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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
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**OPINION
ON THE ELECTORAL LAW
OF THE CANTON OF TICINO**

**Adopted by the Venice Commission
at its 47th plenary meeting
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**Opinion
on the electoral law of the Canton of Ticino**

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Introduction: Purposes of the Opinion and Working Method

This opinion is intended:

- to present the possible amendments to Ticino's electoral law by way of transition to a majority system for the election of the State Council (executive) and possibly the Grand Council (parliament);
- to see how the electoral system could produce clearer majorities and make for changeovers in power, while emphasising the personal vote; a comparison might be made with the situation in other European States.

The two questions differ in nature. The first is technical while the second is distinctly more political. Consequently, although it is fairly easy to propose changes in the electoral system and to explain their effect in mathematical terms, it is much harder to assess their possible implications for a political system.

The two parts of the report will mirror these two questions. The first part will consider the question of the impact which a change in the electoral system would have on election results and more broadly on politics in general. The second part, however, will adopt a more technical approach to the various possibilities for amending Ticino's electoral law as regards the election of both the State Council and the Grand Council.

Part I: Impact of a Change in the Electoral System

1. Effect of the electoral system on politics

Over the last several decades, much has been written about the electoral system's effect on the political system, though without it being logically possible to draw general conclusions. It is indeed a complex question in that the electoral system is only one of various elements that influence the political system. In this respect, there are several distinct levels of reasoning:

a. Influence of the electoral system on the results

Before studying the effect of the electoral system on the results, it should be *determined exactly which electoral system is under examination*. Here, the hard and fast division between the majority system and the proportional system should be qualified. Moreover, a fact that may seem a truism but is crucial should be borne in mind: *the outcome depends, before all else, on the voter's choice*.

aa. Direct influence

In the first instance, the electoral system has a *direct* influence due to the method of converting votes into seats.

To begin with, the distribution of votes being equal, the choice of electoral system influences the *results* in terms of seats (*direct influence of the electoral system on the result*). It usually has an “*anti-fragmentation*” effect (making the elected organ less fragmented) in the sense that the distribution of the seats is not as proportional as the distribution of the votes.

The majority system and the proportional system can in fact be defined as follows: under the majority system any candidate who gains the majority of votes cast is elected, whereas under the proportional system the method of allocating seats is based on the proportion of votes. Overall, proportional systems tend to allocate seats in a more proportional fashion than do majority systems. However, in some cases this definition may miss the real point, which is that the mere existence of a proportional system does not necessarily lead to a proportional result. There are other factors that may bring about a disproportionate result, for instance the quorum eliminating the minor lists; certain methods of proportional allocation are not strictly neutral but tend to favour the big parties; proportionality is attenuated when there is a limited number of seats per constituency. Thus it is preferable to study how a polling method counteracts fragmentation, rather than just distinguish between majority and proportional systems.

A few examples will demonstrate the effect which certain proportional systems can have in reducing fragmentation:

A proportional system based on the largest remainder rule and a simple quotient (where the quotient is equal to the total number of votes divided by the number of seats to be filled, so that $120\ 000 : 12 = 10\ 000$), not intrinsically tending to favour big parties, is applied. It is applied firstly in a 12 seat constituency. The parties obtain the following results:

Parties	Votes	Seats
A	10 000	1
B	40 000	4
C	20 000	2
D	50 000	5
Total	120 000	12

Let us now assume that the election is held in four constituencies each having three seats. If so, the result will be as follows:

Parties	Votes				Seats					
	Constituencies				Constituencies					
	1	2	3	4	1	2	3	4	T	Di
A	4000	2000	2000	2000	0	0	0	0	0	- 1
B	16000	10000	6 000	8 000	2	1	1	1	5	+ 1
C	4500	3500	2000	10000	0	0	0	1	1	- 1
D	5500	14500	20000	10000	1	2	2	1	6	+ 1
Total	30000	30000	30000	30000	3	3	3	3	12	-

The difference (Di) between the total seats won by each party (T) and the total seats that it would have won in a twelve-seat constituency shows that small constituencies are favourable to big parties, even under a largest remainder system. Furthermore, the fact that party C was able to gain a seat was due to the strong concentration of its voter base in constituency 4.

With a 10% quorum in respect of a 12 seat constituency, party A would have been disqualified, and the result would have been:

Quotient $110\ 000 : 12 = 9\ 167$

B: $40\ 000 : 9\ 167 = 4.36 : 4$ seats

C: $20\ 000 : 9\ 167 = 2.18 : 2$ seats

D: $50\ 000 : 9\ 167 = 5.45 : 6$ seats (largest remainder).

In this case, quorum has a slightly less significant anti-fragmentation effect than division into small constituencies.

Otherwise, how the electoral system affects results also depends to a large extent on the way in which *votes are distributed*. This can be substantiated by a small example:

Two parties are contesting an election in six single-seat constituencies having 10 000 constituents each. Seats are allocated by relative majority. In the two scenarios presented, the parties (A and B) score a total of 30 000 votes each.

Scenario 1: A gains 6 000 votes in each of constituencies 1 to 3 and 4 000 votes in each of constituencies 4 to 6 (30 000 votes in aggregate). B gains 4 000 votes in each of constituencies 1 to 3, and 6 000 votes in each of constituencies 4 to 6 (30 000 votes in aggregate). A wins three seats and B three seats, corresponding to their gains under a proportional system in a single constituency.

