

ABBREVIATIONS

J.K. = Jaji Kiongozi (Prencipal Judge)

LRT = Law Reports of Tanzania

N.A. = National Assembly

TLR = Tanzania Law Reports.

MERITS AND DEMERITS OF ALTERNATIVE ELECTORAL SYSTEMS

By

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INTRODUCTION

Modern liberal democracies are representative governments whose main feature is "open and regular competition for offices", and "it is through the electoral system that such competition is conducted and by it that its basic outcome is decided."¹ Thus electoral systems and electoral procedures may have significant effects on democracy (e.g. who participates and how), the functioning of the government (e.g. the extent of accountability to the electorate), parliament-electorate relations (e.g. the extent of representation and representativeness), etc.

By deciding who gets to be represented, electoral systems do affect the chances and fortunes of competing parties and may in the long-run also determine the number of parties in the political arena. Electoral systems also affect the character of party organizations and the modality of political competition.

In much of pre-war Europe, details of electoral arrangements were contained in the national constitutions. However, many post-war constitutions simply provide broad guidelines and leave the particulars of electoral arrangements to ordinary law. This flexibility permits a certain amount of experimentation with electoral procedure over a period of time. Most of the reconstructed West European democracies favoured this method, and have had numerous electoral laws since their post-war reconstruction.² However, the flexibility may be abused by those who choose to tinker with election laws for selfish motives (e.g. to win a particular election).³

In this discussion we shall focus on three electoral systems, namely (1) the plurality system, (2) the proportional representation (PR) system, and (3) various

mixed systems. Much has been written on these systems, and therefore our interest will be to focus on the main features which constitute their merits or demerits.

I. THE PLURALITY SYSTEM

The plurality system has four other popular names: the single-member constituency system, the simple or relative majority system, the "first-past-the-post" system, and the "winner-takes-all" system. In a typical plurality system (e.g. U.K. and U.S.), the country is divided into a number of constituencies, each electing a single representative. The candidate receiving most votes wins.

The plurality system (unlike the PR system) has its origins in pre-democratic days when representation focused on estates, economic corporations, universities, specific localities, etc., rather than numerical agglomeration of individuals. Hence the idea of single-member constituency. In Britain, for a long time until the Reforms of 1832, constituencies consisting of virtually depleted communities (Rotten Boroughs) continued to send representatives to the Parliament under the influence of the aristocrats. Democratization in Britain from 1832 onwards removed many anomalies of the old representation system but left the feudal idea of single-member constituency representation intact, and this system was exported to many countries of the world, including Tanzania, via colonialism.

The 'pure' plurality system can be - and has been - modified to meet particular needs of a country. Variations may, for example, involved constituencies: replacing the single-member with multi-member constituencies. For example, in the U.S., states are multi-member constituencies for purposes of election to the senate.⁴ The ballot can also be modified by switching from the single ballot to a multi-ballot system. For example, most of the elections under the French Third Republic used the two-ballot or "run-off" method: if no candidate in a constituency received an absolute majority of the votes in the original election, a second balloting took place in that constituency a week later and in the "run'off" election a mere plurality of votes was needed to win. These are improvements over the simple majority, plurality system about which we shall have more under the mixed system.

The merits often attributed to the plurality electoral system include the following:

- It has a moderating effect on politics. It promotes moderate political parties (e.g. Britain) which are typically mass or "catch-all" parties⁵ seeking to capture even the undecided voters. Parties become *deideologized* and *deradicalized* so as to accommodate groups with different shades of opinion.
- It promotes party integration and centralized organization.
- It limits party proliferation, with a tendency towards the two-party system (but this depends on prevailing social conditions).
- The single-member constituency system gives the electors a greater hold over their representative, and established more intimate relationship between the parliament and the electorate.
- It leads to stable government because the winning party in most cases emerges with a clear majority of seats (though not of votes).

We should note that these merits or advantages have not been fully tested or proved outside the Anglo-American system, and therefore one has to be cautious about them. They however seem to be logical consequences of a 'pure' plurality system.

The Demerits of the plurality system include the following:

- It often produces a discrepancy between votes and seats of the winning party, leading to "minority governments" exercising authority over a majority of citizens who did not elect them. In Britain for example, between 1910 and 1951 only two governments were backed by more than 50% of the votes cast in a general election.⁶

- It encourages the electors to focus on party rather than programmes of individual candidates.
- Voters tend to rubber stamp choices of the parties which adopt candidates, (except where independent candidates are concerned).
- The first-past-the-post system makes elections a gamble and a zero-sum affair. A few votes determine whether you emerge as a total gainer or a total loser.

