ABSTRACT. In his first major publication more than half a century ago, Jean Laponce (1957) offered a useful typology of approaches to the protection of minorities through the electoral system—an approach that was to be developed and added to further in his first major book. While Laponce’s work on the protection of minorities is well known, there is a case for revisiting his early overview of the potential of the electoral system to assist this. He distinguished initially between arrangements for the suffrage and the electoral system “proper”, with a range of familiar further subdivisions within the second category. Strikingly, though, notwithstanding the most intense focus on electoral laws and their consequences since the mid-1950s by a range of specialists, several of the issues opened up by Laponce remain unresolved. This is not simply a matter of scholarly failure to arrive at conclusive verdicts; political actors continue to try to mould electoral law in a direction compatible with their own interests, not only by adjusting the electoral system “proper”, but also by manipulating the electoral franchise. This paper offers an overview of recent political developments and academic assessments in the light of the Laponce typology, illustrating its continuing relevance both from a scholarly and a policy-related perspective.

Introduction

Codifications of minority rights typically focus on such areas as freedom of expression and association, language status, cultural promotion, provision of educational facilities, and protection of other important features of minority life. Among examples are the Council of Europe’s Framework convention for the protection of national minorities (1995), an ambitious effort to define and provide for the implementation of a package of minority rights. This approach rests on the assumption that certain other rights – fundamental human or civil rights – are guaranteed through some kind of individual rights regime, for example through the medium of the “rights” section of the constitution, of by reference to international human rights regimes such as the Universal declaration of human rights (United Nations, 1948). Such codifications of individual rights seek also to protect political rights, as in the provision for the holding of “free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature” (European Court of Human Rights, 2010: 32).

Concepts of electoral freedom and political fairness are, however, difficult to pin down, notwithstanding their great importance. They matter to minorities both directly (by ensuring appropriate levels of minority representation in the institutions of the state) and indirectly (by giving minorities a voice in the defence of the collective rights to which they are entitled by international agreement). This paper addresses the role of electoral law in securing an appropriate place for minorities in the political system. It begins by outlining Jean Laponce’s useful framework for the analysis of the impact of legal and administrative arrangements on the political representation of minorities, and then considers three aspects of this: suffrage
provisions, mechanisms for electoral registration, and formulas for translating popular votes into parliamentary seats.

Framework of analysis
Analysis of the set of mechanisms available for the protection of minorities offers a quite different challenge from justification of the need to protect such minorities in the first place (Laponce, 1960: 176). While the empirical question may be less demanding than the normative one, though, it is still quite complex, and extends over a wide domain of political activity. Electoral law is of course only one channel, albeit a very important one. Within this, it has been argued, a number of dimensions are important (Laponce, 1957; 1960: 111-131).

Laponce (1957) makes an initial distinction between provisions for the suffrage and “the electoral system proper”. By the former he refers mainly to the openness of suffrage law: the extent to which it is restricted by formal criteria that target specific minorities, or the manner in which it is curtailed indirectly in the name of some principle that in practice (but not in theory) discriminates against or even excludes particular groups. Laponce defines “the electoral system proper” quite broadly, as referring not just to the voting and vote-counting mechanism in the narrow sense (the sense in which the electoral system is generally understood today), but also to provisions for organisation of the electorate (for example, into separate registers according to ethnic background, or on a single, common electoral roll).

The extensive range of specific features of electoral law whose implications for minorities are considered by Laponce may be reassembled to provide a useful framework for the analysis of the impact of such institutional factors on minority representation. Laponce’s rich check-list suggests a clustering into three broad areas, corresponding to three specific questions:

- Who is entitled to vote, and by what means are votes expressed (suffrage provisions, ballot secrecy)?
- How are voters organised formally for casting votes (electoral roll and districting issues)?
- What electoral formula is used for the translation of votes into seats (issues such as level of proportionality)?

These three questions are addressed in the three sections that follow. In a world where universal suffrage is taken for granted and common electoral rolls are the norm, contemporary scholarship largely ignores the first two of these questions, while the third is the focus of an enormous industry. For this reason, the present paper will pay particular attention to the first two areas, offering no more than a superficial overview of the third.

