

Areas of research: Comparative Constitutional Law, EU Law.

**ELECTORAL SYSTEM AND FORM OF GOVERNMENT.**

**A. STATE OF THE ART AND GENERAL PRESENTATION**

This research project investigates the relation between the electoral system and the branches of government, as well as the mode of interaction between citizens and the state.

With few exceptions (such as Chapter 3, Art.1 et seq., Swedish Constitution), constitutions usually regulate electoral phase only through extremely general principles or address specific aspects in equally general terms. Most of the times, these provisions concern the minimum conditions associated with the right to vote. Nonetheless, the aim of this project is to evaluate whether an electoral system can exercise an influence on relations between branches of government, or even on the quality of interaction between the Government and its citizens. Thus, an electoral system may conflict with some of the principles and norms that contribute to shaping the *grundnorm* of the system. A part of the available literature affirms the existence of this influence, but it has only addressed an in-depth analysis of certain aspects (e.g., Chryssogonos K. and Stratilatis C., 2012; Rae D., 1971)

This question is worth being considered on various levels and within the context of different forms of government.

A number of these issues have been addressed by scholars, albeit most frequently in an individual and partial manner, and usually by political science (e.g. D.Pilon, 2018; A. Blais and A.Dobrzynska, 2009). The aim of this project is to address issues jointly, from a prominently legal-constitutional point of view.

## **B. RESEARCH OBJECTIVES**

The main objective of this research project is to understand whether and how an electoral system may influence a form of government.

In particular, the project aims to:

- 1) Ascertain whether an electoral system is able to affect the checks and balances between constitutional branches
- 2) Comprehend whether an electoral system can condition how citizens and institutions interact; in particular, how the right to participation is implemented, also with reference to the structure of the political parties
- 3) Establish whether the media-system and the personalization of politics could play a role with regard to the described issues.

## **C. THEORETICAL AND METHODOLOGICAL FRAMEWORK**

### **1. Methods and Sources**

The following exposition addresses the methods deemed necessary or useful for the objectives of this research project. This, however, does not intend to exclude further research methods that could prove useful to the development of the study.

One of the methods that will be used to implement this study is the comparative one (1), which will be necessary to achieve the objectives of this research project: understanding whether and how an electoral system may influence a form of government. In fact, by its very nature, this issue can only be addressed by comparing a plurality of legal systems. A comprehensive answer to this question can only be obtained by studying both the analogies and differences that characterise each system in relation to how the electoral system and form of government interact. Otherwise, the study would only be suitable to demonstrate how such a phenomenon occurs in a given system.

The first step will be to conduct a descriptive analysis of the most significant aspects of forms of government in individual systems. The following step will be to understand if and how the former and the latter interact, and to ascertain whether this interaction takes similar or different shapes in the context of different systems. In order to provide extensive answers, the comparison will address

both systems with similar forms of government and electoral systems and systems with different forms of governments and electoral systems.

In some cases, this may also require an understanding of the historical development of any given form of government or how a given electoral system came into being. (2-legal historical method)

Moreover, it will also be necessary to use an interdisciplinary socio-legal research method (3) because it is necessary to take certain political and socio-economic dynamics into consideration in order to understand how they concretely interact with different types of electoral systems. And thus, comprehend how, in the light of this interaction, electoral systems affect the effectiveness of the form of government as shaped by the constitution. In fact, the interaction between electoral systems and forms of government can follow different routes based on factors that are partially exogenous to the legal system, such as party structure, media system, etc., as will be addressed further on.

This research method is useful, on the one hand, to understand the *ratio* of juridic norms that are identified and have a *latu sensu* political nature (regarding *ratio legis*, see D. Canale and G. Tuzet, 2010) and are significant to evaluate the compatibility of the electoral system with the basic principles of each constitutional order, as well as with other constitutional norms. On the other hand, the relation between elements that are endogenous and exogenous to a juridic system may point to the presence of possible legal gaps in constitutional systems that are due to a lack of regulation over a given institution or phenomenon that would guarantee the abovementioned effectiveness. This implies that a normative-evaluative method (4) will also be used.

In order to comprehend the *ratio legis* and the socio-economic dynamics, the author would also employ political literature, as well as any other science to the extent that is necessary to the interest of the project. For these purposes it is important to establish a direct dialogue with the scientists dealing with these matters in order to view them in correct scientific terms. This can be implemented also by interviews that can be used as sources to supplement the academic papers. This manner of proceeding can be also used to consult academic experts of any national legal framework. In particular, consulting the latter in a comparative perspective, the author feels that it is necessary to proceed in this manner.

