

Note for the Jersey Electoral Commission

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This note supplements my earlier report of 16 August and provides information and advice in relation to two issues: the nature and merits of alternative electoral systems and the levels of malapportionment under the Commission's proposed new constituency structure.

1. Electoral Systems

Jersey currently uses plurality systems to elect all parts of the States Assembly. As I indicated in my previous report, such systems can have both strengths and weaknesses, but in Jersey's context, the weaknesses appear strongly to outweigh the strengths. I outline those weaknesses and then consider the main alternative systems.

Plurality Voting

In a plurality system, voters have as many votes as there are seats to be filled; all the votes are counted up; the candidates with most votes are elected until all seats are filled.

This system has the virtues of being simple and familiar. Where there are political parties, plurality systems tend also to encourage single-party government, which makes it easier for voters to hold governments to account and which may improve some aspects of governance. In a system without parties, however, this latter point is less relevant.

Critics of the plurality system argue that it has four main flaws. First, it may fail to elect the most popular candidates. Table 1 gives a simple example that illustrates the danger clearly. It comes from a local council election in the district of Charnwood in May 2011. The British National Party candidate won by a margin of five votes over the Conservative candidate, with the Labour candidate some way behind. It seems likely that most Labour supporters would have preferred the candidate of the other moderate party (the Conservative party) over that of the BNP and that, therefore, most voters preferred the Conservative candidate to the BNP candidate. Yet the BNP candidate was elected. The result appears to go against voters' wishes. Of course, we cannot know for sure whether Labour voters' preferences were as just described, but critics of plurality say that is a problem too: we cannot know in a plurality election whether the candidate elected is the candidate whom voters most prefer.

Table 1. Local Election Result in East Goscote Ward, Charnwood District Council, 5 May 2011.

Candidate	Party	Votes	Result
Cathy Duffy	British National Party	401	Elected
Yvonne Smith	Conservative	396	
Gill McLoughlin	Labour	150	

Source: www.charnwood.gov.uk

In the context of Jersey's non-partisan elections, it is impossible (at least for an outsider such as myself) to make educated guesses as to whether the candidates elected are in fact the most popular. But the fact that there can be doubt about this is in itself a cause for legitimate concern. Take the example of the first district of St Helier in the elections of 2011, as shown in Table 2. We simply cannot know from these figures whether the three candidates who were elected were in fact the three candidates with most support.

Table 2. Election of Deputies, St Helier 1, 2011

Candidate	No. votes	As % of eligible ballots	Result
James Baker	767	42.8	Elected
Trevor Pitman	763	42.6	Elected
Judy Martin	717	40.0	Elected
Paul Le Claire	700	39.1	
Nick Le Cornu	571	31.9	
Keith Shaw	482	26.9	
Mary O'Keefe Burger	331	18.5	
Gino Risoli	178	9.9	
Valid votes cast	1,792		

Source: <http://www.vote.je/results/>

The second concern is that, even where the most popular candidates have won, they may not represent the full spread of opinion among the electorate. This danger was clearly illustrated by the result in the Sketty ward of Swansea (which elects five councillors) in the local council elections earlier this year (Table 3). The five Liberal Democrat candidates captured support on average from 34.2 per cent of those who cast votes, but were able to secure all five seats available. Parties winning 65.8 per cent of the votes, meanwhile, won no seats.

In the partisan context of UK elections, it is obvious in this Swansea example that one section of public opinion—comprising around a third of all voters—is represented, while all other sections—comprising two thirds of the voters—are not represented. In the non-partisan Jersey context, it is not possible—at least for an external observer—to say whether some sections of society are overrepresented while others are underrepresented. Even without parties, however, some candidates will attract support from some strands of opinion while others will gain support from other strands. It is therefore likely that outcomes such as that witnessed in Swansea do take place. In the partisan context, as noted above, such misrepresentation can be defended on the grounds

that it delivers accountable single-party government. In the non-partisan context, however, that defence is not so clearly available.