Scenario 2: A gains 5 500 votes in each of constituencies 1 to 5 and 2 500 votes in constituency 6 (30 000 votes in aggregate) B gains 4 500 votes in each of constituencies 1 to 5 and 7 500 votes in constituency 6 (30 000 votes in aggregate). A wins five seats and B one seat, which is highly disproportionate.

bb. Indirect influence

The electoral system also influences the results *indirectly*, in that it has a certain effect on voter behaviour. The general tendency is theoretically that the more a system counteracts fragmentation, the more it prompts voters to accentuate its effects by voting “sensibly” rather than for parties that have little prospect of winning seats.

Generally speaking, the more a system counteracts fragmentation, the more it tends to ensure over-representation of the big parties and under-representation of the smaller ones, a situation that will contribute to one party’s gaining the absolute majority of seats.

b. Influence of the results on the political system

A second stage in the reasoning process is to examine the influence of the results on the political system hence, by inference, the influence of the electoral system on the political system.

As already stated, systems that attenuate fragmentation, particularly majority systems, are conducive to one party’s gaining the absolute majority of seats. They are thus regarded as ensuring the existence of a stable parliamentary majority and a stable government. But that is only true subject to certain conditions: first, that a party or a firm coalition has in fact gained the absolute majority of seats (in India for example, where this was the rule, it has no longer been so for several years); second, that there is proper party discipline, and third – often associated with the foregoing – that the government is accountable to parliament. The last two conditions, which impinge on the nature of the political system, are not, however, fulfilled in Switzerland. It is therefore very difficult to apply in Switzerland what may otherwise appear to be a general maxim.

The example provided – which concerns one of the most widely accepted rules about the effect of the electoral system on the political system – clearly reveals two impediments to an extrapolation in this area.

In the first place, *it is extremely difficult to deduce general rules*. This difficulty arises principally from the variety of electoral systems and of political situations, which by no means depend on the electoral system alone.

In the second place, the peculiar nature of the Swiss political system raises the question how far the experience gained elsewhere is valid in Switzerland.

c. Could the proposition be reversed by considering the influence of the political system on the electoral system and on the results?

aa. General remarks

The difficulty in identifying a clear influence of the electoral system on the political system also arises more generally, from the absence of a one-way causal link between them. In other words, it is not just the electoral system that influences the political system; the political system influences the electoral system too.

As is very correctly pointed out in a recent publication¹, it must be realised that the *question of the electoral system* (for the election of the legislative body) has a far less technical than *philosophical import*. A majority system – or a proportional system with a strong reductive effect on fragmentation- - is associated with the attainment of a ruling majority (governed democracy) whereas a system more akin to complete proportional representation seeks consensus to secure social cohesion (representative democracy). On that basis, there is not only the question of the electoral system's influence on the political system, but *the reverse question of how the political system influences the electoral system*.

Switzerland is plainly a representative democracy in the above sense. In addition, its political system is very distinctive (“*Sonderfall Schweiz*”) and displays the following peculiarities:

bb. The “Sonderfall Schweiz”: characteristics

Among the peculiarities of the Swiss system, the following may be mentioned:

- consensual democracy and the more or less pronounced proportionality of party representation in the cantonal executives, nearly all of which are elected by the majority system (this will be re-discussed);
- direct election of a collegial executive, which hardly compares with the direct election of the President of the Republic in States having a dual executive;
- extensive vote-splitting in practice, and not only in the legislation;
- absence of executive accountability to the legislature, unique in Europe;
- weak party discipline;
- semi-direct democracy.

cc. The “Sonderfall Schweiz”: de facto “proportionalisation” of the cantonal executives

The tendency of cantonal governments to assume what amounts to a proportional composition is one of the plainest illustrations of Switzerland's special position in the relationship between the electoral system and the political system. Indeed, the political system happens to influence not the electoral system but its effect – ie the results, showing how intricately cause is linked to effect in this area.

When writing my thesis some ten years ago, I examined the “de facto proportionalisation” of the cantonal executives according to the criterion of the mean deviation calculated between the share of votes (of the parties) at the Grand Council election and the share of seats in the election of the State Council (hereinafter “deviation”). The results for Ticino, which applies the proportional system, did not essentially differ from those for the French-speaking cantons which use the majority system². Comparable figures are derived from more recent election results, as can be seen below³:

¹ Daniel-Louis Seiler, in Pascal Delwit/Jean-Michel De Waele (eds.), *Le mode de scrutin fait-il l'élection?* Brussels: Editions de l'Université de Bruxelles 2000, pp. 21-35, particularly pp. 30 ff.

² See Pierre Garrone, *L'élection populaire en Suisse – Etude des systèmes électoraux et leur mise en oeuvre sur le plan fédéral et dans les cantons*, Basel/Frankfurt: Helbing & Lichtenhahn 1991, p. 317.

³ The deviation between share of votes (of the parties) at the Grand Council election and share of seats in the election of the State Council is equal to the sum of the differences between the percentage of votes gained by the parties at the Grand Council election and their percentages of seats in the election to the State Council, divided by the number of parties. This excludes parties which gained less than 2% of the votes. Furthermore, the

Canton	Year	Deviation
<i>Ticino</i>	1999	4.34
<i>Ticino</i>	1995	5.23
<i>Ticino</i>	1991	11.09
Berne	1998	5.20
Berne	1994	6.11
Geneva	1997	7.85
Geneva	1993	10.83
Geneva	1989	8.90
Valais	1997	4.68
Valais	1993	11.55
Vaud	1998	6.46
Vaud	1994	4.51
<i>Zug</i>	1998	3.94
<i>Zug</i>	1994	4.80

The foregoing examples, taken not only from the two cantons (*in italics*) that apply proportional voting for the State Council (Ticino and Zug) but also from the other cantons, tend to bear out the negligible influence of the electoral system on the proportionality of the election outcome. One of the most disproportionate results is the one for Ticino in 1991. This corresponds to the Valais figures at the time when the dominant party held four out of five seats, and is still more disproportionate than the result of the Geneva State Council elections when the left was ousted (in 1993)!