II. THE PROPORTIONAL REPRESENTATION SYSTEM

Under the proportional representation (PR) system, seats are apportioned to parties in proportion to the number of their supporters in the electorate as demonstrated in voting. In other words, the number of votes a party gets is taken as a proxy for the level of support the party has in the country. Theoretically, it would be possible for the whole country to be treated as a single constituency and parliamentary seats allocated in strict proportion to national electoral support demonstrated in an election. However, it is more common to divide up the country into large multi-member districts-cum-constituencies and restrict the operation of the PR system to these rather than conducting the election without constituencies at all.

Typically, a country is divided into multi-member constituencies in order to ensure that each party shall obtain its fair share. A 'quota' which entitles a party to a seat is established by dividing the total votes cast by the number of seats allotted to each constituency -according to population.

The idea of the PR system was born out of a search for the democratic ideal of representing all shades of opinion, i.e. no vote should be wasted by not being represented. The example often quoted of a near-pure PR system is that practiced in Germany during the Weimar Republic (under the Weimar Constitution 1919-33). Under the Weimar system, Germany was divided into 30 electoral constituencies, and in each of them every participating party was awarded one seat for every 60,000 votes it received. A method had to be devised to avoid wasting votes totalling less than 60,000 in the basic local constituency.

For example, if party A got 340,000 votes in constituency X, it would receive five seats for that constituency, but 40,000 votes would remain unrepresented and therefore wasted. To minimize wastage, such remaining votes were transferred to other electoral districts where again each party received one seat for every 60,000 votes. In the end, all district remainders for each party were totalled at the national level, and again one seat being allotted for every 60,000 votes. This system, which had very few unrepresented votes, was interrupted by Hitler's takeover in 1933.

The PR system has many variations. With regard to the size of electoral district, most are large, but there are also examples of small ones as in the single-member constituency systems.

As for the voting system, in some cases one votes only for a party-compiled list of candidates, not for individual candidates, with those heading the list receiving seats allotted to their party. In other cases, voters are allowed to express preference among candidates on a single list; and in yet another system, electors may cross-vote, i.e. split their votes among candidates on different lists.

Methods of allocating seats to parties also vary. There is the quota system best illustrated by the Weimar model which is by far the simplest but under it the size of parliament changes from election to election, depending on the number of voters coming forth. An alternative method is that of allocating a fixed number of parliamentary seats using the so-called "highest average" and "highest remainder" methods.⁷ A rather complicated system is the Hare system which we shall elaborate under the mixed system.

Qualification for a seat also varies. Theoretically, all participating parties could be allocated seats (according to votes) without stipulating any pre-conditions. In practice, however, most countries using the PR system stipulate a minimum proportion of votes which must be earned by a party (e.g. 5%) to be able to participate in the quota system.

The Merits of the Proportional Representation system were pointed out by John Stuart Mill as early as 1961, and have ever since been elaborated by many other advocates of the system. The following have received the most attention:

- PR lessens the possibility of the dictatorship of the majority over minorities by assuring the minorities (or small parties) of some sort of representation. Mill wanted to make the parliament a faithful image of the nation, rather than distorting representation in favour of the majority by forcing minorities to waste their votes on the constituency level. He wanted to ensure that minorities and majorities in Parliament actually reflected minorities and majorities in the country.
- By making the government more representative, the PR system also makes the government more effective, particularly in terms of accountability to the public. In Mill's argument, what promotes numerical democracy (i.e. wider participation) also promotes good government.
- PR makes opposition in parliament more constructive and thereby improves the legislative product.

The Demerits of the PR system pointed out by various analysts include the following:

- Some argue that by attempting to make democracy more representative, the PR system lessens its chances of effective functioning or survival. PR leads to over-mobilization of the people which, in turn, may lead to "political decay."⁹
- PR leads to incapacitation of democracy's decision-making process through splintering of political parties into a larger number of organizations. Splintering occurs because parties with different political views do not have to co-operate to ensure their representation in parliament.
- PR radicalizes political parties, making them more dogmatic and "ideological", and therefore incapable of compromise, thus impeding integration at the local-community and parliamentary levels. Such parties are incapable of mobilizing marginal or undecided/uncommitted voters.