Nature of suffrage law
The history of the emergence of modern democracies is closely linked to the struggle for universal suffrage. Step by step, filtering mechanisms that confined the franchise to a small group were removed. Wealth criteria (whether defined by reference to annual income, property ownership or occupation, or access to other resources) were gradually dismantled; the franchise was extended steadily, or sometimes suddenly, to women; and the age threshold was lowered. The outcome was an electoral law that was conventionally described as providing for “universal” suffrage, even if it fell far short of including people of all ages, and even when it excluded non-citizens or those failing to fulfil certain residence conditions.
Explicit exclusion of particular minority groups was also a common feature of the old electoral regime. In European states, Jews were generally excluded from the franchise until the nineteenth century, when most countries finally conceded political rights (Baron, 1938). As is well known, many southern states of the USA excluded African Americans from voting rights until the late nineteenth century. A form of emancipation occurred in 1868-70: citizenship rights were extended, and racial restrictions on voting rights was constitutionally prohibited, but in practice this was only partly effective (Lawson, 1976: 3-4). The South Africa Act of 1909, which established that country as a British dominion, confined the right of sitting in parliament to whites, and non-whites were in general deprived of voting rights. It is true that one province maintained a more open regime, but even there blacks lost the right to vote in 1936, as did coloureds in 1951 (Thompson and Prior, 1982: 77-9). This position lasted until 1994, when the first multiracial parliament was elected, marking the end of white minority rule.

In circumstances where direct discrimination against minorities is difficult, impractical, or unfeasible for other reasons, surrogate methods may be resorted to. Income or wealth qualifications, for instance, may have the effect of giving an advantage to the more privileged dominant group. Up to 1973, the franchise law for local elections in Northern Ireland restricted the right to vote to householders and their spouses, leaving other adult household members without a vote – and these were disproportionately Catholic. At the same time, the law allocated multiple “business votes” to those paying large amounts of local taxation, a set of people who were disproportionately Protestant. In the USA, many states introduced a literacy requirement following the outlawing of racially defined franchise provisions in 1870. This had the effect of excluding a much larger proportion of the African American population than of the white population, and came to an end only with the Voting Rights Act of 1965.

Citizenship and residence requirements are also relevant. Estonia and Latvia restricted voting rights to citizens following the re-establishment of their independence in 1991, an arrangement that was particularly important, since citizenship was substantially confined to descendants of those who had been citizens of the pre-1940 states; naturalisation was, however, provided for in certain circumstances (Pettai, 1996: 42-4; Tsilevich, 1996: 52-3). The impact of these provisions becomes clear if we compare the ethnic distribution of the overall population with the citizen population: ethnic Estonians made up 62.5% of the population of Estonia in 1989, but about 90% of citizens; and ethnic Latvians made up 52.5% of the overall population of Latvia in 1989, but 78.5% of citizens. Other established democracies are also increasingly marked by a gap between the total resident population and the citizen population as a consequence of recent immigration. In Switzerland, for instance, noted for the late introduction of universal suffrage (with women given full franchise rights at federal level only in 1971), the largest language group, German speakers, made up 64% of the overall population but 73% of the citizen population in 2000.

Certain reforms that are superficially benign may in reality disguise policies of ethnic exclusion. While the devolution of power from the central government to a particular region may constitute a relatively generous response to demands for autonomy on the part of a minority group, it may also be designed to “quarantine” the minority, allowing it to be excluded from participation in mainstream affairs of state. Thus, the “homeland” or “Bantustan” policy of South Africa under apartheid restricted the political rights of specific African groups to their supposed ancestral homelands, and, if “Israel” is defined as the set of territories under the de facto control of the Israeli government since 1967, the political rights
of most Palestinians are confined to the areas under the nominal control of the Palestinian Authority. As in the case of pre-1994 South Africa, the excluded group has no voice in the selection of those placed in effective authority over it.

What, then, are we to conclude about the significance of suffrage provisions for minority protection? Clearly, possessing the right to vote and to participate politically is vital to minorities, so universal suffrage (ideally defined broadly, as extending to the resident population rather than just to the citizen population, especially if there is a substantial gap between the membership of these categories) is important. Laponce (1957: 320) nevertheless identifies two rather traditional contexts in which restricted suffrage might be to the advantage of minorities. The first is where the minority is a high-status one, and limited franchise, defined on the basis of income or wealth, results in its over-representation in the electorate (Laponce cites the example of the Poles in the pre-1918 Austrian Empire). The second is where the minority is in the process of assimilation into the dominant culture, with only an elite leadership seeking to counteract this; in such circumstances universal suffrage may assist the integration of the minority in the broader community, hastening its disappearance (Laponce cites this as one of the arguments used by politicians in Vienna to justify the introduction of universal suffrage in the last days of the Habsburg Empire).

