

## **Designing Electoral Rules and Waiting for an Electoral System to Evolve**

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An electoral system in new democracies comes about in two phases. In a relatively short time the electoral rules are devised and adopted. Then, over many elections, politicians and voters learn how to use these rules within their sociopolitical context. The choice of early electoral rules is a complex process where self-interest of actors explains everything and hence nothing, overshadowed as it is by random events, misperceptions and compromises that bring unintended consequences. Ideally, the electoral rules should be based on quantitative theory tested by worldwide experience and adjusted to local conditions, but our knowledge about the functioning of electoral rules under various circumstances is still very limited, though expanding. Hence the main advice is to keep the electoral rules simple, so that worldwide empirical and analytical knowledge can be used to obtain somewhat predictable outcomes and make informed incremental changes, when needed. Once chosen, the same rules should be kept for at least three elections, so that an electoral *system* has time to develop. To maintain flexibility, electoral rules should be specified in constitutions in as little detail as possible. Estonia's constitution of 1992 offers an example of relatively successful vagueness for parliamentary election rules and problematic excess of detail for election of the figurehead president.

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One cannot design an electoral system. It's almost as chimerical as designing a party system. In systems theory, a system implies division of the world into external and internal. The system has some capacity to restore internal equilibrium when disturbed by external factors. An electoral system comes about in two phases. In a relatively short time the electoral rules are devised and adopted. Then, over many elections, politicians and voters learn how to use these rules within their sociopolitical context.

An electoral *system* emerges when the electoral rules have become embedded in a political culture where actors have acquired reasonable skills in handling the electoral rules for their enlightened self-interest. This includes most actors' long-term interest in preserving minimal stability. Such skills are based on experience. Hence electoral rules can become the containing carapace of an electoral system only when they have been used a fair number of times. If meanwhile the rules are altered, the evolution of a system is delayed.

By such definition, developing an electoral system is part of developing democracy rather than something established at the early stage of democratization. But some electoral rules must be specified very early in the game. One cannot design an electoral system, but one can devise more or less favorable starting points for a stable system to evolve.

Is this distinction between electoral rules and systems nit-picking? Not quite. By talking of design of electoral systems, when thinking of electoral laws, we raise exaggerated expectations. It's close to talking of designing a crime-free society when merely designing criminal laws. In the latter case, most people realize that laws, though needed, are not the entire story. In the case of electoral laws confusion is more likely. Excessive optimism about given electoral laws bringing certain results can quickly flip into excessive disillusionment when, for instance, single member districts with plurality rule (SMP) do not immediately produce a two-party constellation, as predicted by Duverger's rule.

Please note that I said "party constellation" -- not "party system". I see little systematic in the kaleidoscopic party constellations in many new democracies. It takes many years and elections before something reasonably stable evolves, so that we can talk of a party system.

The same considerations apply to the main theme of this conference -- constitutional design. A functioning constitution consists of the written text, plus the layers of interpretations, precedents and tradition added later on. The same written text may lead to different interpretations or may prove completely dysfunctional in some societies. Fortunately, the limits of constitutional design's ability to revamp a polity are widely appreciated.

This paper will address three issues. On what basis are electoral rules actually chosen in new democracies, and what are the consequences? On what basis should they ideally be designed? And in how much detail should the electoral rules be specified in constitutions? Regarding the two first questions -- how electoral rules should be and actually are designed -- I draw from two previous articles (Taagepera 1997, 1998). The third question -- the connection between electoral rules and constitutions -- ties in with the central theme of this conference. The second phase -- waiting for a system to evolve -- does not enter directly. Indirectly, however, the awareness of it colors the entire discussion.

## **How Electoral Rules Are Chosen and What Are the Consequences**

### *How Electoral Rules Are Chosen*

So how are electoral rules chosen in new democracies? Often they are not designed in a harmonic way, as conjured by the word "design". All too frequently they are a patchwork of incongruous compromises. It may look hard-boiled realism to claim that self-interest of the original decision-makers determines the choice. The trouble is that this claim is as non-falsifiable as "Everything happens as God wills it." Such statements retroactively explain every conceivable outcome and hence predict nothing specific. One's perception of one's self-interest is hard to specify even for oneself, much less for others. People decide what is in their interest on varied, conflicting and often fleeting grounds.