One noteworthy scenario is that if large districts are created that cover several parishes, voters might wish to vote for candidates from their own parish. In the extreme case in which all voters voted in this way, all of the seats in a district would be won by candidates from the largest parish in that district. Such an extreme voting patterns seems very unlikely, but some bias in favour of the largest parish might nevertheless be feared.

Table 3. Local election result in Sketty Ward, Swansea, 3 May 2012

Candidate	Party	No. votes	As % of eligible ballots	Result
June Stanton	Lib Dem	1860	40.9	Elected
Mike Day	Lib Dem	1624	35.7	Elected
Cheryl Philpott	Lib Dem	1573	34.6	Elected
Huw Rees	Lib Dem	1433	31.5	Elected
Paul Michael Meara	Lib Dem	1293	28.4	Elected
Paul Elliott	Lab	1286	28.3	
Carolyn Brown	Lab	1272	28.0	
Ian James	Lab	1253	27.6	
Paula Pritchard	Lab	1172	25.8	
Aisha Iftikhar	Lab	1082	23.8	
Tony Lloyd	Con	1014	22.3	
Steve Jenkins	Con	866	19.0	
Craig James Robert Lawton	Con	848	18.7	
Daniel Stephen Boucher	Con	771	17.0	
Dayne Ryan Powell	Con	665	14.6	
Ian Anthony McCloy	Indep.	600	13.2	
Carl Harris	PC	529	11.6	
Thomas Caldas	PC	450	9.9	
Shan Couch	PC	412	9.1	
Jon Howes	PC	411	9.0	
Rob Williams	TUSC	195	4.3	
Ronnie Job	TUSC	147	3.2	
Valid votes cast		4546*		

*The published data do not include this number, so I have approximated the correct value by applying the published turnout percentage to electorate data from 17 months before the election. Source: www.swansea.gov.uk.

The third criticism of plurality systems stems from the second: they tend to reduce voter turnout. In many districts, it will be clear which group is in the plurality and therefore clear in advance what the election result will be. This reduces the incentive to turn out to vote. This problem is likely to be lower, however, in multi-member districts, where genuine contestation over at least the last few seats to be filled is common.

The final point that critics of plurality systems commonly express is that they leave voters with little choice. In single-member districts, voters can do no more than pick a single candidate. In multi-member constituencies, voters can support multiple candidates, but can indicate no order of

preference among these. Some voters may be frustrated by this constraint, which may again reduce turnout. Evidence from surveys, focus groups, and citizens' assemblies suggests that voters do indeed like the idea of having more choice at the elections. At the same time, there is little evidence from actual elections that voters are particularly keen to exercise more choice, so the strength of this preference may be questioned.

Preferential Systems

The main alternatives to plurality systems are party list systems and preferential voting systems. In the non-partisan context of Jersey, party list systems are not an option. If preferential voting is combined with multi-member districts, two alternatives exist:

- **Single Transferable Vote (STV).** Voters rank the candidates in order of preference. Only first preferences are counted at first. Lower preferences are subsequently counted as necessary in order to determine which are the most popular candidates. This system is used for most elections in Ireland (both north and south), local elections in Scotland, parliamentary elections in Malta, and Senate elections in Australia.
- **Borda Count.** Voters again rank the candidates in order of preference. But this time each rank is accorded a certain weight: for example, a first preference might be worth ten votes, a second preference eight votes, and so on. All of these votes are counted up and the candidates with most votes are elected. This system is used for national elections only in the Pacific island state of Nauru. It is, however, familiar from the Eurovision Song Contest and some sporting contests, such as Formula 1 racing.

Political scientists have generally preferred STV to Borda count for three reasons:

- Borda count requires strong assumptions to be made about the relative strength of different preferences and different assumptions can lead to different outcomes. This could delegitimize the election result.
- Under Borda count (but not STV), it is possible for voters' lower preferences to harm the electoral prospects of their favourite candidates. This makes it hard for voters to know how best to promote that election result that they want. It also leads to much tactical voting, which may again detract from the legitimacy of the outcome.
- Under Borda count (but not STV), it is possible for a candidate to be elected having secured no first preferences. While first preferences should not generally be thought radically distinct from lower preferences, still most people would find it odd if a candidate were elected who was no one's first choice.