The de facto proportional appointment of the executive is a long-standing phenomenon dating back at least to the end of World War II. For over forty years, the Confederation has recognised, echoed by the cantons, “government by all parties” which entails “a share in governmental responsibilities for any party of a certain importance, provided that it is not extremist”⁴. This is true even in two of the three cantons electing the Grand Council under the majority system, namely:

- Grisons: the State Council is constituted as follows: UDC 2, PRD 1, PDC 1, PS 1;
 - Appenzell-Outer Rhoden: PRD 5, UDC 1, PS 1.
- (Appenzell-Inner Rhoden, particularly in view of its size, is a special case).

This tendency to proportionality and all-party government arises first of all from the stance of the parties, which habitually field only a number of candidates approximately matching their share of the electorate, and do not function on a majority-opposition pattern. It also arises from the voter’s acceptance of such proportionality as normal. The Geneva exception of 1993 was therefore swiftly rectified. After the centre-right parties, for the first time in half a century, had made a successful bid for all the State Council seats, the parties adjusted their aim in 1997 so that the centre-right put up only five candidates and the voters only gave it four seats.

calculations do not take into account the parties classified as “others” in “L’Année politique Suisse” yearbook (except for Zug Canton, where they are counted as one party, and Geneva Canton).

⁴See for instance Christian Dominicé, “Autour des élections gouvernementales en Suisse”, in *Mélanges Marcel Bridel*, Lausanne 1968, pp. 97-120.

As at federal level, the effective though unofficial imposition of proportionality is an aspect of consensual democracy, itself linked with semi-direct democracy and more specifically with the desire to avoid paralysis of the institutions through systematic recourse to referendum by the parties kept in opposition.

dd. Federal political system and cantonal political system

In a federal state where central government powers have tended to increase steadily at the expense of the cantons, the cantonal political system cannot be understood without referring to the federal political system. The federal political system is marked in practice by proportionality, as much as the political system of the cantons if not more so. This is because the “magic formula” has operated for over forty years, and one may point out that it is bound to prevail in a context where only one of the two Chambers, which have equal powers, is elected under a proportional system. It is a context where fundamental alteration of a canton’s political system is clearly very difficult, especially via a change in the electoral system. Even assuming the electoral system has a decisive influence over the party system, such change would still be hampered by the fact that the National Council is elected under the proportional system.

2. The question of changeovers in power

a. General points

Changeovers in power in the stable democracies of Western Europe only partly depend on the electoral system that applies to voting for the legislative assembly. Changes in the majorities occur in States using the majority system (United Kingdom, France) as also in those which apply a proportional system that counteracts fragmentation (Spain, Greece, Portugal). Changeovers are possible as well in States that employ a system verging on full proportionality (Denmark, Netherlands, Israel prior to the direct election of the Prime Minister), though not always undiluted (some parties remain in government). The case of Italy, which experienced true changeovers in power only after changing from a strictly proportional system to a substantially majority system, does not give rise to a different conclusion, for it was barely conceivable before 1989 that a government dominated by the Communist Party could be constituted.

b. Are changeovers in power possible in Switzerland?

Switzerland possesses the unique trait of being a true semi-direct democracy. But semi-direct democracy is a basic factor in ensuring that executives in Switzerland acquire a proportional composition for practical purposes, since any party can use the weapon of referendum to obstruct the institutions in order to gain admittance to the government. Gain admittance, not completely alter its composition. The most typical example is the late 19th century Catholic Conservatives who systematically availed themselves of referendum in order to join the Federal Council.

Direct and personal election of the government members, in combination with vote-splitting and under a collegial system, is also peculiar to Switzerland. It is part of the process whereby the cantonal executives are in effect constituted along proportional lines, although virtually

all cantons stage the election of the cantonal executive under the majority system – Zug and Ticino are exceptions.

The introduction of a majority system with closed party lists (*liste bloquée*) is almost unthinkable in Switzerland, and its constitutionality is even open to query⁵. At all events, it would not automatically result in a compact majority, considering the possibility that none of the lists puts up as many candidates as there are seats to be filled.

If we rule out the closed party list system, it is unlikely that the formation of a homogeneous government would be possible, in view of voter habits in most cantons. It can be reiterated that Geneva, which for the first time in half a century had an entirely centre-right government in 1993, reverted to a more “proportional” government in 1997.

The question of *changeovers in power* therefore does not arise, or no longer does - unless political behaviour in Switzerland changes radically - in terms of absolute changeovers (complete change in the government’s party make-up). It may be more a question of partial changeovers (change in the ruling majority).

Partial changeovers are perfectly conceivable under the current electoral system, if the party blocs are defined. It should be observed that the composition of the party blocs can be more readily clarified with majority election. This is due mainly to an ostensibly technical factor which, in Switzerland, has always set the majority system (multi-member) apart from the proportional system: the possibility of putting forward lists with exactly the same content under different party designations. These are not common lists in the true sense as each party puts forward its own list, but the alliances are clearly apparent.

Part II: Scope for Amendment of the Electoral Law

A. General principles/constitutional limitations to revision of the electoral law

Democratic elections are founded on five main principles: free, equal, direct universal suffrage with secret ballot. These principles are enshrined in Swiss constitutional law⁶. Universal and equal suffrage follows from Articles 8 and 5.1 of the Federal Constitution, and free suffrage from Article 34.2, direct suffrage for election of the Grand Council from Article 51.1; the secrecy of the ballot is an aspect of free suffrage, with a reservation for *Landesgemeinde* elections⁷. The options discussed in this opinion do not on the whole raise problems of incompatibility with the general principles of electoral law. Still, some points should be stressed:

⁵ See section II.A.2 below.