The politicians' self-interest cannot be defined solely as winning the next election. This goal can conflict with long-term interests, including preservation of stability. It can conflict with ideological preferences, including advice by foreign advisors belonging to the same philosophical strain. The force of habit and familiar examples from abroad also enter. Which of these will overshadow the others in defining "self-interest"?

Moreover, the means used to achieve one's presumed self-interest can be misinformed and counterproductive. Assume that, for the old regimes in the Soviet-dominated area, winning the next election was overriding all other considerations. Such regimes often preferred keeping the Soviet electoral rules, which favor the largest party, not only by force of habit but also because they expected to be the largest party. It turned out to be a catastrophic misjudgment for them in many countries.

The predominant forces may stick to the rules inherited from preceding political regime either by ignorance of alternatives or by trying to balance rationally the merits of the existing rules against the costs and risks of innovation. Thus most ex-British colonies adopted SMP without realizing that assembly size matters (Taagepera and Shugart 1989:173-174; Lijphart 1990 and 1994:83-88). Under SMP, the effective number of parties tends to be appreciably larger in the large parliament of UK than in the 15-seat assembly of a small island nation like the Seychelles. Instead of a healthy two-party system like in UK, the parliaments in small ex-British nations often ended up with an overly strong largest party and a completely decimated parliamentary opposition even when the votes were close to 50-50. Such was not the intent of the decisionmakers, and in retrospect it hardly served their self-interest by any criteria.

Among the post-Soviet states, Ukraine maintained the Soviet two-round rule the longest -- changing only in 1998 (Birch and Wilson 1999). This rule allows voting against all candidates and yet requires absolute majority. What formally worked with Soviet one-candidate pseudo-elections led to interminable repeats, and some seats in Ukraine remained vacant until the next election. Maybe some clever politicians preferred such an outcome, but I suspect that most decisionmakers were surprised.

The role of random events should not be underestimated. As Nigel Roberts (1987) asks regarding New Zealand: "What would have happened if David Lange had not made an inadvertent pledge during the 1987 election to hold a binding referendum on the question of electoral reform?" Except for this irretrievable slip of tongue, the ball may not have started rolling. If this could happen in stable New Zealand, then how often may it have happened in new democracies that the choice of the initial electoral rules was determined by who happened to be present at what meeting in what mood?

With 20-20 hindsight, one can always harness "self-interest" to perfectly explain away this conglomeration of desire to win, yet follow tradition, avoid rethinking and gathering information, satisfy foreign ideological sponsors, and keep some idealism about future stability, combined with miscalculations and pure random chance.

Forgetting about the mushy notion of self-interest, what do we observe in actual new democracies? Unfortunately, there is a dearth of detailed English-language descriptions of how electoral systems historically emerged in various countries in recent times. (The same applies to histories and analyses of Constitutional Assemblies and their equivalents.) I have described the Estonian vagaries (Taagepera 1997; expanded in Grofman, Mikkel and Taagepera 1999). On this basis, I proposed the following tentative sequence of attitudes, especially regarding input by political scientists.

*Phase 0.* (Applies only to countries where previous non-democratic regime carried out fake elections.) The democratizing elites take the pre-existing electoral rules for granted. They see no cause for change and hence no need for outside advice or information.

*Phase 1.* The democratizing elites feel the need for new electoral rules, because none exist or the ones used for choiceless elections prove unworkable once choice is introduced. Unaware of the variety of electoral rules used by stable democracies, the elites try to reinvent the wheel, grasping at some simple formula that seems the only sensible one. If the variety of rules elsewhere is noticed, they are perceived as unfamiliar, complex, and unsuitable for one's own culture.

*Phase 2.* As homespun electoral rules backfire or more radical reformers replace the early ones, the multitude of options sinks in. Foreign advice is eagerly invited and sometimes overvalued. It may be followed more to the letter than the advisors intended it.

