



## **Remarks on ‘The Future Viability of the Dutch Democracy’**

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**Abstract:** The democratic pillar of the Dutch Constitution is discussed under three headings: (1) electoral system and the proposed changes in it, (2) the measures proposed to enhance governability through counteracting fragmentation of the parliament and (3) initiatives to encourage political participation. Due to the systemic nature of the Constitution it is difficult to improve the performance of one component without deteriorating that of another; governability can be increased by creating obstacles for representation, but this is likely to lower the rate of participation.

**Keywords:** political fragmentation, participation, governability, closed-list system, open-list system

### **1. It's clearly not broken, so why fix it?**

The first thing to wonder about when embarking upon reading the report on the issues dealt with by the State Commission (Brouwer and Staal, in this volume) is why this body was called upon to deliberate on the future of democracy in a country that to an outsider seems to be doing just fine insofar as the performance of political institutions is concerned. It seems that the mission of the body is not dictated by immediate urgency, but a desire to provide a wider view of how the institutions are working at present and how they might be modified to face problems envisioned by

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the legal and political experts. A view spanning over several parliamentary terms is necessitated by long-term nature of several major challenges in contemporary societies: the aging population, the prospect of environmental warming, the massive inter-state and inter-continental migration, epidemics, terrorism, to name the most widely debated ones. The basic question is how democratic institutions can and should be improved to tackle these and similar problems.

In what follows I will concentrate on just one of the assignments for and the respective recommendations of the Commission. This pertains to the enhancement of the democratic pillar, as it is stated in the report. This goal is divided into several sections of which I will pick the following for closer examination: (1) the reform possibilities of the electoral system, (2) dealing with political fragmentation, and (3) increasing political participation. On most of these I find myself largely in agreement with what the Commission says about the problems and the solutions.

## **2. Electoral reform options**

Known for its advanced proportional representation system (see e.g. Gallagher 1991), Netherlands strive to secure political proportionality in the composition of the Lower House. The reforms considered in the report pertain to the possibility of the voters to change the order of priority among candidates in the party list, i.e., the order in which the candidates are selected from the party list once the number of seats allocated to the party has been determined on the basis of the vote totals of the parties. Presently those candidates with more than 25% of the party vote total get the priority in the list. The suggestion discussed pertains to lowering this threshold.

Obviously, what is at issue here is a conflict of interest between those determining the initial (default) order of priority in the party list and those advocating a direct link between the popularity of individual candidates and their position in the party list. The present system and its marginal adjustments are based on offering the voters primarily a choice between parties. The more emphasis is put on the popularity of individual candidates, the more the system resembles the Finnish one, where the candidates' popularity is the sole determinant of choosing from the party

list.<sup>2</sup> The polar opposite of the Finnish one is a system, sometimes called the closed-list system, where the order of priority of the candidates is determined before the election. This system was in use e.g., in Sweden, but has been replaced by another one closer to the Dutch electoral procedure. In any event, the latter strikes a compromise between the Finnish open-list system and its polar opposite.

There are pro's and con's in the closed-list system and the Finnish one. The former renders the elections to choices between party programmes or manifestos, while the latter makes the parliamentary policy somewhat more fluid in the sense that the elected MP's can determine the policy priorities and agenda at least to some extent. The general trend over the past decades points to the direction of individualism in electoral choices. This inevitably happens at the cost of the power of party elites to determine the parliamentary policy. The closed-list system's emphasis on party with its common goals and strategies makes the voter choice easy for a voter whose interest is mainly in ideologies, while the purely individualistic system, naturally, favors candidates with outstanding individual characteristics and voters appreciating personal qualities of candidates. In the end, the arrangement whereby the voter decides whether he/she casts a vote for a candidate or for a party is a reasonable way to proceed. As the problem to address is not clearly stated by the Commission, the solutions are difficult to evaluate.

### **3. Counteracting fragmentation**

All political systems require an occasional review to determine possible weaknesses, be they due to poor design at the outset or to developments in the environment that could not be foreseen at the time of the original design. Political fragmentation is often deemed a nuisance accompanying the PR systems. Fragmentation, in turn, leads to delays in post-election formation of majority governments. It may also increase the bargaining costs in enacting legislation.

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<sup>2</sup> The candidates are listed in the ballot instructions in the alphabetical order so that each candidate is associated with a number. The voter votes by writing the number associated with his/her preferred candidate in the ballot slip. The instructions (and advertisements) indicate the party affiliation of each candidate so that the party totals can be determined once the votes have been cast.

There are various ways for decreasing fragmentation. The most brutal one is to erect a vote threshold excluding all parties not exceeding the particular threshold from representation. This is in use in several countries, either in the form of an explicit percentage threshold (as in Germany) or in a more implicit form (as in Finland). In some cases, the effect of multiple district bias is corrected by nation-wide party votes to restore proportionality. In the case of Netherlands, the threshold of representation is extremely low and hence the suggestion that it be raised sounds reasonable.

Another way of counteracting fragmentation is to introduce electoral districts so that each district is considered separately. Thereby the underlying vote threshold would rise to the level considered appropriate. In Finland where the sizes (i.e., the number of MP's returned) of districts vary between 7 and 36, the lowest share of votes guaranteeing representation under d'Hondt's allocation thus varies between 2.70 % (in the 36-sized district) and 12.5% (in the 7-member district) of the votes cast in the district (see, e.g., Nurmi and Nurmi 2019). Obviously, this makes the entrance of new parties or movements to the parliament wellnigh impossible in small districts. By creating districts that are roughly equal in size, this blatant discrepancy in thresholds of representation can be avoided.

What, then, is the right size of a district? This is primarily a political issue on which reasonable people may disagree. Moreover, the prospects of small parties and movements can, to some extent, be improved by allowing for electoral alliances of parties whereby each alliance is considered as a party in the allocation of seats.