⁶ On this subject, see in particular the thesis by Poledna Tomas, *Wahlrechtsgrundsätze und kantonale Parlamentswahlen*, Zurich: Schulthess 1988; for a more general approach, see my report at the UniDem seminar in Sarajevo on the constitutional principles of electoral law, in *New trends in electoral law in a pan-European context*, Science and technique of democracy n° 25, pp. 11-33.

⁷ Auer Andreas, Hottelier Michel and Malinverni Giorgio, *Droit constitutionnel suisse*, Berne: Staempfli 2000, vol. I, n° 851.

1. *Regarding equal suffrage*

- The question of *equal weight of votes* does not arise in a system without constituencies whether for the election of the State Council – as in all Swiss cantons – or for that of the Grand Council, which is a far more original feature. In the event of constituencies being created for the election of the Grand Council, it will be necessary to make sure that the seats are equally distributed between them, and to determine the distribution criterion (number of inhabitants, of Swiss citizens, or of registered electors).

- *Equality of party representation* is not imperative under Swiss federal constitutional law, whatever the electoral system adopted. There is no principle requiring the result to be as proportional as possible. On the other hand, where the cantonal constitution stipulates the proportional system, the outcome must not be rendered unduly disproportionate by the operation of the rules on quorum⁸.

2. *As regards free election*

The closed party list is unknown in Switzerland, whether under the proportional or the majority system. It is therefore doubtful that it complies with the principle of free election. Conversely, it may be argued that the possibility of choosing from the candidates on a list, if not a combination of lists, is guaranteed by the Federal Constitution⁹. In any case, introduction of the closed party list is very difficult to envisage politically.

3. *Concerning the stability of electoral law*

Stability of electoral law is not demanded by constitutional or international law. However, in the established democracies, major changes in this respect are few, guarding against any risk of the system being manipulated for purposes of electoral gain, and bearing witness to the maturity of democracy. In Western Europe, only Italy has recently effected a major change for the national elections by switching from a virtually universal proportional system to a mixed but predominantly majority system. France, which has frequently revised its balloting method in the past, has upheld the system of two-round majority election to a single seat since the creation of the Fifth Republic, apart from the 1986 elections which were held according to the proportional system. Stability is still more pronounced in Switzerland, and by and large both federal and cantonal electoral law have only been amended in secondary areas since the proportional system was introduced for the election of the legislative assembly in the recent or remote past. On the other hand, introduction of the proportional system for electing the executive has not succeeded in taking hold elsewhere than in Ticino and Zug. Swiss electoral law is thus typified by considerable stability.

Retention of the fundamental rules of the electoral system in the constitution of Ticino should ensure that the innovation is perpetuated even if the system changes, and prevent it from being challenged on grounds of party interests.

⁸ Cf. ATF (Federal Court ruling) 124 I 55 65-66 *Evangelische Volkspartei Freiburg*, of 1 April 1998, and references.

⁹ On this point, see Poledna, *op. cit.*, pp. 253-254.

B. Proposals to amend electoral law

The second part of this opinion deals with the possibilities for amending Ticino's electoral law in line with the request made by the State Council. When a new system is chosen, it should always be realised that any change in the method of election has but a limited impact on political life. In particular, the various alternatives are consequently often examined in the light of technical rather than political considerations.

1. Election of the State Council

a. Adoption of a majority system

Transition to a majority system for the election of the State Council would bring Ticino into line with the other cantons which elect their State Council by the majority system (Zug is an exception).

The majority system embodies a number of alternatives.

1. Firstly, it should be determined whether the territory is divided into *constituencies*. This is not so in any canton, but it is conceivable:

- either to limit the number of State Council members resident in the same part of the canton: for instance, in the canton of Uri, not more than three (out of seven) State Council members can come from the same municipality¹⁰; in 1997 the canton of Vaud repealed a rule stipulating that there should not be more than two State Councillors having had their political address in the same district of the canton for a year;

- or to provide that each large region of the canton shall have one State Council member: this is the case in Valais (for three regions); the two other members can come from any region but there may not be more than one State Council member per district¹¹.

2. Next comes the problem of *calculating the majority*.

It may be a case of the relative majority. This system is applied in Geneva: "Candidates having gained a relative majority of the votes shall be declared elected, provided that such majority is not less than one-third of the valid ballot papers". The quorum stipulating one-third of the votes is almost inoperative, and a second round (by relative majority without a quorum) is never held in practice¹².

The second solution involves the *absolute majority*. This solution is adopted in nearly all cantons. In multi-member constituencies it has a number of alternative forms which can be called the classic method, the Zurich method and the Grisons method.

¹⁰ Art. 95.2 of the Constitution (Cst.)

¹¹ Art. 52.2-3 Cst.

¹² Art. 50 Cst.

- According to the *classic method*, the absolute majority is understood as half plus one of the valid ballot papers. This method is used for electing the State Council in the French-speaking cantons especially (Geneva excepted)¹³. It is used in Ticino for electing State Council members¹⁴.

According to the *Zurich method*, the absolute majority is half plus one of the quotient of the number of lines validly completed on the ballot paper (ie neither blank nor obliterated) and the number of seats to be filled; the calculation, not taking into account the blank or obliterated lines, facilitates achievement of the absolute majority at the first round. This system is used particularly in Zurich and Berne¹⁵.

According to the *Grisons method*, applied in the Canton of Grisons alone, the absolute majority is equal to the number of lines completed on the ballot paper, divided by the number of seats to be filled plus one; this system makes seats difficult to win at the first round but is intended to make it impossible for the absolute majority to be won by a larger number of candidates than the number of vacant seats. This method applies to elections by the majority system, including that of members of the parliament, except in districts where the Zurich method is chosen¹⁶.