*Phase 3.* Knowledge of various electoral options increases, but confidence in having mastered it all grows even faster. As the united front of reformers fractionalizes, electoral rules become part of political football. Emphasis is on perceived short-term goals, leading to counterproductive results when the relative strengths of groupings change. Foreign professional advice becomes undervalued, unless it agrees with one's momentary tastes. In some countries fractionalization and kaleidoscopic shifts in party constellation bring popular disappointment with electoral rules and possibly democracy itself. Suboptimal strategies by inexperienced actors in a fractionalized field may produce

outcomes at variance with those in stable democracies using similar rules, further reducing credibility of political science advice.

*Phase 4.* A more balanced use of political science advice develops, provided that democracy survives Phase 3, as local academics develop expertise in electoral rules, in tandem with growing practical experience.

In each of these phases it can be said that decisionmakers follow their perception of self-interest -- it's just that this perception changes. It is not clear to what extent the evolution of thought in other newly democratizing countries can be approximated by this Estonian-inspired scheme. A different scheme might work better, or it might turn out that no general pattern can be perceived.

#### *How Electoral Rules Matter and How They Are Evaluated in Young Democracies*

The rules chosen at the beginning of democratization make a difference, but sometimes in unexpected directions, because of unsettled political culture and party constellation. Compromises between various proposals all too often lead to complex rules, but complexity enhances unpredictability and potential for getting the worst of both worlds.

A main decision concerns the balance between governability and representation of minority views. Governability may be promoted by having only two major parties and one-party cabinets, which in turn often result from the SMP rule. Proportional representation (PR) of minority views, on the other hand, is best obtained when using a single nationwide district. One can have both, if political culture spontaneously develops only two parties, as was the case in post-WWII Austria, despite PR electoral rules. Another political culture may miss out on both accounts, as in present-day Russia, which has huge deviations from PR and yet a large number of parties.

Apart from governability-representation balance, many other considerations enter, such as party cohesion and having a personal representative. In new democracies two aspects emerge stronger than in the established ones. One is legitimacy of electoral rules, or rather perception of it. If for whatever reason, right or wrong, these rules are perceived as illegitimate, then democracy is in trouble. The other aspect is cost of elections, both in money and expert labor. New democracies are often strapped for funds and skilled administrators, so that too much of these resources spent on execution of elections may leave gaps elsewhere.

In their *Handbook of Electoral Design*, Andrew Reynolds and Ben Reilly (1997) have presented a dispassionate overview of the various electoral systems and their components throughout the world. They list both the claimed advantages and shortcomings of the various approaches. They stress the issue of the cost of elections -- both in money and perception of legitimacy. Simple rules may be expected to keep the costs down, but what looks simple on the surface may involve costs elsewhere.

For instance, SMP might look like the simplest of all allocation rules, but the initial drawing of electoral boundaries is costly, and so is voter registration, because with SMP the outcome depends very much on *where* a given voter votes. Two-round rules double the cost of ballot papers, polling stations and vote counting. There is also voter fatigue, plus disappointment, if a crowded first round leaves later only a choice between two poorly supported finalists. Multi-seat districts, on the other hand, may be costly in terms of voter education. Voter dissatisfaction may impair stability, if too many ballots are spoiled because of ballot complexity or if the outcomes look mysterious because of a complicated allocation formula.

In an admittedly coarse count by Reynolds and Reilly (1997), the total cost handicap of various rules is the following:

Two Rounds	10
Mixed Member Proportional	9
Parallel	8
STV and Alternative Vote	7
Block Vote	5
Single-Member Plurality	4
Single Non-Transferable Vote	4
List PR	2

Doubts about legitimacy of election results can focus solely on the electoral rules and the political operators specifically held responsible for the purportedly unfair or inappropriate rules. But such doubts can also extend to the entire “political class” or even democracy as such, risking breakdown of democratization.

Understandably, there is an urge to evaluate the rules after the very first elections, but it might be too early. Political culture and party constellation are still in flux. The stable characteristics of the outputs of electoral rules can not yet be measured, because politicians and voters are still learning how to use these rules to their best advantage. There is temptation to alter the electoral rules rather than wait for this learning process to take place. But if rules are continuously altered no such learning can ever occur.