Dialogue with other scholars could also be implemented through events and other means provided by organizations such as ICON-S, DPCE and IACL-AID

In addition to academic papers and legal texts, sources also include verdicts passed by the constitutional courts of various legal orders. For instance, in the last decade, the Italian and German Constitutional Courts have issued important judgments regarding the compatibility of electoral systems and mechanisms with the constitution.

## **2.Theoretical framework**

As a consequence of an electoral system, both the parliamentary majority and the government are the expression of a single party. In this case, decision-making processes do not consist of a compromise between different political forces, but, rather, decisions relating to both the legislative power and the executive power may be taken within only one party. Thus, the issue is whether an electoral system could make the separation of powers merely apparent (Politi F.,2018) or, in the best-case scenario, may affect the checks and balances between the constitutional branches (Volpi M., 2009). Hence, the electoral system may conflict with the constitutional principles that establish the division and the balance between powers.

Under closer inspection, the electoral system may also condition how citizens and institutions interact.

In a parliamentary form of government, as a consequence of the electoral system, a parliament may mirror society and thus constantly replicate the dialectic between its various components (Cincea E., 2013; Lavagna, 1952). On the other hand, it could simply be the means to determine which party or political entity will detain the legislative and executive power through the same majority-system mechanisms that could affect the relations between the branches of government. Thus, a part of the literature considers that the value of these mechanisms resides in assuring governability (Torsten Persson T., Roland G. and Tabellini G. ,2007, Morrone, 2014; ACE project.org, no date).

In a typical presidential system, the direct election of the head of government is envisaged by the constitution. Therefore, in this case, these issues arise differently. In fact, the focus on the elections, with respect to the executive power, disregards the issue of the electoral system, which is intrinsically majoritarian (Adebe A. and Bulmer E., 2019).

This focus on the electoral phase implies a different concept of democracy, one that addresses the abovementioned question on the compatibility of the constitutional provisions that define relations between a state and its citizens.

## **D.PROJECT DESIGN**

### **1.The electoral system and relations between the branches of government**

The issue of the influence of an electoral system on checks and balances is particularly relevant in parliamentary forms of government, but it must also be analysed in presidential and semi-presidential forms of government, in which it arises in different terms and intertwines with the issue of the direct election of a monocratic office. In this case, an influence on the separation of powers could be exerted if the head of the state belonged to the same party which detains (by itself) the parliamentary majority.

This issue should also be viewed in terms of the norms that regulate the right to participation in a political party, its structure and its organization, or its concrete structure and organization if these norms are not present.

These questions will also be examined based on the structure of parliamentary houses, their prerogatives and the relations between them. Indeed, the imbalance of power that could be caused by an electoral system could take a more severe form in the case of a unicameral system or in the case that one of the houses does not possess relevant powers (Tondi della Mura, 2016).

All these issues will be addressed in connection with the points set out below regarding the interaction between a state and its citizens.

### **2.The electoral system and the interaction between citizens and the state**

The difference, in terms of the effects of the different types of electoral systems, could imply a different mode of implementation of the right to participation (that a part of the scholarship considers to be a human right, -e.g. H.J. Steiner, 1988,F. Peter, 2013; ) and consequently the necessity to identify the meaning of the norms that characterise the democratic nature to a government system. In particular, the question is how terms such as “sovereignty”, “democracy” and “democratic” should be interpreted in the constitutional provisions that mention them. This interpretation may make it possible to comprehend whether or not an electoral system stands in contrast with the same provisions.

This issue should also be seen in terms of the right to participation in a political party, its structure and its organization, given that they should operate as intermediary entities between society and

government (Skach C., 2012). In particular, it is necessary to analyse to what extent these features allow the participation of citizens.

These issues are closely connected with a factor that is exogenous to the legal framework, but which can nonetheless politically affect both the checks and balances established by the constitutional order and the quality of the interaction between citizens and institutions. The issue is whether the focus of the public debate centres around political programs and the interests represented or, on the contrary, on individuals who aspire to public offices. In other words, this issue arises when majority-system mechanisms (above all in single-member constituencies) are combined with a personalisation of politics (Staiano S., 2015,8; Pace A.,2016, 14). For instance, in terms of form of government, *de facto*, although not *de jure*, this can entail a direct election of the head of the government, namely the leader of the winning party, as has been observed for some time now in the literature (Jennings, 1941; Fisichella, 1965; Modugno 2010; Luciani, 2010).

Therefore, an electoral system could, in fact, alter the government system as envisaged by the Constitution.

With reference to the relation between the state and its citizens, it is evident that the personalization of politics could parallel the mechanisms that grant the absolute majority of seats to a single party. Indeed, they both represent a mode through which citizens interact with institutions, focusing on the election phase.