- Moreover, it is conceivable to return at the first round only those candidates who have gained the votes of a certain percentage of registered electors, as in France for the election of Assembly members, where the figure is 25%¹⁷.

Examples:

- Elections to the State Council of Zurich Canton in 1999:

Elected at the first round were 7 candidates polling between 106 424 and 179 388 votes, the absolute majority (according to the Zurich method) being 88 727 votes. An eighth candidate gained the absolute majority. No second round was required.

If the classic method had been applied, the result would have been: absolute majority – 141 093; only two candidates (gaining 179 388 and 143 506 votes) would have been elected at the first round.

If the Grisons method had been applied, the absolute majority would have been 155 282 votes¹⁸. Only one candidate would have been elected at the first round.

¹³ See for example sections 4 and 114.2 of the Law on Elections and Referenda (Valais), and section 80.1 of the Law on Political Rights (Neuchâtel).

¹⁴ Sections 88 and 105 of the Law on the Exercise of Political Rights (LEDP).

¹⁵ See for example § 64.2 of the Electoral Law (Wahlgesetz) (Zurich); section 24.2 of the decree on political rights (Berne): “The majority shall be calculated as follows: the total number of valid votes for individual candidates is divided by the number of member of the authority to be elected, and the figure thereby obtained is divided by two. The absolute majority is equal to the integer immediately above the last result obtained”.

¹⁶ Section 40-41 of the Law on the Exercise of Political Rights (Gesetz über die Ausübung der politischen Rechte im Kanton Graubünden).

¹⁷ Art. L. 126 of the French Electoral Code.

- State Council elections of Basel City Canton on 22 October 2000:

Classic method applied; absolute majority 23 572 votes. Five candidates elected at the first round of the ballot, gaining between 25 504 and 30 157 votes (one candidate gained 23 570 votes).

If the Zurich method was applied, the number of lines completed being 236 745, the absolute majority would be 16 911 votes, and the seven seats would be filled at the first round, with an eighth candidate gaining the absolute majority (polling 17 451 votes).

Conversely, if the Grisons method was applied, the absolute majority would be 29 594 votes, and only one candidate would be elected at the first round.

- State Council elections of Grisons Canton on 15 March/5 April 1998:

Only one candidate gained a seat at the first round by narrowly beating the absolute majority of 21 031 votes (she scored 21 561).

If the Zurich method had been applied, the absolute majority would have been 12 619. All seats would have been filled at the first round, with a sixth candidate attaining the absolute majority.

If the classic method had been applied, no candidate would have been returned at the first round as the absolute majority would have been 22 087. This result is due to the fewer lines completed by each voter here than in Zurich and Basel City (since there are five seats, not seven, to be filled).

- State Council elections in Grisons Canton on 20 February/13 March 1994:

Three candidates won seats in the first round by surpassing the absolute majority of 25 204 votes. Two candidates gaining 25 021 and 24 846 votes respectively were to be elected only in the second round.

If the Zurich method had been applied, the absolute majority would have been 15 122. The five seats would have been filled at the first round while a sixth candidate would again have surpassed the absolute majority.

The absolute majority according to the classic method would have been 22 977. All offices would have been filled at the first round.

However, the result of an election conducted according to the majority system is difficult to extrapolate on the basis of the *Ticino* State Council election results. Indeed, besides the differing nature of the majority and the proportional system, which may influence voter behaviour, the following factors should be taken into account:

¹⁸ Counting 1 242 259 lines completed.

- in Ticino, the parties put up far more candidates than the seats which they hope to gain, which would not happen with majority voting;

- Ticino's electoral law prohibits deletion of candidates ("latoisage"); three candidates may be added on each list, giving the elector eight votes for five seats; under the majority system, however, voters in Switzerland very widely receive as many votes as there are seats to be filled, and can distribute them at will.

The foregoing examples clearly indicate that the Zurich method tends to favour the election of candidates in the first round; the classic method and the Grisons method lead as a rule to a second round. The classic method allows the election of more candidates in the first round than the Grisons method when the voter completes a large number of lines on the ballot paper; otherwise the opposite applies (a situation that arises more in five-seat than in seven-seat constituencies).

Choosing the Zurich method would largely obviate the complications of organising a second round. A second round might nevertheless be justified where the political formations prefer to go to the people in dispersed order first and then work out arrangements for the second round. Failing such arrangements, the second round in fact tends to confirm the first round results.

3. Further, the question of *the elector's freedom of choice* is to be considered.

In very broad terms, the majority systems applied in Switzerland provide for very substantial freedom of choice on the elector's part, and the elector always has a number of votes equal to the seats to be filled, being able:

- to delete candidates put up by a party; this is not possible at present for the Ticino State Council¹⁹;

- to split the vote, by adding candidates from other lists;

- to use a blank ballot paper to be filled in as the voter wishes with candidates of various parties ("*lista senza intestazione*");

- in addition, it is possible in many cantons to vote for people who have not stood for election although this barely affects the election outcome.

All these possibilities except the last are already recognised in Ticino's law when the majority system is applied²⁰. The current system, which rules out deletion and the "*lista senza intestazione*" and allows each voter to have more votes than there are seats to be filled, would have to be discarded if the majority system was introduced, in view of its complexity and lack of adaptability to this type of election method.

It might be possible to contemplate the use of restricted voting enabling the elector to vote for fewer candidates than there are seats to be filled. This system was moreover applied in Ticino when it reverted to the majority system for electing the State Council from 1905 to 1920. It is also conceivable to allow cumulative voting where all of an elector's votes go to one

¹⁹ Art. 37 LEDP.