A major criterion for whether electoral rules matter is whether inadequate rules have demonstrably led to collapse of democracy, or at least a severe crisis. Rarely have electoral rules been the only reason in the past, but they have contributed to crisis (see Taagepera 1998).

### **How Electoral Rules Should Be Designed**

Ideally, electoral rules should be designed with enlightened self-interest in mind, making use of all the knowledge that political science can offer. Enlightened self-interest implies taking a long-range view. For instance, a large party cannot expect to remain large at all times, so it would be mistaken to promote rules that give a large seat bonus to

the largest party, just on the basis of one's present popularity. Making use of political science knowledge is a stickier proposition.

### *What Do We Know?*

What do political scientists know that is worth transmitting to designers of electoral rules? We know quite a lot about past experience with electoral rules in democratic countries -- see e.g. Lijphart and Grofman (1984), Grofman and Lijphart (1986), Sartori (1986), Shugart and Carey (1992), Lijphart (1994), Rule and Zimmerman (1994), Nohlen (1996), and Cox (1997), just to limit the list to the most recent 15 years. The question is how to extrapolate from it into future, and to other countries.

One way to proceed is by detailed empirical precedents. However, forty years ago W.J.M. Mackenzie (1957) maintained that "The only thing that can be predicted with certainty about the export of elections is that an electoral *system* [My emphasis -- RT] will not work in the same way in its new settings as in its old." In my terminology, electoral systems cannot be exported -- only electoral rules can. Export of electoral rules to different environments can be expected to lead to different electoral systems. In Harry Eckstein's (1966; 1998) terminology, institutions should be sufficiently congruent with the existing political culture; otherwise they fail or yield unexpected results. This certainly applies to electoral laws.

But it is even worse than that. It is even risky to extrapolate from a country's past experience to the same country's future. David Butler has pointed out how the so-called cube law of elections, after fitting the British elections during the 1950s and 60s, "went sour" in the 1970s, shifting into a square and then a power index 1.5 relationship (Kavanagh 1992:17). This is getting close to the power index 1.0 of perfect PR. To the extent that a heavy impact of swing votes is a precondition for the workings of Duverger's law, this is a major change, and indeed, the importance of third parties has increased in UK, without any change in electoral rules.

At the level of recipes based on single country precedents political scientists have little more to offer than historians or journalists, except for presenting a larger number of cautionary case studies. Any advice is likely to be as good as any other -- or rather as ineffective. Fortunately, we have a little bit more than country portraits. We have comparative electoral studies, and there some fuzzy regularities emerge. Here are a few examples.

On the average, increased district magnitude tends to reduce deviation from (PR), unless overruled by other features of electoral rules. Increased magnitude may also go with increased number of parties, although the direction of causality is uncertain. With SMP the number of parties tends to increase slowly with assembly size, which itself tends to rise with the population represented. But deviations from these average trends are huge (cf. Taagepera and Shugart 1989 and Lijphart 1994), and how is one to figure out whether the given new democracy will be below or above the average trend?

There is a difference between empirically observed regularities and those based on rational models. All regularities observed between the variation of two quantities depend on "all other things being the same". But if we do not know what makes  $y$  depend on  $x$ , how can we tell whether all other things remain the same? How can we predict whether the cube relationship will continue to hold in Britain, if we do not know what causes it in the first place?

Rational models establish quantitative relationships that hold under specified conditions. When deviations occur, one sometimes may have to scrap the model, but often it suffices to pin down the conditions of applicability more stringently -- which in itself represents an advance in knowledge. Thus, Boyle's law of ideal gases (*loi de Mariotte* in French textbooks) started out as an empirical relationship between pressure, volume and temperature but later was explained in terms of a rational model of motion of molecules. The latter, in turn, helps in introducing correction factors needed in the case of real gases.