It is possible to find other examples of these two exceptional contexts where the introduction of universal suffrage militated against the interests of the minority (or at least against its short-term interests). High-status minorities such as Protestants in what is now the Republic of Ireland, Swedish speakers in Finland and the Baltic Germans in interwar Estonia and Latvia lost their position of political dominance with the introduction of universal suffrage. Minorities in the process of assimilation, such as the Bretons and other minority groups in France, were encouraged further down this path by their full political integration in the French state, though the case of the Scottish and pre-1922 Irish minorities within the United Kingdom show that there is nothing inevitable about the link between franchise extension and political integration. In general, it seems clear that, other matters being equal, minorities are more likely to gain than to lose from possession of the franchise in circumstances of universal suffrage. \(^1\)

**Electoral registration provisions**

While being on the electoral register in the first place is a critical threshold for an individual’s capacity to influence the political process, the manner in which the electorate is organised for purposes of casting votes has a big bearing on the outcome. The most obvious starting point is the near-universal division of the electorate into territorial constituencies, a feature that has great importance for minority representation. Since this is intimately linked to the nature of the electoral formula, however, discussion of this territorial question is deferred until the next section. A second principle of organisation of the electorate is less obvious and much more unusual: the division of the electorate along functional, ethnic or other non-territorial lines, as when provision is made for communal electoral rolls.

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\(^1\) Laponce (1957: 320-321) also highlights the importance of ballot secrecy for minority protection, instancing the manner in which the Magyar authorities in nineteenth-century Hungary could put pressure on voters from minority groups by requiring them to vote openly. Open voting was an important instrument for controlling voters in Ireland until the Ballot Act of 1872 introduced ballot secrecy, assisting conservative landowners in delaying the mobilisation of nationalist forces.
Segmentation of the electorate along functional or class lines dates back to medieval times, and was the starting point from which the modern principle of universal suffrage originated. Medieval parliaments were assemblies in which the main legally defined social groups were convened. These included the clergy (with their own internal hierarchy, ranging from bishops and senior monastic officials to lower clergy), the nobility (also with their own elaborate internal gradations from princes to the lowest rank of the peerage), the townspeople (sometimes also internally differentiated by class), and occasionally, as in Scandinavia, the free peasant class (Myers, 1975: 23-9). Parliaments differed in the formula by which these groups came together or were, indeed, included at all. The pre-revolution French Estates General is a well-known example, with a grouping of these classes into three chambers, corresponding to the clerical, noble and bourgeois estates (Marongiu, 1968: 226-8). Parliamentary organisation could even take quadricameral form, as in Sweden until 1866, with the clergy, nobility, bourgeoisie and peasants each meeting in a separate chamber.

This form of segmentation sometimes had implications for the status of minorities. Thus, in the nineteenth-century Finnish quadricameral diet, two of the houses, those of the nobility and of the bourgeoisie, were dominated by Swedish speakers (a small but privileged minority of the population, amounting to 14% in 1880); the two remaining houses, those of the clergy and of the peasants, were made up mainly of representatives from Finnish-speaking backgrounds. The German-speaking aristocracy and urban elites in nineteenth-century Bohemia also enjoyed power out of proportion to their numbers through the system of representation in the diet, and this pattern was also to be found elsewhere within and outside the Habsburg monarchy. In Russia’s Baltic provinces, the provincial diets were controlled by a single social group, the mainly German-speaking nobility, who accounted for a tiny proportion of the population.

The notion of estate-based representation was dealt a decisive blow by the French Revolution and had disappeared by the early twentieth century except in certain eccentric cases. But the notion of universal adult suffrage was modified by devices intended to protect certain minorities, or to mark them out as distinct from the rest of the population. This commonly took the form of separate electoral rolls for minority groups. New Zealand offers an important example. It was not only the first country in the world to adopt universal suffrage (in 1893); from an early stage, its Maori population was entitled to separate parliamentary representation. Four seats were allocated initially, in 1867; in 1993, as part of a broader electoral reform, this fixed number was changed to a floating one, so that seats are assigned to the Maori constituencies according to a mathematical formula that depends on the relative size of the Maori and the general electorates (Geddis, 2006). There are thus currently seven Maori constituencies out of a total of 70 single-member districts, and Maori candidates may also be elected among the 50 top-up MPs elected by the list system, as well as from the general constituencies (New Zealand, 2014).