²⁰ Art. 36 LEDP.

candidate. Restricted and cumulative voting in a majority election, both seldom applied in practice, are alike intended to ensure the representation of minority political tendencies. They are not warranted in Switzerland as I see it, since voters are wont to split their votes liberally between the lists so that the result of voting usually has a proportional flavour.

In the event of a *second round*, it needs to be determined who is entitled to stand. Some cantons do not lay down any particular rule and thus allow any candidate to contest the second round. In others, the second round is open only to candidates who contested the first round, as for example in Neuchâtel where “The candidacy of a person who has not participated in the first round shall be permitted only to replace a candidate who has meanwhile become ineligible”²¹. More stringent rules may be made, whereby the candidates who scored lowest in the first round do not qualify for the second round. In Fribourg, “the second round is open to all candidates not elected in the first round, or to as many as do not exceed twice the number of seats remaining to be filled. If there are more, those who gained the fewest votes shall be disqualified”²². In *Ticino*, the candidates admitted to the second round of majority elections must have stood during the first round and must have gained 5% of the votes²³. A rule of this kind could be extended to the State Council. In *France*, for the sake of comparison, a similar rule is in force for parliamentary elections, but the threshold is set at 12.5% of votes in the first round²⁴.

It should be further noted that under the majority system *the name of the list* has no effect on the count. Consequently, it is possible for several lists to bear the same candidates (in the second round especially).

What would be the effects of switching from the proportional to the majority system for election of the State Council?

As we saw earlier, it is extremely difficult to tell what implications an alteration of Ticino’s electoral system would have for the results and for the political system in general, but they are unlikely to be significant, especially if the majority system is introduced strictly at the cantonal level and in respect of the State Council alone. This is borne out by the experience of the other cantons, most of which combine a proportional election of the Grand Council and a majority election of the State Council. Introducing the majority system for the State Council and Grand Council at the same time would entail more numerous, but probably not major, changes. This point will be further discussed in connection with the implications of introducing the majority system for the election of the Grand Council.

b. An adjustment of the proportional system?

Adjusting the proportional system to the greater advantage of the big parties or the majority coalition could also be envisaged.

Countless changes in the method of calculation are of course conceivable, but just two solutions that could significantly influence the election result need be presented in this study.

²¹ Section 82.1 of the Law on Political Rights.

²² Section 126.2 of the Law on the Exercise of Political Rights.

²³ Section 106.2 LEDP.

²⁴ Article L.162 of the Electoral Code; however, the two candidates who led in the first round can always contest the second.

The first is to establish an indirect quorum whereby lists not gaining a seat in the initial distribution are eliminated. This indirect quorum would be 16.66% (cf Article 66.2 Cst.). Although such a quorum would not have altered the 1999 and 1995 results, it should be observed that the Socialist Party, with its respective scores of 17.6% and 16.8%, would have come very close to elimination. A direct quorum of 20% would have eliminated this party, and the Lega (“Union of the People of Ticino”) would have gained its seat very narrowly indeed in 1995 (it obtained 20.1%). The socialists, who split in 1991, would not have gained a seat in either case. A system like this definitely tends to make dispersal of the lists more difficult and to aid their amalgamation. One could also envisage making the quorum applicable to allied lists and groups of lists; if so, alliance would be promoted but dispersal of the lists could not be averted. Only the “per list” quorum would have a real effect in my opinion, but this would still need to be determined: would it tend to eliminate parties, or would they opt for joint listing?

A formula favourable to the largest coalition (or perhaps party) might also be contemplated, for instance by providing that the list or the group of allied lists having won the most votes, but not less than 40%, is not to have fewer than three out of five representatives in the State Council. (In the present political context, this would actually apply in practice only to a group of allied lists.) But a system like this would not be effective, for purposes of forming a majority, unless alliance was linked with the framing of a common programme and consequently did not seek purely electoral ends.

Other changes, such as introducing the open list (“senza intestazione”) or the option of deleting candidates’ names, are possible but ought not to influence the party structure of the State Council.

2. *Election of the Grand Council*

A change in the method of electing the Grand Council is conceivable (a) by changing to a majority system or (b) by introducing a mixed majority/proportional system, or (c) by altering the proportional system.

a. *Changing to a majority system*

In principle at least, changing to a majority system is possible for the Grand Council and the State Council alike.

Contrary to the election of the government, election of the parliament by the majority system cannot be contemplated without division into *constituencies*, whereas under the present system the representatives are elected in a single constituency²⁵. The constituencies could theoretically be single-seat, but their demarcation would be extremely awkward and such a procedure is unknown in Switzerland. It would be wiser to provide for multi-member constituencies. To ward off any suspicion of gerrymandering, they should be stable and consistent with pre-existing administrative entities. The constituencies drawn up to allow regional representation under the present law might be used²⁶. However, constituencies of this kind are relatively few (the number of seats averaging 9), which might lead to a highly disproportionate result. It could be argued that they should be divided so as to arrive at an

²⁵ Art. 58 Cst.

²⁶ Section 73 LEDP.

average of not more than 5 seats per constituency. Unduly disproportionate size of constituencies should preferably be avoided so that the effect of the electoral system in each does not differ too widely. By way of comparison, Grisons, the only large canton still using the majority system, has 39 constituencies for 120 seats, an average of 3.07 seats each (but 16 constituencies have a single member, as the constituencies correspond to the districts – making the average 4 seats for the 26 multi-member constituencies). Once the constituencies are defined, the seats would need to be apportioned among them. This may be done according to various distribution criteria: number of inhabitants – number of Swiss citizens (minors included) – number of registered electors. Distribution of seats between constituencies in Switzerland is usually according to a proportional system with the largest remainder. A redistribution of seats among the constituencies must take place regularly (at federal level and in most cantons, every ten years). Choosing a single-seat system would raise additional problems of demarcating the constituencies which in this case, true to the principle of equal representation, would be required to represent a comparable number of inhabitants, citizens or electors.