One advantage of the rational model approach is that narrows down the locus of discrepancy, if any occurs. The empirical cube relationship between seat and vote ratios can be decomposed into a rationally supported power relationship, plus a rational explanation of what the power index should be (Taagepera and Shugart 1989:157-188). The change Butler observes in Britain does not affect the power relation as such; it's just that the power index has shifted from 3 toward 1.5. The power index itself has been explained in terms of the number of voters and the number of seats available, subject to certain conditions. It tends to be close to 3 for parliamentary elections, because most countries pick assembly sizes that approximate the cube root of their population -- another regularity for which a rational model in terms of communication channels exists (Taagepera and Shugart 1989:173-182). British population and assembly size have not changed significantly, so one would have to look into other factors which affect the seat-vote relationship -- and this remains to be done.

Contrary to Butler, I have not lost my optimism regarding fundamental laws that govern electoral relationships. The reason is that I see a way out. As long as one deals with empirical relationships for which one has no rational explanation, one has no other course but disillusionment when the relationship fades. But when one has a rational model, one can decompose it into parts, pin down the locus of discrepancy and refine the model.

At the same time, I have no illusions about the momentous task still ahead of us, before our knowledge reaches a widely applicable stage. Given the complexity of sociopolitical phenomena, electoral studies are about where astronomy was 500 to 400 years ago -- lots of observations and little predictive ability.

Our present quantitative rational models may be as unsuitable as the attempts to fit the planetary motions with circular motions around epicycles, or they may be the beginnings of fruitful models like Kepler's elliptic trajectories. Come to think of it, even epicyclic attempts were useful. It would have been much worse to give up on



looking for rational quantitative explanations in favor of mushily qualitative statements or purely empirical measurement. Models that fail force one to look for alternative models, while giving up on search for rational explanations is an utter dead end.

What opportunity does all that leave for supposedly rational advice by neutral experts in electoral rules and systems? It is not up to the experts to decide on the motivational basis of the choice. They can only help avoid misconceived ways to reach the stated goals. They can ask “What results do you want?” and then point out to what extent the rules under consideration may ensure or defeat the intended purpose. For instance, if low population imposes a small assembly and you still want to have single-party cabinets plus vigorous opposition, British-style, then you are not likely to get it with British-like  $M=1$ , because it might utterly decimate the opposition. Instead, you should consider low magnitude PR -- say,  $M=3$ . Even then Chile's experience with two-seat districts offers cautionary notes.

In view of our modest grasp of the effects of electoral rules in stable democracies and even greater ignorance of their interaction with culture and learning processes in new democracies, it might seem that no advice can be given, apart from “Pick anything and try to muddle through.” This is not quite so. Even recognition of ignorance is a positive step compared to cocksure application of pseudo-knowledge. Here are some very general suggestions, condensed from a previous article (Taagepera 1998). Reynolds and Reilly (1997) have made some of the same points and offer further recommendations. In general, don't think of electoral rules as a panacea for all ills, but also don't underestimate their influence.

### *Keep the Electoral Rules Simple*

This is basic. Whatever we know about the impact of electoral rules applies mainly to simple systems. If simple rules produce undesirable outcomes in the given cultural context, we may at least know in retrospect what caused them, and then we can try incremental changes.

In the case of highly complex electoral rules, in contrast, any degree of rational predictability vanishes. If the seat allocation produces unwelcome surprises, incremental adjustment becomes impossible, because one cannot even be sure which component of the rules was the major factor. Hence attempts at correction may make it worse.

Trying to obtain very specific outcomes by making new electoral rules complex assumes much better knowledge of the functioning of electoral rules (and their interaction with political culture) than we presently have. It is all too easy to discard theory- and/or observation-based equations because they work only within a factor of two (and worse for new polities) – and then fall for completely impressionistic woodoo.

Complexity increases unpredictability of results, and also makes elections costlier. On the other hand, one should also beware of apparent simplicity of rules that may hide complications elsewhere. Thus the simple SMP rule involves relatively high districting and voter registration costs. It has embroiled the United States in complex and

interminable gerrymander and redistricting issues. When this entire package is considered, even Single Transferable Vote looks simple in comparison.

A further reason to start out with simple rules is that later corrections invariably go in the direction of further complexity. It is always easier to add than to subtract from existing laws and rules. When the electoral rules are complex to begin with, attempts to correct them may make them unmanageable – or can be seen as underhanded by the voters.