- PR often leads to unstable coalition governments of centre parties, since left and right parties tend to remain doctrinaire or firmly attached to their particularist identities or social constituencies.
- Under PR, parties can easily become organs of special interests in society rather than brokers of a variety of interests. One of the results is a parliament split into a large number of groupings, more concerned with the pursuit of vested interests than with their integration and less capable of the pragmatic compromise needed to form stable coalition and reach positive decisions.
- Ministerial instability and decisional inefficiency may result due to the dogmatic assertion of principles by parties in parliament or ruling coalition. Democracy loses under such circumstances.

It should be noted, again that these demerits and merits of the PR system, as those of the plurality system, have not been fully tested and proved in the field. While some criticisms have been upheld, others have been disproved by practice. For example, in Europe there are countries which have used the PR system for a long time and have remained stable (e.g. the Scandinavia / Nordic region, Switzerland and Belgium). In the last two countries, the plurality system had been abandoned because it suppressed minorities and created tensions which threatened the survival of the polity). It is also debatable whether party fragmentation in Italy, Germany and France can be attributed to the PR system, because fragmentation in these countries pre-dates the introduction of the PR system.

III. MIXED SYSTEMS

Mixed systems refer to those electoral arrangements which have modified the plurality and PR systems so as to achieve a more acceptable compromise. We shall only mention the more interesting innovations, especially those which are currently being practically employed.

The German Dual System

If the Weimar Republic (1919-32) had a pure PR system, the system adopted by the German Federal Republic after 1946 was a dual electoral system, in which plurality features in some aspects (e.g. the way campaigns are conducted) and PR features in others (e.g. the actual allocation of seats).

Under the German dual electoral system, elections are conducted as if they were pure plurality elections: half the parliamentary seats are given to individuals who win single-member constituency elections, so that elections tend to revolve around persons rather than party lists. The other half are allotted to parties on PR basis on a certain minimum performance (e.g. in the case of FRG, upon getting 5% of the total votes cast or winning three single member seats). This system ensured party integration because no splinter group could hope to be represented at the federal level.

The method can be modified so that the voter focuses on candidates as well as parties. The German 1953 parliamentary election, for example, permitted each elector to exercise two votes, the first for a particular candidate in his constituency and the second for a party. The idea was to enable the elector to vote for a candidate of his choice even if he did not favour the candidate's party but in practice it made little difference. For example, the very popular Chancellor Adenauer received very few more votes than did his party in the same constituency.¹⁰

The Second Ballot Method

The idea behind this method (also called the exhaustive ballot method) is that the winning candidates should have absolute majority support. It needs a series of exhaustive ballots among all the candidates except the bottom ones (2 or more can be eliminated together if their combined votes are fewer than those of the candidate next above). In Germany from 1870 to 1913 the second ballot was restricted to the two candidates leading on the first ballot. This is a modification of the plurality system and has been tried by many European countries. It has, however, been abandoned in most places except for some French elections and trade union elections in Britain.¹¹ The method can be cumbersome, and if much time passes before the second ballot, small parties are likely to trade their support with the larger ones.

The Alternative Vote Method

This method avoids the cumbersomeness of the second ballot method by taking the successive votes in a single operation - i.e., by asking the voter to indicate, on his original and only ballot paper, how he would vote if his favourite candidate were defeated and he had to choose again among the remaining candidates. He/She therefore provides the alternative vote. The method permits the voter to give as many choices as there are candidates, not only two as the name (alternative vote) suggests.

Under the alternative vote system, the elector is in fact ordering the candidates according to his preference (numbering them 1, 2, 3, etc.) The Returning Office first sorts the papers according to which candidate is marked '1'. If at this stage any one candidate has a clear majority of votes (i.e. over 50% of the votes cast in the constituency), he is declared elected. If no candidate has a clear majority, the Returning Officer declares defeated the candidate who is lowest on the poll and transfers the votes of that candidate's supporters to whichever of the remaining candidates they have marked '2'. If there are more than three candidates, it may be necessary to transfer from the candidate then lowest on the poll to the next available preference; and transfers are continued until one candidate gets more votes, than all his remaining opponents combined.¹²

One advantage of the alternative vote over the first-past-the-post system is that "although it does nothing to improve the relation between the votes cast and the total result, it may improve the relation between the votes cast and the real wish of those casting them."¹³ It avoids wastage of votes. The candidates receive votes much more nearly in accord with their true popularity with the electors. Under the system, the independents and small parties may probably get more votes than under the first-past-the-post system.¹⁴

The Single Non-transferable Vote Method

Operating in multi-member constituency systems, the single non-transferable vote method is claimed to achieve superior representativeness than where electors have more votes or where such votes are transferable.