It is clear that the basic distinction concerning electoral systems is between the majority and proportional systems (for a classification of the electoral systems, see: P.Norris, 1997). Within this essential distinction, there are a range of variants. In some electoral systems, questions could arise, with varying intensity depending on which variant applies, concerning the relationship between citizens and institutions. One of these concerns the fact that both majority systems and certain mechanisms introduced to proportional distribution structures, such as electoral thresholds, could potentially give a different weight to the votes of individual electors.

On the one hand this raises the issue of whether the principle of vote-equality, established by various Constitutions, must be intended as equal potential weight or equal effective weight of the vote (on this matter, see: Verdict of the German Constitutional Federal Tribunal 25/07/2012; Verdict of the Italian Constitutional Court n. 1/2014; Scaccia G., 2014). On the other hand, a different weight could represent a form of blackmail. In fact, electors could be induced to vote for a party which is not what is considered most representative of their interests, to avoid a wasted vote. If this

assumption is correct, the question of constitutionality is self-evident: the “blackmailed” subject is the one to which the Constitution attributes sovereignty.

One of the most important aspects, similarly external to the legal framework (and also closely related to the issue of self-centred degeneration of politics) is the relation between the media and the electoral system. It might be valuable to analyse this relationship also in reference to the issue of the ownership and control of media, and, therefore, it involves the constitutional rules that regulate the press.

While this may seem obvious, public and individual opinion and consequently electoral decisions are formed on the basis of information (on this subject, see: Horváth P. and Machyniak J, 2014; Karp.a., 2013; Comstock G. and Sharrer E., 2005; aceproject.org, no date; amongst others).

Not only can media influence the behaviour of voters, but even more so that of the elected (Herbst S., 1998). In fact, the elected may be well-aware that their re-election depends on a favourable portrayal in the media. It is self-evident that the decisions made in exercising their roles can be conditioned by the pursuit of media favour.

This mechanism takes place – to a certain degree – independently of the type of electoral system. Parties that enjoy the favour of a significant portion of the media are clearly at an advantage, independently of the electoral system. Nevertheless, this may not occur always to the same degree. Indeed, where there are majority bonus systems, election thresholds, and especially single-member constituencies, the favour of the media could represent an indefectible factor even just to access parliament.

In this context, the aforementioned issue of possession and/or control of the media could result significant and this points to a legal gap in the constitutional norms that regulate the media system. In fact, it is evident that a (small) social group could be empowered to affect the policy-making process to a widely greater extent than other citizens. This influence could be augmented or attenuated based on the electoral system in force.

All the mentioned issues may imply the existence of a legal gap, which might arise in several legal orders, consisting in the lack of constitutional regulation on an election system.

### **3. Geographical area of research.**

The countries analysed in the present research project are the ones commonly considered well-established democracies. Indeed, if we consider that the electoral system is capable of affecting

relations between constitutionally significant subjects (including citizens), it is in these legal orders that this capacity would emerge more evidently. In fact, in states in which the minimum conditions enabling freedom of thought, organization, free exercise of voting, etc... are absent, these faults tend to englobe all issues concerning the electoral system.

This project will take into account national orders that are exemplary or useful to this research project. However, a particular focus will be dedicated to the countries that are particularly significant for their constitutional systems. Amongst parliamentary forms of government, the focus will be on the UK, Italy and Scandinavian countries. The UK is of interest as the birthplace of the plurality system (Turpin, 2007), while Italy has been characterised by a succession of different electoral systems. Scandinavian countries are particularly relevant here because, amongst other things, the proportional electoral system is directly envisaged by the Constitution.

In terms of presidential forms of government, the paper primarily addresses the United States and then Finland, Iceland and France, amongst others, as examples of the different subtypes of semi-presidentialism.

As the project is mainly based on European countries, a substantial reference to the EU system is necessary. Indeed, in view of the binding EU regulations for member states, a mere analysis of the latter would provide an incomplete picture. Above all, however, the quality of the interaction between citizens and decision-making processes can only be properly analysed if we consider the EU prerogatives, its unique institutional architecture, and the electoral systems adopted by individual member states (On this aspect, see: Hix S., 2011, Farrell, Monet, 2007).

Similarly, the project will also mention other supranational organisations, such as WTO and FMI, whose decisions are binding or condition the internal decisional processes of national systems.

## **E. EXPECTED RESULTS**

The desired result is to supply a contribution to the understanding of the interaction of the described phenomena. This understanding may provide scholars with further tools for analysis and allow them to better identify and inform society about critical points concerning the balance of powers and the effective participation of citizens in decision-making processes, as well as provide valid solutions.



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