As regards the various methods for calculating the absolute majority, reference is made to the foregoing remarks about the election of the State Council²⁷.

The effects of a change to the majority system for the election of the Grand Council are no more easy to determine than for the election of the State Council. With the reservations prompted by the difficulty of predicting the effects of the electoral system on the political system, the choice of a multi-member majority system like the one applied in the cantons that still practise majority election, or existing earlier in federal and cantonal law, could presumably justify the following forecasts:

- either a marked over-representation of the majority party or coalition (which was the position in Ticino prior to the introduction of proportional representation);
- or a more proportional result due to vote-splitting, although it would tend to work against the political tendencies outside the mainstream (like the Socialist Party in Grisons). For example, the seats in the largest of Grison's constituencies, Chur, were distributed as follows in 2000 (1997) : 3 (4) UDC, 5 (3) PDC, 4 (3) PRD, 7 (6) PS, 0 (2) other; the small constituencies are where the Socialist Party is at a disadvantage.

Before going over to a majority system for the election of the legislative assembly, it should nevertheless be realised that this system has at present become *exceptional* for electing Switzerland's cantonal legislatures. The only relatively populous canton to use it is Grisons. Resumption of the majority system would therefore run counter to the general trend. Moreover, in most European states, a proportional or partly proportional system is applied.

What is more, Ticino led the world in using the proportional system for electing its parliament, second only to Denmark which had introduced it for the upper house alone. Among other causes, the innovation arose from the unduly disproportionate effects of the majority system, compounded by the contentious apportionment of seats among the constituencies which had precipitated an intense political crisis.

²⁷ Part II.B.1.a.2.

b. A mixed system

In recent years, mixed systems which are majority in some respects and proportional in others have developed in Europe and exist in many different forms.

Special attention should be paid to the systems used at the various levels in *Italy*. Their purpose is the formation of a majority, and this is especially true of the local and provincial election arrangements

For *local* elections, the system works as follows. It should be noted that the mayor and the municipal councillors are elected concurrently, and that election is by the single-round majority system in municipalities with fewer than 15 000 residents and by the two-round system in municipalities with more than 15 000 residents – constituents can cast only one vote, valid both for the mayor and for the municipal council list, together with a preferential vote for one of the municipal council candidates. Combining the election of the council and of the mayor helps to rally the voters behind the principal lists. In municipalities with under 15 000 residents, the list of the mayoral candidate gaining the most votes takes two-thirds of the seats, and the other lists share the remaining seats according to the d'Hondt method. In municipalities with over 15 000 residents, if the mayor is elected in the first round, the list or group of lists associated with the mayor obtains 60% of the seats if it has gained at least 40% of the votes cast and no other list has gained 50%. Where the mayor is elected in the second round, the 40% requirement is dispensed with. The other seats are distributed proportionally according to the d'Hondt method.

This system obviously has a strong link with the election of the mayor. However, it affords the possibility of awarding a majority bonus to the winning list or group of lists, on condition that they gain a minimum percentage of the votes. The majority bonus system has the advantage of bringing in a majority element without the need for division into constituencies²⁸.

In the *provincial* elections, the election of the provincial president also takes place under the single-member majority system in two rounds; a majority bonus of 60% is awarded, for the provincial council, to the group or groups of candidates associated with the candidate elected president. (In addition, the election is run on the basis of territorial units, but this point will not be enlarged on here²⁹).

In the *regions*, pending the adoption of regional electoral laws³⁰, an extremely complex system operates, allowing a majority bonus to be awarded to the strongest list. Briefly, this system is designed to ensure that the list achieving a relative majority obtains 10% more seats if it has already won over 50% of the seats on the basis of an almost wholly proportional distribution, 60% of the seats where at least 40% of the seats are obtained according to the former calculation method, and 55% where less than 40% of the seats are obtained under the proportional system³¹. The candidate at the top of the regional list winning the most votes is elected head of the regional executive (Giunta)³².

²⁸ See “decreto legislativo n. 267/2000: testo unico degli enti locali” (Consolidated Act on Local Authorities), art. 71-73.

²⁹ See the aforementioned “decreto legislativo”, art. 74-75.

³⁰ Cf. Art. 122.1 Cst. and section 5 of Constitutional Act n. 1/1999.

³¹ Sections 14-15 of Act n. 108/1968.

³² Section 5 of Constitutional Act n. 1/1999.

This system assuredly has the object and the effect of allowing a majority to emerge, although its formation is not solely due to the existence of a majority bonus but also to the concurrent election of a head of the regional executive accountable to the legislative assembly. Furthermore, if a majority bonus arrangement was to be introduced in Ticino, it should be simple and understandable to electors.

It is also of interest to describe the systems applied in Italy for electing the Chamber of Deputies and Senate. These are mixed systems combining a majority element and a proportional element which is designed to attenuate the effect of the majority system.

For the *Chamber of Deputies* each voter has two votes, one in respect of the seats to be filled under the single-round, single-seat majority system and the other in respect of the seats to be filled by the proportional system³³. 75% of seats are allocated according to the majority system and 25% are to be shared out at national level along proportional lines, followed by apportionment among a number of constituencies³⁴ according to a calculation method which is again extremely complex: the votes given to the elected candidates are deducted, in the main, from the votes of their party in the proportional distribution³⁵. Strictly speaking the result is not altogether proportional, considering the limited number of mandates to be shared out.