It is the system used by Japan since 1900 and the results are claimed to reflect the wishes of the voters more than those of the Anglo-American plurality system. In Japan the parliament is elected in constituencies returning from 2 to 10 members, depending on their population.¹⁵ An advantage of this method lies in its simplicity and suitability for use in an illiterate electorate. The candidates can be represented on the ballot paper by symbols.

Drawbacks include the following:

- Parties tend to fear to nominate as many candidates as the country may wish to elect, lest they divide their vote among too many candidates, leading to some or even all to fail.
- Voters may also resent the limitation to one choice out of so many (sometimes over a dozen) candidates.¹⁶

The Single Transferable Vote Method

This method was invented by Thomas Hare in Britain in 1857 and, independently, by Andrea in Denmark two years later. The rather complicated Hare system has three main aspects:¹⁷

1. Voters indicate their order of preference among as many candidates as they wish either on a national or a large geographic area.
2. A quota of votes required for election is established by dividing the number of voters by the number of parliament seats.
3. Seats are awarded to candidates who achieve the quota by counting, to begin with, only first choices, then second choices, then third, and so on, until a full complement of legislators is elected.

The procedure is complicated but can be clarified further. The preference is transferable to the next (less) preferred candidate if the most preferred has either too little support to win or enough support to win without an additional vote. The transfer continues until all the votes are effectively used, i.e., they have not been wasted on a losing or a winning candidate.¹⁸

Advocates of the single transferable vote system are concerned more with giving greater freedom to the voter than with electoral fortunes of the parties. The object is to enable each citizens to take part as freely and as fully as possible in the selection of his own representative, in the belief that this is the essence of true democracy. Among other countries, Switzerland and Finland have modified the PR system based on party lists towards this popular direction.

FOOTNOTES

1. Eckstein, Harry, 1963, "The Impact of Electoral Systems on Representative Government", in Eckstein, Harry and David E. Apter, eds., 1963, *Comparative Politics: A Reader*, p. 247.
2. *Ibid.*, p. 247.
3. Such tinkering happens very often in Third World Countries, but it is not unknown in the older democracies.
4. In Britain, the method of multi-member constituencies with each elector having one vote for every seat to be filled is used for local government elections, especially in the Metropolitan Boroughs. For elaboration, see Lakeman, Enid and James D. Lambert, 1959, *Voting in Democracies: A Study of Majority and Proportional Electoral Systems*, London, Faber and Faber.
5. For a discussion of "catch-all" parties, see M. Duverger, 1954, *Political Parties, Their Organization and Activity in the Modern State*, London, Methuen.
6. Lakeman and Lambert, *op. cit.*, pp. 34-35.
7. For elaboration, see Eckstein, *op. cit.*, p. 249 and Lakeman and Lambert, *op. cit.*, pp. 85-91.
8. See his book, *Considerations on Representative Government*, 1861, especially Chapter 7.
9. For the argument relating to mobilization and political decay, see Samuel Huntington, 1968 "Political Development and Political Decay," in *World Politics*, Vol. XVII, No. 3 (1965), pp. 386 - 430.
10. Lakeman and Lambert, *op. cit.*, pp. 53-54.
11. *Ibid.*, pp. 54-55.
12. *Ibid.*, p. 65.
13. *Ibid.*, see footnote 1 at p. 96.
14. *Ibid.*, p. 66.
15. *Ibid.*, p. 78
16. *Ibid.*, p. 79
17. As summarized by Eckstein, *op. cit.*, at p. 249.
18. For further details, see Lakeman and Lambert, *op. cit.*, pp. 98-118.

Civil and Political Rights in Tanzania: The Bill of Rights of 1985

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It is my recognition and deep appreciation of the important role played by the judiciary in the enhancement of the freedom and rights of the people. It is through the courts of law that the people can defend their rights whenever they feel, for one reason or the other, that such rights have been violated.

*Ali Hassan Mwinyi*¹.

"If the judiciary cannot come to the aid of a poor citizen when oppressed, then its existence is questionable. We can do without it and perhaps create other institutions for that noble purpose."

*Justice Mwalusanya*².