STV is not perfect either. It can occasionally generate the perverse result that a candidate's chances of winning are enhanced if they *lose* certain votes to certain other candidates. This is, however, rare in practice. Compared to plurality, STV produces far fewer anomalous results. As I have noted, the proportionality of STV can be criticized if single-party majority governments are desired, but this point does not apply in a non-partisan context. In the scenario in which voting was strongly influenced by parish, STV would allow proportional representation across the parishes of a large district.

The only credible criticism of STV in the Jersey context is that it is complex. There is no doubt that the process of counting votes under STV is often complex. But ordinary voters do not need to understand that complexity in order to understand how to exercise their vote and why the election result is as it is.

By way of example, I have submitted with this note the information booklet provided by the UK Electoral Commission for the Scottish local council elections in May 2012. It explains how to cast a vote, but says nothing about how the votes are counted. The Electoral Commission has since conducted research into voters' experience of the election. It found that 92 per cent of voters said it was easy to fill in the ballot paper, while only 4 per cent said it was difficult.¹ The proportion of spoiled ballot papers, at 1.7 per cent, was slightly higher than in UK general elections (around 1 per cent), but this is probably due to the fact that voters in Scotland are asked to vote in different ways at different elections. In Ireland and Malta, where all elections use preferential voting, the proportion of spoiled ballots is generally around 1 per cent.

There is therefore no reason to think that STV, once it is in operation, is too complex for voters.

The Commission may be concerned that it will be difficult to explain STV to voters at a referendum: here it may be thought necessary to do more than explain the voting process. We have little international experience to go on here. The only referendum ever to have put the option of moving to STV to voters was in Canberra in 1992. This was a very unusual referendum: voters were given two options, neither of which was the status quo. It offers only limited lessons for Jersey, for three reasons. First, the system that was being replaced was probably the most absurdly complex ever used for any public election in the world, so in comparison STV looked easy. Second, the alternative was also a preferential system, but with single- rather than multi-member districts. Third, STV was already familiar to Canberra's voters from federal elections.

Nevertheless, in case it may interest the members of the Commission, I have submitted with this note the information leaflet sent to all voters before the referendum by the ACT Electoral Commission (in which STV is called the Proportional Representation (Hare-Clark) system).

In the event of a referendum on STV, something like the following short description of the counting process might be offered:

The votes are counted so that seats are won by candidates who represent the spread of opinion across the constituency. At first, only first preferences are counted. Candidates who achieve a certain 'quota' of votes are elected. If there are still seats to fill, second and sometimes lower preferences can also be taken into account. The way this is done ensures that each vote counts once and only once in determining the final distribution of seats.

¹ Electoral Commission, *Scottish Council Elections 2012: Report on the Administration of the Elections Held on 3 May 2012* (London: Electoral Commission, 2012), p. 3.

2. Malapportionment

One of the principles underpinning representative democracy is the notion that each vote should carry the same weight. This implies that—other things being equal—the number of voters per representative should be the same in all parts of the polity. In practice, other things are not always equal: there may be legitimate reasons for deviating from the principle of equality. Yet the equality principle is central to democracy and needs to be taken seriously.

Malapportionment is the technical term referring to deviations from this principle: the greater are the differences between different parts of the polity in the number of voters per representative, the higher is the level of malapportionment. As indicated in my previous report, the standard measure of malapportionment, proposed by the political scientists David Samuels and Richard Snyder, is calculated as follows:

where s_i is the proportion of seats allocated to district i and v_i is the proportion of registered voters living in that district.² Translating this into English, we take the difference between the share of seats and the share of voters for each district (ignoring plus or minus signs), add all of these up, and then divide by two. My previous report showed the value of this index for a large number of democracies around the world today.