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2 The United Kingdom was an interesting survival of estate-based representation until the constitutional reforms of 1999, which overhauled the House of Lords and opened membership of the House of Commons to peers. Until then, one chamber represented the “Commons” (the non-noble population), while the other continued to represent those social groups which were excluded from the Commons – the Lords Spiritual and Temporal. This came to an end only in 1999, when membership of the House of Commons was extended to the (overwhelmingly hereditary) nobility and upper clergy, whose own chamber was fundamentally restructured.
Indigenous peoples in other countries, too, have had a specific proportion of parliamentary seats reserved for them. Leaving aside the many cases where minorities are explicitly represented in the upper house of parliament, these include, in respect of the lower house, Latin American countries such as Colombia and Venezuela, where respectively 3% and 2% of seats are reserved for indigenous peoples; Jordan (12% reserved for Circassians, Chechens and Bedouins); Niger (10% for Tuareg), Afghanistan (4% for Kuchi nomads) and Taiwan (3% for Aboriginal peoples). India and Pakistan, with complex religious structures and surviving tribal populations, make provision for parliamentary representation for these. A number of central and east European post-communist states make explicit provision designed to ensure that small minorities will be included in parliament: Croatia, Kosovo, Montenegro, Poland, Romania and Slovenia have all established quotas for specific minority groups. There are other cases where an intense and evenly balanced ethnonational struggle has had direct electoral competition between the competing groups reduced though not eliminated by the introduction of parliamentary quotas: in Burundi a 58% – 39% – 3% balance between Hutus, Tutsis and Twa; in Fiji a 32% – 27% – 1% balance between ethnic Fijians, Indo-Fijians and Rotuman Islanders, with the balance elected from a common roll; and in Lebanon a 50% – 50% division between Christians and Muslims at the cap of a complex system of post allocation. In other cases, too, specific minorities are protected by being allocated a fixed proportion of parliamentary seats: in Singapore, Malays, Indians and other minorities (33%), in Tanzania, Zanzibaris (19%), and in Samoa, part-Samoan and non-Samoans (4%) (derived from Krook and O'Brien, 2010: 257-8).

How effective are such quota systems in protecting minority rights? Laponce (1957: 323) pointed to an early objection that has since been repeated on many occasions: by explicitly recognising ethnonational divisions, provisions for communal representation may have the effect of deepening these very divisions rather than of helping to build up shared loyalties across the communities (see, for example, Wilford, 2010). Furthermore, even from the narrow perspective of communal self-interest, such provisions may not be calculated to advance minority preferences. They may have the effect of rendering the majority more secure and more hostile, and it is the majority that will hold power in the long term. The minority may thus find itself sidelined by the very device that is designed to give it an effective voice. It may be added that sometimes the voice is a weak one. Offering Maori four parliamentary seats, for instance, implied a significant underrepresentation of the Maori population in the early years, even if there was limited evidence as to the enthusiasm of the Maori to engage with the European dominated political process.

**Electoral formulas**

While Laponce devoted a great deal of space to the analysis of electoral formulas and their consequences, the explosion of subsequent academic interest in this area and the sheer diversity of systems being analysed have been so great that only a superficial overview is possible.\(^3\) Already a century ago, a lawyer and activist in the Proportional Representation Society, John Fischer Williams, expressed the view that “there are said to be some 300 systems [of proportional representation] in existence, and the ingenuity of inventors shows no sign of exhaustion” (Williams, 1914: 30).

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\(^3\) This section draws heavily on Coakley, 2013: 138-148.
Table 1. Distribution of world’s electoral systems, 2010