In the Senate too, 75% of seats are allocated according to the single-seat, single-round majority system while 25% are shared out proportionally, at regional level in this case³⁶. The elector has a single vote for one candidate in a single-seat constituency³⁷. For the proportional allocation of seats, the votes gained by the candidates already returned are deducted; the seats allocated to a party are divided among its unelected candidates who obtained the highest percentage of votes in their single-seat constituency³⁸. The system thus displays some complexity, even if more intelligible than those applied at regional level and for the Chamber of Deputies.

The system for electing the *German Bundestag*, known as *personalised proportional representation*, tends on the other hand to yield an *essentially proportional* result while allowing half the candidates to be elected in one round of uninominal, majority voting. The elector has two votes, one within a single-member constituency and the other at Land level. Firstly, half the seats are allocated according to the majority system in the single-member constituencies. At a second stage, all seats are proportionally distributed among the lists at national level in order to determine the number of mandates to which each list is entitled. The seats already allocated in the majority ballot are deducted. The total number of seats may be increased if the number of seats gained according to the majority system exceeds the number to which a party would be entitled after the proportional distribution has been effected. The only parties eligible for the proportional distribution are those which have gained at least 5% of the second votes or three seats in the majority ballot³⁹.

³³ Sections 4 and 58 of the Act on Election of the Chamber of Deputies (Presidential Decree of 30 March 1957, n. 361, and subsequent amendments).

³⁴ Section 1.4 of the Act.

³⁵ Sections 77, 83 and 84 of the Act.

³⁶ See in particular section 1.2 of the Act on the Election of the Senate (Legislative Decree of 20 December 1993 and subsequent amendments).

³⁷ Section 14 of the Act.

³⁸ Section 17 of the Act.

³⁹ Sections 1-7 of the Federal Electoral Act of 7 May 1965, last amended by the Act of 21 May 1999.

If Ticino inclined to a mixed system, the majority bonus with voting in a single constituency would assuredly be the simplest method. A system entailing creation of constituencies with majority voting would in fact raise the problem of division. Of course the constituencies would not necessarily have to be uninominal, but even the creation of multi-member constituencies would not be straightforward. At all events, it would be desirable for the proportional part of the election to take place at the level of the canton as a whole.

Awarding a majority bonus to the leading party does not seem realistic in the electoral context of Ticino, given that the top party has been the same for a very long time. The bonus could thus be awarded to allied lists. As already explained with regard to the election of the State Council, such a system would only be effective if alliances were formed lastingly and not for purely electoral ends. Most significantly, there being no monocephalous executive elected at the same time as the legislature, it is hard to achieve the same grouping of political forces as in the Italian regional, provincial and local elections.

c. *Redesign of the proportional system*

Reducing the proportionality of the results without discarding the proportional system is feasible in three ways:

a. Altering the calculation method: for instance, the Hagenbach-Bischoff system is more advantageous to big parties, unlike the largest remainder system operating at present⁴⁰; other methods of apportionment are still more advantageous to big parties, but such an alteration by itself will have virtually no impact if the present single constituency with 90 seats is retained.

b. Division into constituencies with a limited number of seats; the smaller the constituencies the greater the advantage to the big parties, at least if the largest remainder system is supplanted by a system more capable of reducing fragmentation (cf. point a.); there again, too great a disproportion in the size of the constituencies should preferably be avoided to guard against an excessively uneven effect of the electoral system between constituencies, and it is desirable to keep to the pre-existing administrative units (cf. remarks about the majority system). In all other respects, the same problems of demarcation of the constituencies as for the majority system apply *mutatis mutandis*.

c. Introducing a quorum that would eliminate the small parties at cantonal level (for example, a 5.7 % or even 10% quorum). This solution is the most drastic but also the simplest. Geneva Canton, which besides Ticino is the only one providing for a single constituency, has a 7% quorum⁴¹, whereas Ticino's quorum is only token since it is equal to the quotient ie to $1/90 = 1.111\%$ ⁴². For example, in 1999 a 7% quorum would have ousted from the Grand Council three parties accounting for seven seats and in 1995 four parties accounting for four seats. If the present party distribution was maintained, the effect would thus be only marginal.

d. The regression of proportionality would obviously be accentuated by two or three methods of division into constituencies combined with alteration of the calculation method and the quorum. However, in Ticino's context of party politics, redesign of the proportional election

⁴⁰ Section 72 LEDP; the Hagenbach-Bischoff system is applied to the State Council election (section 80 LEDP).

⁴¹ Art. 70 Geneva Cst.

⁴² Section 72.1, 72.3 LEDP.

system ought not to have much impact on the allocation of seats, or consequently on political life.

Conclusion

The options for achieving the objectives discussed are at once multiple and limited. Indeed, the electoral systems allowing personalised choice are many, and constitute the rule in Switzerland where the idea of the closed party list is virtually non-existent. There are numerous openings for the adoption of a majority system, a mixed system or a system reducing proportionality, both for State Council and for Grand Council elections.

This variety of conceivable changes should not disguise the fact that it is extremely difficult to predict how a change in the election method would affect the political system. The interactions between the electoral system and the political system are hard to pin down and unlikely to be monodirectional. The electoral system is but one element of politics, and the effects of a reform cannot be registered until it has operated for some time. Furthermore, the impact of a change in the electoral system at cantonal level alone is inevitably limited, and changeovers in power would presuppose a break with a tradition now well-established in Switzerland.

Even if the effects of a change in the election method are to be seen in relative terms, it is nonetheless true that the further a system departs from fully proportional representation the more it favours the constitution of a clear majority, hence changeovers in power. Majority bonuses awarded to the majority coalitions are the simplest way to move in this direction.