Table 4 shows the level of malapportionment under the Commission’s two alternative interim proposals and under the current system. Three bases for calculation are employed: total population; eligible electorate; and registered electorate. It is apparent that the option of six seven-member districts substantially reduces malapportionment compared with the current system. If total population or eligible electorate is used as the basis of calculation, it pushes malapportionment to levels similar to those found in proportional systems such as Germany and Ireland. If registered electorate is used, the figure is similar to that in the UK at the last election. By contrast, the option of retaining the Constables alongside five-member districts for the Deputies actually increases malapportionment compared to the status quo. This is due to the removal of the Senators, whose presence currently dilutes the malapportionment in other parts of the system.

Table 4. Malapportionment under the draft proposals and under the current rules

Basis of Calculation	42 Deputies	30 Deputies + 12 Constables	Current System
Total population	3.29	11.12	9.34
Eligible electorate	2.79	11.37	10.53
Registered electorate	4.44	8.27	8.21

Note: The malapportionment index is used as in my previous report, but I have here expressed the numbers as percentages. Source: Calculated using data supplied by the Electoral Commission.

² David Samuels and Richard Snyder, “The Value of a Vote: Malapportionment in Comparative Perspective”, *British Journal of Political Science* 31, no. 4 (October 2001), pp. 651–71, at p. 655.

Table 5 supplements this analysis by providing data relating to an alternative indicator of malapportionment used by the Venice Commission. The Venice Commission—officially, the European Commission for Democracy through Law—is an arm of the Council of Europe and has established guidelines for a wide range of aspects of electoral law. It recommends that, “except in really exceptional circumstances”, the population per seat should deviate from the national average by no more than 15 per cent in any district.³ The option of having 42 Deputies largely satisfies that criterion: all of the population deviations from the average are within 15 per cent except that district 3 is 19 per cent above the average when registered electorate data are used. But the option of retaining Constables produces deviations far in excess of 15 per cent whichever criterion is used. The largest deviations are little different from those under the current system.

Table 5. Deviations from average population per seat

District	Parish	Total population		Eligible electorate		Registered electorate	
		Dep only	Dep+Con	Dep only	Dep+Con	Dep only	Dep+Con
1	St Helier 1	+7.60	+36.36	+8.04	+37.01	-12.71	+26.94
2	St Helier 2	-2.22	+25.00	-0.17	+27.52	-12.70	-0.24
3	St Clement	+9.49	+10.50	+8.42	+9.14	+19.37	+18.35
	Grouville		-11.59		-11.96		-3.69
	St Martin		-21.34		-21.90		-12.98
4	St Saviour	+2.65	+15.30	+0.30	+12.81	+1.06	+12.27
	Trinity		-30.26		-32.93		-30.43
5	St Lawrence	-13.04	-20.08	-14.10	-20.81	-3.24	-12.51
	St John		-38.33		-39.07		-32.28
	St Mary		-53.50		-54.73		-48.88
	St Ouen		-28.05		-29.00		-19.51
6	St Brelade	-4.49	+3.28	-2.49	+5.55	+8.22	+16.19
	St Peter		-17.59		-16.17		-8.05

Source: Calculated using data supplied by the Electoral Commission.

It is for the Commission to draw conclusions from these data as to the desirability of the alternative schemes. The Deputies-only option clearly improves apportionment markedly and leaves it comparable to that found in many other democracies. Of the three bases for calculation shown above, that using eligible electorate is, at least in theory, the best (though I understand the available data are not in all respects wholly accurate). It is on this basis that overall malapportionment is lowest. Using this basis of calculation, the deviation from the average number of voters per seat does come perilously close to the 15 per cent threshold in district 5. Given, however, that this district is geographically the largest and most rural, its slight overrepresentation may be thought entirely defensible.

The option of retaining Constables makes overall apportionment worse than at present and in multiple parishes violates the Venice Commission’s criterion. Whether that is considered justifiable is not for me to judge.

³ European Commission for Democracy through Law, *Code of Good Practice in Electoral Matters* (Opinion no. 190/2002, Strasbourg, 30 October 2002), p. 17.