<table>
<thead>
<tr>
<th>System</th>
<th>Countries</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Proportional</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>List proportional representation</td>
<td>75</td>
<td>Spain, Switzerland</td>
</tr>
<tr>
<td>Single transferable vote</td>
<td>2</td>
<td>Ireland, Malta</td>
</tr>
<tr>
<td><strong>Single-member non-proportional</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plurality</td>
<td>49</td>
<td>UK, USA</td>
</tr>
<tr>
<td>Two-round system</td>
<td>19</td>
<td>France, Belarus</td>
</tr>
<tr>
<td>Alternative vote</td>
<td>3</td>
<td>Australia, Fiji</td>
</tr>
<tr>
<td><strong>Multi-member non-proportional</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Single non-transferable vote</td>
<td>2</td>
<td>Singapore, Vanuatu</td>
</tr>
<tr>
<td>Limited vote</td>
<td>1</td>
<td>Gibraltar</td>
</tr>
<tr>
<td>Block vote</td>
<td>14</td>
<td>Kuwait, Laos</td>
</tr>
<tr>
<td><strong>Mixed</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mixed proportional</td>
<td>7</td>
<td>Germany, New Zealand</td>
</tr>
<tr>
<td>Mixed parallel</td>
<td>26</td>
<td>Japan, Mexico</td>
</tr>
<tr>
<td>Single non-transferable vote and list PR</td>
<td>1</td>
<td>Jordan</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Party block vote</td>
<td>3</td>
<td>Singapore, Chad</td>
</tr>
<tr>
<td>Borda count</td>
<td>1</td>
<td>Nauru</td>
</tr>
</tbody>
</table>


It was not, however, the imagination of those who devised such systems but rather hard-headed political choices by state elites that led to the configuration of electoral systems that was ultimately to emerge. These have tended to centre on a relatively small number of electoral formulas, as described in table 1, which provides an overview of the distribution of the electoral systems of the countries of the world. The table makes clear the dominance of two particular types of electoral formula: the party list system of proportional representation, and the plurality system and its relatives. The dominance of these two types is all the more striking when the size of the countries in question is taken into account: the large countries of the world, as measured by population, fall overwhelmingly into these two categories.

The main features of these systems are well known, and have been definitively described in the standard text on electoral systems (Farrell, 2011) and in the major comparative volume that explores these systems and their political consequences (Gallagher and Mitchell, 2005), so it is not necessary to describe them in detail here (as well as the two works just mentioned, see Reeve and Ware, 1992; Reynolds, Reilly and Ellis, 2005). It is nevertheless important to sketch their main features as these impinge on the fortunes of parties, before exploring their implications for minorities.

In the case of list systems of proportional representation, three features are of particular importance. The first is constituency size. Obviously, the larger the number of representatives returned by each constituency, the greater the potential degree of proportionality, other things being equal. For example, if three parties, A, B and C, win respectively 50%, 30% and 20% of the vote in a constituency in a typical list system, then in a single-member constituency A will win the seat, in a three-member constituency A will probably win two seats and B one, and in a 10-member constituency the respective parties
will win 5, 3 and 2 seats. The proportionate distribution of seats between the parties in the three scenarios is, then, 100-0-0, 67-33-0 and 50-30-20, with only the last one representing true proportionality. In practice, constituency size in list systems ranges from the modest (as in Belgium or Spain) to the very large (as in the Netherlands and Israel, where the whole territory of the state is treated as a single constituency).

The second feature is the formula for translating votes into seats for parties. In list systems in general, each party gets at least as many seats as it has Droop quotas (defined as the number of valid votes divided by one more than the number of seats, with any fractional remainder rounded up). But even if the allocation of seats follows Droop quotas exhaustively, some seats will remain unallocated, and list systems differ in the manner in which they deal with this. There are three main approaches. The simplest and most intuitively obvious is the largest remainder system: remaining seats in a constituency are allocated to parties in order of their remaining votes once Droop quotas that have been used up have been subtracted, as in South Africa. A second approach (the Sainte-Laguë system) is to adjust the size of the quota until a point is reached at which the proportions of seats due to the various parties, when rounded, total exactly the number of seats in the constituency, as in the Scandinavian countries (where, however, this system is applied in modified form that raises the threshold for smaller parties). The third approach (the D'Hondt system) is similar: the size of the quota is adjusted until a point is reached at which the proportions of seats due to the various parties, when truncated, total exactly the number of seats in the constituency, as in Belgium.\

The third broad consideration is the mechanism for allocating seats to candidates within party lists. Here, the extremes are represented by “closed” list systems, as in Spain, where seats are allocated to candidates in an order predetermined by the party, and “open” ones, as in Switzerland, where personal votes determine the outcome. In typical list systems that allow personal voting, most voters in practice do not take up this option, and their votes are automatically allocated to candidates beginning at the top of the list of the party they support. Under these arrangements, personal votes have an impact only in marginal circumstances, since in the case of major parties candidates at the top of the list are certain of election, while those at the bottom will almost certainly not to be elected.

