opportunity to express a "cross vote", by selecting candidates who belong to different political parties, but have common views on certain issues. Proportional representation is promoted by Arend Lijphart³⁷ too, who asserts that it stimulates turnout precisely because it offers more options from which to choose and largely eliminates the problem of wasted votes.

All in all, it appears that proportional representation gives voters greater freedom than majoritarian systems, providing them with an opportunity to express their right to vote based on their real political preferences and not depending on the party's chances to win the electoral battle. One must, nevertheless, consider that besides the electoral system, there are other factors that influence voting behaviour, such as the education level, the economic situation, the perception of voters about the incumbent government, the attitude and level of interest in politics, the level of media freedom. Therefore, the impact of electoral systems on voting behaviour should not be overestimated, but should be analysed according to the particularities of the political system of each country.

Conclusions

The design of the electoral system is essential for the formation and development of modern democracies. Both proportional representation and majoritarian systems have their merits, but also deficiencies that draw them away from electoral equity. In an attempt to reconcile these two different visions about elections, G. B. Powell suggests that "given the benefits that each model confers, it would be desirable to succeed with both, rather than trading one off against the other"³⁸. This desire to combine the qualities of proportional

36 Southwell, P. L., "Fairness, governability, and legitimacy: The debate over electoral systems in France, *Journal of Political and Military Sociology*", 1997; 25, 2 (pp. 163-185); ProQuest Central, p. 164

37 Lijphart, A., "Unequal Participation: Democracy's Unresolved Dilemma", *American Political Science Review* 91(1), 1997, p. 7.

38 Powell, G. B., *op. cit.*, p. 235.

representation and majority voting and eliminate their weaknesses led to the emergence of mixed electoral systems. Thus, there are various types of mixed systems which combine majoritarian elements with proportional ones, aiming to build a fair and operative electoral system. The intention was noble, but the result wasn't always the intended one. J. Cotteret and C. Emeri described the mixed systems in a very suggestive manner, stating that³⁹ "the legislator acts like a bartender when preparing a cocktail: a finger of proportional representation and two of majority voting or vice versa. In both cases, the inventor is often more than satisfied with its mix than the consumer-voter". Unfortunately, despite the well-intentioned objectives that were behind the design of mixed systems, they have been criticized for their complexity and difficulty, especially because they are more difficult to understand by voters.

One of the most praised mixed electoral systems is the German electoral system, which represents an attempt to combine "the best of both worlds": a true mirror of the opinion of the people is "adopted" from the system of proportional representation and single-member districts are "borrowed" from the majority system⁴⁰. The German electoral system is a mixed-member proportional one, which combines proportional representation with the majority system in order to compensate for any disproportionality in representation resulting from the single-member district portion of the election. For this reason, this system was also called "balanced mixed system" or "personalized proportional representation". Despite its merits, the German electoral system has been criticized, because it is considered that due to the fact that electors have two votes, nothing prevents political parties not to officially present candidates in the single member constituencies, allowing the latter to candidate as independents or supported by an artificial party, which would give them priority in obtaining direct mandates and also, would enable them to benefit from the maximum compensation⁴¹. I agree that such a practice might occur, but weighing the pros and cons of German electoral system, I think it illustrates a harmonious combination of the two largest systems, being the closest version to the ideal of electoral equity. Besides, even the author that highlights the potential harmful effects of the German system, admits that such a political manoeuvring has never been used in Germany and recognizes the seductive character of the German electoral system for those who want to combine elements of proportional representation with majoritarian elements.

In conclusion, the answer to the question which is the most equitable electoral system can be neither simple nor categorical, because it depends on a number of factors, such as the socio-political context, the degree of democratization, the stability of political parties and the existence of national minorities. Thus, in countries which are divided by the existence of deeply rooted ethnic or religious cleavages, even though proportional representation seems to be more appropriate due to its inclusive nature, it could have the opposite effect, reinforcing these cleavages, instead of attenuating them. In strongly centralized states, a majoritarian voting system may have an undesirable effect too, as it may generate governments' alienation from the electorate, because knowing that it has the support of a stable parliamentary majority, the government won't need to appeal to public consultations or debates in order to implement its political programs.

39 Cotteret, J.-M., Emeri, C., *op.cit.*, p. 73-74.

40 Shugart, M.S., Wattenberg, M.P., *Mixed-Member Electoral Systems, The Best of Both Worlds?*, Oxford University Press 2003, p. 270 and the following.

41 Martin, P., *op. cit.*, p. 87.

Although each state enjoys a wide margin of appreciation in choosing its electoral system, as it was enshrined by the European Court of Human Rights (ECHR), depending on their political, historical, socioeconomic particularities, all democratic constitutions contain either expressis verbis, or implicitly a set of binding principles which are relevant to political representation and should serve as guidelines for designing the electoral system. Even the ECHR stated that states must harmonize the objectives of electoral systems, which are sometimes scarcely compatible with each other: on the one hand, to reflect fairly faithfully the opinions of the people, and on the other, to channel currents of thought so as to promote the emergence of a sufficiently clear and coherent political will. In these circumstances, the phrase "conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" implies essentially - apart from freedom of expression (already protected under Article 10 of the Convention) (art. 10) – the principle of equality of treatment of all citizens in the exercise of their right to vote and their right to stand for election⁴².

Consequently, the legislator must seriously analyse the political and constitutional system as a whole and consider all the principles essential for any authentic democracy, when designing the electoral system. These principles are the principle of equal suffrage, principle of equal opportunities of political parties, political pluralism and free expression of the popular will. Only an electoral system that respects these constitutional principles and also takes into account the historical, political, economic and social realities within the state, can be considered to tend towards electoral equity.

42 *Mathieu-Mohin and Clerfayt versus Belgium* (March, 2nd, 1987) 10 EHRR 1, par. 54.