Another, perhaps slightly more subtle way of countering fragmentation is to resort to proportionality formulae that are favourable to large parties at the cost of smaller ones. Of the most common divisor methods d'Hondt's represents such formula. Its rounding down rule works to the benefit of the larger parties. However, if one compares this effect with the one related to establishing multiple districts and no compensation seats, the latter seems both more drastic and, in that sense, more efficient way to counteract fragmentation.

So, tried measures to counteract fragmentation exist, but in the end the question remains as to whether they are justifiable, given their inbuilt potential to deprive small groupings of the possibility for representation. What is gained by way of governability may well be lost by sluggish innovations in the party system.

#### **4. Encouraging political participation**

In pondering upon modifying electoral systems one soon becomes aware of their systemic nature. Fiddling with one component often brings about unexpected and/or undesired changes in others. Sometimes the stated goals for reform are mutually incompatible. For example, one cannot increase the proportionality of the system of election without sowing the seeds of fragmenting the party system. Similarly, the measures taken to enhance governability by erecting vote threshold run the risk of lowering the turnout.

Lowering the minimum voting age is mentioned as one way of increasing voting turnout. Indeed, this is a likely outcome of such a measure, but only in absolute terms. In terms of the percentage of the eligible voters voting the effect is likely to be the opposite: younger people are not in general more likely to vote than their middle-aged compatriots. Rather to the contrary.

Mandatory voting can be justified by the idea that the rulers are entitled to receive advice from the ruled. However, it is unlikely greeted with enthusiasm in systems where it has not been instituted. One can question the quality of advice given by voters who cast their ballot under the threat of facing a penalty for not doing so. In liberal view the case for compulsory voting is weak.

The voters living abroad face several difficulties in casting their votes. Voting by mail is a common way of overcoming some of these difficulties. Recently, voices have been raised to increase the possibility of electronic voting. There are countries (e.g., Estonia) where electronic voting is basically on equal footing with the paper balloting and where some precautions have been made to counteract some obvious possibilities for fraud (e.g., vote buying and selling, subjecting voters to physical threats, etc.) due to the uncontrolled environment where the balloting takes place. The very existence of the institution of mail voting or (for whatever reason) enabling people to vote on behalf of others means that one of the basic prerequisites of liberal democracy, secret balloting in secure settings, is sacrificed for technical convenience.

This is not the place to ponder upon the pro's and con's of electronic voting, but it should be noted that the obvious benefit in encouraging people to vote (by making it simpler) should be juxtaposed with serious concerns that result from the lack of control of the election officials of the settings where the votes are cast. This is not to downplay the remarkable

advances in cryptographic balloting mechanisms (Chaum et al. 2005). In fact some of those mechanisms make it possible to do things that are not possible under prevailing paper-balloting systems, such as, verifying that the ballots are correctly assigned and/or changing one's ballot before counting without jeopardizing ballot secrecy (Nurmi and Salomaa 1998). Nonetheless, the fundamental problem of securing appropriate environment for voting which is, of course, beyond the realm of cryptography, remains unresolved in all absentee voting systems.

### **5. More radical reform suggestions**

True to its mission, the Commission proposes ameliorative measures rather than a wholesale redesign of the Constitution. The more radical proposals discussed pertain to opening the post-election government formation process to the voters by allowing them to vote on the government formateur. This idea belongs to those not pursued further by the government. Indeed, the past experiences from Israeli politics where, for a time, the voters could vote not only for the MP's but also on who is to form the upcoming government, were on the whole disappointing. The system was subsequently abolished. Depriving the professional politicians of one of their most valuable assets, negotiation skills, would, indeed, seem to the present writer counterproductive to the public and demoralizing for those actively engaged in the "art of the possible".

The Commission has chosen not to take up more radical reform proposals such as expanding the choice menu of the voters. To be sure, many voting system reform proposals would call for a truly drastic reform of the electoral procedures. For example, the majority judgment method of Balinski and Laraki (2011) amounts to choosing the winner on the basis of the (ordinal) grades given by voters to candidates. However, the notion of representation proportionality is not built into the system, but requires further specification. Should closed- or open list system be adopted? What is the role of parties? Similar questions arise for nearly all voting systems aiming at electing a single candidate – with the exception of the plurality system which underlies the definitions of proportionality today.<sup>3</sup> Similarly, the voting alternatives might require a redefinition, e.g., if the parties are

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<sup>3</sup> An exception is the single transferable vote system which operates on ordinal ranking input of the voters.

to be ranked or graded, how are the elected MP's determined? If individual candidates are being voted upon, how are these aggregated to yield a party ranking? Difficult questions! The safe bet is to focus on one-person-one-vote balloting and define proportionality accordingly. Yet, this ignores a large part of the voter opinion and leaves the voter input pretty much to what is was in ancient Athens.

Perhaps, in the long run, the balloting should be reviewed if for no other reason than for finding out how much difference the ballot form makes to the election outcomes. Should a broader view be opened, then perhaps ordinal (Balinski and Laraki 2011) grading, cardinal points assignment as in the range voting or perhaps approval balloting (Brams and Fishburn 1983) could be included in the comparative assessment. Similarly, the idea of including both positive and negative votes could be discussed (Janecek 2020).<sup>4</sup> Constitutional Commission may not be the correct forum for a comparative analysis of these procedures, but, given the considerable amount of information on their theoretical and practical properties (simulations, classroom and *in situ* experiments) it is only fair that some of them be included in the menu of procedural choice in the future parliaments.

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<sup>4</sup> More radical innovations in democratic institutions are sequential choice and fund voting advocated by Stefánsson (2019) and liquid democracy (Blum and Zuber 2016).

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