The single transferable vote (STV) system differs from the party list one in that parties need not be present: ranking of candidates can proceed in accordance with whatever criterion the voter wishes to use, and personal votes entirely determine the outcome. Nevertheless, the system can allow considerable influence to parties: candidates may be grouped by party rather than simply being listed alphabetically, as in Malta; or voters may be allowed to select a predetermined candidate ranking favoured by a particular party rather than themselves ranking the candidates, as in Australian Senate elections, where voters can tick “above the line” to signify their support for the preference ordering offered by a particular party (Farrell and McAllister, 2006: 65-7). The complexity of the voting and especially counting process in effect rules out very large constituencies in this system. In 1925, for example, the whole territory of the Irish Free State became a vast constituency for the election of 19 senators by

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4 There are many variants of these systems, such as use of the Hare quota (votes divided by seats) rather than the Droop quota in largest remainder systems. The discussion here focuses on the mathematical principle that underlies these formulas; the generally used rules for counting votes under the D'Hondt and Sainte-Laguë systems (based on division tables) seem at first sight quite dissimilar to the approach described above.
STV. There were 76 candidates, whose names appeared in four columns on a huge ballot paper, and it took 67 counts over three weeks to complete the election, an outcome that attracted a great deal of criticism (see Coakley, 2005).

The older plurality system is easier to describe, and more familiar, due to its dominance in the UK and in other formerly British-governed states such as Canada and the USA. It is often misleadingly labelled the “first past the post” system, implying an analogy with racing, where the winning runner has demonstrated his or her capacity to out-run all other competitors in the race. This quality is not necessarily shared by winners under the plurality system: the rule that whoever wins a plurality (i.e. more votes than any other candidate) is returned does not necessarily ensure the election of a candidate capable of beating each of the others in a two-way contest. The system is also strikingly disproportional. Two related systems share this feature (disproportionality), but at least offer a more easily justifiable result at local level. Under the two-ballot system, as in France, if no-one wins an overall majority (50% or more) in a first round of voting, a run-off ballot takes place between the leading candidates. Under the alternative vote system, as in Australia, voters rank candidates, and, if no candidate has an overall majority, candidates are eliminated in inverse order of popularity and their votes are distributed to other candidates in accordance with their lower preferences until some candidate reaches 50%, or only one candidate is left.

The three electoral systems described as “multi-member non-proportional” have in common the fact that they are based on multi-member constituencies with categorical voting. The single non-transferable vote and the limited vote, which give the voter respectively one vote and a number of votes less than the number of seats, allow for a level of minority representation in a constituency and soften some of the disproportionality that is inherent in the plurality system. The block vote, however, where voters have as many votes as there are vacancies, aggravates this disproportionality in the context of partisan elections; widespread use of this system at local elections in Northern Ireland up to 1967 discredited a formula that was seen as copper-fastening majority dominance there. The remaining formulas, the party block vote and the Borda count, are confined to a very small number of countries.

This leaves one remaining important category, a hybrid one. Even with list systems of proportional representation, there is commonly a two- or even three-tiered approach, with an initial allocation of seats in relatively small constituencies, a further corrective allocation at regional level, and occasionally even a final allocation at national level to maximise proportionality. But sometimes a different electoral formula is used at constituency and regional levels. Germany is an important example: half of the members of the Bundestag are elected from single-member constituencies using the plurality system; the remainder are elected from regional lists, but seats are allocated in such a way as to compensate for the disproportionality of the lower tier. New Zealand, Scotland and Wales moved to similar systems. In most hybrid systems, though, the regional tier plays no role in correcting for absence of proportionality in the lower tier; in such cases as Japan, the upper tier simply adds a proportional allocation of regional seats to a disproportional constituency level.