Unfortunately, the reality during the selection of electoral rules often is that a recalcitrant player with some veto power agrees to go along with a simple electoral setup only if some apparently tiny extra feature is added. Though looking innocuous, it may actually change the picture appreciably. The danger looms that some other player will offer a supposedly minor counter-correction – and the race toward complexity is on.

#### *Make Use of Worldwide Experience*

Don't be afraid to innovate upon the electoral rules inherited from colonial rule or dictatorial sham elections. While innovating, don't think that your society is such a special case that it needs a unique set of rules. You'd most likely end up reinventing something that has been tried in a very different society and given up. On the other hand, don't expect either that rules borrowed from another single country would lead to the same outcomes in a different culture.

World experience includes not only that of different countries as packages but also the analytical results that cover the same features in many countries. They give some idea to what degree a change in input (such as district magnitude) affects an output (such as number of parties). And the scatter around these average trends also indicates to what degree a given feature may lead to different outcomes in various cultures.

#### *Once Chosen, Keep the Same Rules for at least Three Elections*

Don't think the first election outcomes are characteristic of the properties of the given electoral rules under your sociopolitical conditions. It takes several elections with the same electoral rules before their systematic effects stabilize. Parties and voters need time to learn how to use them to their best advantage. An electoral system consists of rules and skills in using these rules. If the rules are continuously altered, no stable electoral *system* can emerge.

Of course, no advice is absolute. There may be disastrous sets of rules to be given up in a hurry. But in 9 cases out of 10, when electoral rules are altered, it is done too early in two respects. First, the existing rules may not be so dysfunctional after all, once people learn to use them. Second, if you messed it up the first time, what guarantees that you now can do a better job, rather than flipping from flaws discovered to flaws as yet unknown?

### *Consider Incremental Changes*

When rules are altered so as to correct for specific flaws, avoid going overboard. Don't flip to a totally different setup that may include new weak points. Fine-tuning may achieve the desired results more safely. Consider minor changes in district magnitude, legal threshold, etc.

Even so, apparently minor adjustments to correct one particular aspect may have unintended side effects elsewhere. Suppose for instance that one wishes to reduce intraparty competition for seats and reinforce the hand of party leaders by switching from open to closed lists. If this means that some personally popular politicians are placed low on the closed list, so that they have little chance to win, they may bolt the party and start a new one. The unintended result may be proliferation of separate parties.

Sometimes the change needed may lie outside the electoral rules. Do parties strike election-time alliances but part ways once in the assembly? The gut response might be higher legal thresholds for alliances, but this may be hard to police and would complicate the electoral rules. In contrast, parliamentary rules that deny material benefits to parliamentary groupings that did not feature in elections may be self-policing.

### **Should Electoral Rules Be Specified in the Constitution?**

Some constitutions bypass electoral rules completely. Some others state them in great detail. Estonia's constitution of 1992 succeeds in having it both ways and thus offers a convenient starting point for discussing the relative advantages.

#### *Estonia: The More It Matters the Briefer It Gets*

Estonia's constitution (Eesti 1992) stipulates essentially a parliamentary democracy where the prime minister and the cabinet must obtain and maintain the approval of the unicameral *Riigikogu* ("State Assembly"). The president is a symbolic head of state whose veto of legislation can be overridden by mere plurality in a repeat vote. The first president, whose second and final term ends in 2001, initially tried to increase his powers, using some constitutional ambiguities, but did not succeed. Given this format, one might think that the constitution would spend appreciable space on parliamentary election rules and little on the presidential -- but the reverse is the case.

The article on assembly elections (Art. 60) consists of 8 sentences, a total of 77 words (in Estonian): "Riigikogu has 101 members. Riigikogu members are elected in free elections *based on the principle of proportionality* (My emphasis -- RT). Elections are general, uniform and direct. Voting is secret." The rest deals with age of candidacy (at least 21), normal duration (4 years), and early elections, concluding: "The Riigikogu election *procedure will be specified in the law on Riigikogu elections* (My emphasis -- RT)."