While there is agreement that electoral systems have a huge impact on the shape of the political system more generally, efforts to assess their consequences vary from author to author, depending on the criteria that each sees as important (for a comprehensive overview, see Gallagher, 2005: 566-75). The most widely discussed criterion (and one with great relevance for minority protection) is the extent to which the various systems are proportional.
Use of the standard Gallagher index of disproportionality (which measures the mean deviation of seat share from vote share in elections to parliamentary assemblies) to measure the performance of the electoral system at post-war elections shows the French two-ballot system (1958-2012) as by far the most disproportional, followed by the British and Canadian plurality systems (1945-2011), with the Australian alternative vote system (1946-2010) in third position. Proportional systems, by definition, offer a much closer match between share of seats and share of votes, though there is great variation in such systems – a function of constituency size, of the actual electoral formula used, and of such issues as the existence of a threshold clause (requiring a party to reach a certain share of the vote if it is to be allocated any seats at all) (Coakley, 2013: 146). Such systems (and especially the plurality system) may also encourage strategic rather than sincere voting, distorting “real” electoral preferences (for example, supporters of “no hope” candidates may be tempted to vote for another party rather than “wasting” their votes). Finally, mixed systems tend to create two classes of representatives, those representing regions (typically beholden to their parties) and those representing constituencies (and therefore dependent on voters).

Aside from these proximate consequences of an electoral system, however, there is a second layer of less immediate, or “ultimate”, consequences in such areas as governmental stability: if an electoral system produces a fragmented parliament, so the argument runs, it is also likely to be associated with unstable governments (though in reality governmental stability may be a product of elite disposition to cooperate rather than of the electorate’s willingness to give an overall majority to one party). Overall, though, quite apart from the effectiveness of an electoral system in delivering a representative parliament and an efficient government, its legitimacy is likely to be an issue: the extent to which it is seen as fair, rather than necessarily being “fair” as judged by a set of objective criteria. Thus, for typical British and American citizens, the electoral system is legitimate and seen as “fair”, notwithstanding the widespread incidence of disproportional or otherwise anomalous results.

There is no unanimity as to which electoral system is to be preferred in general. The plurality system has brought forth a long line of passionate defenders. The major work of Ferdinand Hermens, for example, was a full-frontal assault on proportional representation, which he blamed inter alia for the collapse of democracy and the victory of fascism and Nazism (Hermens, 1972 [1942]). But the plurality system has had an equally long line of passionate opponents, who have typically advocated the STV system (for example, see the several works of Enid Lakeman, including Lakeman, 1982). The list system is generally favoured in continental Europe by academics as well as by practitioners (see the implied endorsement in Lijphart, 1994). Others have advocated mixed systems as embracing “the best of both worlds” (Shugart and Wattenberg, 2001: 591). After an exhaustive analysis of electoral systems and their critics, Gallagher (2005: 572) arrived at eight criteria that are widely used in assessing them: their accuracy in representing voter preferences and in producing a socio-demographically representative parliament, their capacity to render parliamentarians accountable to constituents, to maximise voter participation opportunities, and to produce both cohesive, disciplined parties and stable, effective governments, and the degree to which they produce identifiable government options and allow voters an opportunity to vote out a government. But these criteria individually may point in the direction of different electoral systems; as Gallagher argues, there is no “best” electoral system:

Those who value stable and ejectable government, and identifiability of alternatives, above all else, even at the expense of performance on several other criteria, will be attracted by a single-
member constituency system. Those for whom a high degree of proportionality and disciplined parties are the transcendent virtues will favour a closed-list system in a nationwide constituency. Those prioritising proportionality, a high degree of voter participation, and personal accountability of MPs will logically gravitate towards PR-STV or open list PR. Mixed compensatory systems score well on nearly every criterion (Gallagher, 2005: 575).

There appears to be a consensus among those who study electoral systems, then, that choice of a system depends on the results that one wishes to be delivered. As it has been put, “it would stretch credulity to attempt to argue that one electoral system is ‘best’ or ‘ideal’ for all circumstances” (Farrell, 2011: 229-30). Indeed, as van der Eijk and Franklin (2009: 69) argue, “there is no perfect electoral system, just systems in which the trade-offs that have been made are thought to be appropriate for particular countries, their culture and their people’s expectations about what an election should be”. It would, then, be unwise to sit back and try to devise a system which is objectively “best”, ignoring existing institutional and political cultural realities that shape the world of those who will be affected by the system. A new electoral system should not, in other words, be devised in the abstract and be implemented blindly; we need to take account of the costs of change, and they may “outweigh the benefits of reform” (Reeve and Ware, 1992: 173).