Thus adherence to the principle of PR is the only restriction Riigikogu faces in determining and modifying its own election rules. The rules actually chosen are pointlessly complex (see Grofman, Mikkel and Taagepera 1999) but boil down to nationwide PR, subject to a faint largest-party seat bonus and a nationwide 5 % votes threshold for parties, with an escape clause for very strong individual candidates. The constitutionality of the 5 % threshold has been challenged --unsuccessfully so far -- by those who interpret "based on the principle of proportionality" to require as small deviation from PR as possible. The constitution's vagueness on electoral rules allows Riigikogu to alter them (as it has done repeatedly at the margins) without going through the hassles of amending the constitution.

In contrast, the article on electing the figurehead president (Art. 79) consists of 17 sentences, a total of 200 words. It briefly specifies who has the right to nominate (at least one-fifth of Riigikogu members), who can run (age 40 at least and Estonian citizen by birth), and who elects the president (at first glance, the Riigikogu) -- and here the fun starts.<sup>1</sup>

"A candidate is considered elected when receiving a two-thirds majority, out of all Riigikogu members." This means at least 68 out of 101. If two rounds are inconclusive, the field is narrowed down to the two top candidates, but the two-thirds requirement still holds. Given absences and abstentions, 68 votes is stratosphere. The one time the rule has been applied (1996) the top-ranking candidate came nowhere close. The impossibly high hurdle was purposely pushed through the Constitutional Assembly by a blocking minority who thought they had more supporters in local assemblies -- and imagined this advantage would last for many electoral cycles. Indeed, after the third round in Riigikogu, a locally dominated electoral college takes over. Art. 79 words it as follows.

"The electoral college consists of Riigikogu members and representatives of local self-government assemblies. Each local self-government assembly elects to the electoral college at least one representative, who must be Estonian citizen." This means several hundred local representatives, who swamp the Riigikogu members. The top two candidates from the third round in Riigikogu continue, but any 21 electoral college members can nominate new ones. "The electoral college elects the President of the Republic by majority of the electoral college members who participate in the election." If the first round doesn't produce a winner, the second round includes only the two top candidates from the first round.

So the second round in the electoral college is bound to reach a decision (unless the two candidates split the vote exactly 50-50), right? Wrong. The wording "majority of the electoral college members who participate in the election" in Art. 79 fails to exclude those who cast a blank or spoiled ballot. Indeed, in 1996 the top candidate (incumbent Lennart Meri), though markedly ahead of his competitor, only narrowly passed the hurdle, due to the presence of many neutrals. The constitution does not specify what would happen after a second round impasse in the electoral college -- the possibility of such an outcome apparently was not perceived. In 1996 the predominant view in the

press was that the choice would revert back to Riigikogu (still with the two-thirds hurdle), and so ad infinitum...

Why did I pick these examples, apart from having been myself a (visibly ineffective) member of Estonia's Constitutional Assembly? These are textbook examples of both extremely short and quite lengthy ways to include electoral rules in a constitution. The fact that both occur in the same constitution, where the length of stipulation is inversely related to the importance of the election, drives in the lack of overall balanced design in the constitutional kitchen. What lessons are suggested?

I consider both Riigikogu electoral law and the presidential one as poorly designed. Both are excessively complex, thanks to compromise upon compromise. The difference is that the electoral law for Riigikogu can be modified relatively easily, while the one for president requires constitutional amendment.

The latter course is difficult -- as changes in the constitution should be. Yet, once this particular amendment becomes popular, other constitutional amendments could be tacked onto the coattails of the presidential issue. This could put the entire constitution in jeopardy before it has time to test itself over several decades. Indeed, proposals to elect the figurehead president through direct popular elections are having a field day in late 1999. In sum, while being procedurally stable against change, it is not stable from the viewpoint of perceived legitimacy -- and this is a potentially explosive mix.

Has the superficiality of the constitutional stipulations on Riigikogu elections left too much leeway to lawmaking by the Riigikogu incumbents? Electoral laws should have some stability. In principle, the Riigikogu could change electoral laws too fleetingly. This is counteracted, however, by the fact that the present incumbents obviously have profited from the existing rules. Many of them are quite reluctant to change a law that has served them well, personally. Being embedded in the constitution has not spared the presidential election procedure from criticism.

By being more specific, has the article on presidential election left at least fewer loose ends than the utterly brief article on Riigikogu elections? As is often the case in politics, the more one explains, the more loose ends become exposed. The detailed stipulation of the steps for presidential election in the constitution fails to guard against the possibility of a deadlock -- it only makes a solution more cumbersome than in the case of a simple law. Another can of worms is contained in the requirement that electoral college members must be Estonian citizens. Given the clear non-eligibility of non-citizens to any elective office in the US, among many other countries, this requirement needs clarification.

In contrast to the US, Estonia's constitution allows non-citizen permanent residents to participate in local elections (Art. 156). Given the purposeful Russian colonization during the Soviet occupation, at least a fifth of the residents have not yet satisfied citizenship requirements (which are of the same type as in the US). In some townships most of the voters are non-citizens. The latter indirectly determine a part of the

electoral college composition. Given that Art. 56 reserves sovereignty ("highest state power") to citizens, there is legal incongruity in non-citizens affecting the choice of the president. Thus, by going into too much detail on presidential election, the constitution has produced a conflict between the nationwide (Art. 56) and the local (Art. 156) levels.

### *Generalization*

I very much believe that electoral rules are important. I also have made the case that they should not be changed too frequently. On both accounts, it would seem then that electoral rules should be included in the constitution. Yet the previous case study suggests the contrary. The reason is that not all things important should be enshrined in the constitution. Principles belong in the constitution, instrumentalities are a different kettle of fish -- and a very mixed kettle. Presidentialism vs. parliamentarism, federalism vs. unitarism, electoral rules etc. all are instrumental to achieving stability, enjoyment of various goals and satisfaction of principles such as those in the bill of rights. Which of such instrumentalities belong in the constitution?

If the optimal settings for a given instrumental aspect are quite well determined, we might as well specify them in the constitution. At the other extreme, if we know very little about some other aspect, we might also need to enshrine some more or less arbitrary choice in the constitution so as to minimize further dissension. But if we know something, yet not enough, we are better off keeping this aspect out of the constitution, especially when our knowledge is rapidly expanding. Let us not freeze in something that the next stage of research findings may contradict.

The impact of electoral rules and their interaction with other sociopolitical factors so as to develop an electoral system are at such an intermediary stage between beliefs and knowledge. Therefore, I'd rather keep their details out of constitutions as much as possible.

### **General Conclusions**

Stable electoral systems consist not only of electoral rules but also of the way these rules are used in the given democratic culture. This culture includes *informed* self-interest, meaning some concern for stability and tradition, and avoidance of gross miscalculations resulting from limited understanding of the effect of given electoral rules. Such experience comes with time. A stable electoral system consists of electoral rules that have withstood some test of the times.

Such time would be shortened, if the local learning experience could be complemented by general scholarly knowledge about the properties of electoral rules and their interaction with other factors. To some extent every electoral system is *sui generis*, because similar electoral rules are embedded in different historical and sociopolitical contexts. If this prevailed totally, then no advice to newly democratizing countries would be possible apart from impressionistic, which varies from one advisor to the next. But this is not so. Some hard, transferable knowledge already exists, to a limited degree.

Of course, we should be modest about our ability to predict the effect of electoral rules. Even for stable systems, one finds considerable variability of data and disagreement of opinion. Extension to newly democratizing countries must be even more cautious, in view of different and unstable political cultures. Recommending complex electoral formats, in particular, implies pretension of knowing more than we do. Including electoral rules in constitutions could make it worse. Such inclusion should wait until theory is put on a much firmer basis than is presently the case. We have made a good start in this direction.

## Notes

1 Art. 4 of the Law on the Implementation of the Constitution of the Republic of Estonia (Eesti 1992) made an exception for the very first election (1992). Bowing to popular demand, the first president (since 1938) was to be elected by popular vote, provided a majority materialized in the first round. Failing this, the parliament was to choose between the two top runners. The top candidate received 41.8 % of the popular vote, and the parliament picked the runner-up, who had 29.5 %. For a description of proceedings in Estonia's Constitutional Assembly, see Taagepera (1994). I was a member, but teaching obligations held me in California most of the time and especially during the end game.

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