What, then, are the implications of the choice of an electoral system for the protection of minorities? The considerations above about the significance of different systems for the level of proportionality obviously have force. The generalisations at which Gallagher and others have arrived are compatible with Laponce’s (1957) early response to the capacity of various electoral systems to protect minority interests. He arrived at a conventional ranking of systems according to this criterion, though carefully noting that the ranking depends on other factors, such as the geographical distribution of the minority (concentrated or dispersed), and the character of the party system (cross-ethnic or ethnically based). In effect, he endorsed the list system of proportional representation as the one most likely to secure appropriate minority representation, with its STV form likely to be useful in this respect only if the minority is not too small; the limited vote is likely to produce a reasonable level of minority representation; but the plurality and majority systems are less likely to favour this, unless the minority is territorially concentrated.

Recent decades have seen an explosion in analysis not just of the political consequences of the electoral formula but, more specifically, of its implications for deeply divided societies (which is not quite the same as its implications for minority protection, since some would argue that minority assimilation, or at least a decline in the intensity of minority identity, constitutes “progress” in the pursuit of stability in divided societies). For different reasons, specialists in the area of conflict resolution have advocated different electoral formulas. For Lijphart (1977), the list system of proportional representation is best; not only does it secure appropriate representation of all significant groups, but in divided societies, especially in its “closed list” form, it frees elites from excessive dependence on parliamentarians, allowing the leaders of the main blocs to strike deals. For McGarry and O’Leary (2009: 65), the STV form is preferable; not only does it secure fair representation of all groups, but it encourages policy moderation because it offers incentives to the leaders of one bloc to pursue lower preference votes in rival votes. Horowitz (2002) opts instead for the alternative vote, arguing that it may be used to incentivise cross-ethnic electoral compromise, a feature disputed by others on the basis of empirical evidence from one case, that of Fiji (Fraenkel and Grofman, 2004; for subsequent debate, Horowitz, 2007; Fraenkel and Grofman, 2007).
Those academic studies which serve also as “users’ guides” to electoral systems stress the complexity of the issue: there is no single electoral system ideally suited to all divided societies. The “best” system depends not just on the general qualities of the various systems, but on local political and cultural circumstances (Reynolds, Reilly and Ellis, 2005). The same conclusion no doubt applies to the “best” system for the protection of minorities: “the electoral system designer must … go through a careful process of prioritising which criteria are most important to the particular political context before moving on to assess which system will do the best job” (Reilly and Reynolds, 1999: 54).

**Conclusion**

Jean Laponce’s early intervention in the analysis of electoral systems and their consequences for minority protection has proven surprisingly robust as a framework for research in this area, even if subsequent scholarly endeavour has been focussed overwhelmingly on only one of the three dimensions highlighted for discussion in this paper. Yet the two other dimensions continue to have contemporary (if not necessarily central) relevance.

There is a widespread view that the question of universal suffrage is “settled”; few disagree with the principle. But only a little reflection will reveal that this is an area where unresolved questions remain. It is obviously the case that there are still many societies where elections, if they take place at all, are not free, rendering irrelevant the question as to who may vote; but even in liberal democracies the impact of large-scale immigration, and indeed emigration, raises important questions. In circumstances where citizenship is not easily won, to what extent should the franchise be extended to the resident non-citizen population? In countries with a large diaspora, to what extent should the franchise be extended to the non-resident citizen population, a question particularly important when there has been a high level of emigration on the part of one bloc in a divided society, such as Lebanon (Ekmekji, 2012: 9-10)?

Second, while Laponce (1957: 338) comes to a quite negative conclusion on the value of communal electoral rolls, this issue has not gone away. Seats continue to be reserved in several parliaments for particular minorities, and sometimes the electorate itself is formally divided along ethnic lines. Laponce argues that there are other, less divisive ways in which the same outcome (fair representation for the minority) may be procured. Yet, it continues to be likely that some form of formal designation of members of parliament along ethnonational lines will continue to be a feature of the government of divided societies, given the popularity of power sharing as a constitutional solution: in order to share power, groups have to be designated in the first place, as the experience of Belgium, Northern Ireland and Lebanon shows.

In offering an overall assessment of the role of electoral law in minority protection, it is important to recall more recent words of caution. As Laponce (1995: 139) put it in exploring institutional options for the multi-ethnic state, the warning of Montesquieu needs to be invoked: each society and political system has its own cultural norms, and institutional architects will ignore them at their peril. Electoral provisions need to take account of this, and of existing political realities, and any attempt to impose a single “best” solution is unlikely to be helpful or successful.
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