Electoral Laws and Systems

INTRODUCTION

‘Electoral laws’, ‘electoral systems’, and ‘electoral formulas’ are often used as synonyms without clear distinctions. In the terminology used by several authors, an electoral law consists of suffrage and its limitations. For other authors, such as D. W. Rae, an electoral law is instead defined by the structure of the ballot, the magnitude of the constituency, and the electoral formula (usually referred to as the electoral system elsewhere in the literature).

The first distinction is between a broad and a narrow definition of electoral law. In the broader sense, electoral laws are a set of written and non-codified rules regulating the election of political bodies—including parliaments. This set of rules includes all phases of the election, from nominating candidates to overseeing the ballot-counting and declaring the winners. The narrow definition of electoral laws, by contrast, includes those written and non-codified rules regulating the right of individuals to participate in the election, both as electors and elected. It concerns therefore the right to vote (franchise), eligibility, and equality between voters and between candidates, as well as the transformation of the preferences expressed through votes into mandates (direct and indirect elections, the rules for declaring candidates elected, etc.). The compulsory character of the election and its secrecy also belong to the narrow definition of electoral laws. This last point is important since it is often contested within democratic theory whether the act of voting is a right or a function, and whether this function should be mandatory and openly carried out or not (see Chapter 2). The size of the legislative body, the duration of the legislature and the indemnity of representatives are usually not included in the narrow definition of electoral laws since they are rather elements of parliamentary regulation.

Three main elements can be distinguished within the narrow meaning of electoral law:

1. levels of enfranchisement (or franchise);
2. equality or ‘fairness’ of voting conditions;
3. electoral system.

These three elements define who is included in the process of representation (inclusiveness), that is, eligible to vote; the degree of equality between those included (equality); and the method by which preferences are expressed in votes and votes are transformed into seats of the representative body (electoral system). All these rules will be defined here as electoral laws.

Formulating operational definitions of these three concepts shows in the first place that the concepts of enfranchisement and equality of voting conditions are ordinal
(sometimes quantitative) variables of historical development, while the concept of electoral system is a categorical variable of a typological nature. In effect, it is possible to speak of the first two concepts at least in terms of ‘levels’ of democratization (that is ‘democratic progress’ over time during the nineteenth and twentieth centuries), even though it is sometimes problematic to determine ‘how much’ and therefore to build continuous variables. By contrast, the categories that define different electoral systems do not constitute orders of more or less and better or worse, but rather types.

FRANCHISE

The elements composing the concepts of franchise and enfranchisement are the levels of suffrage as defined by the limitations to universal suffrage through

1. gender;
2. census requirements;
3. capacity requirements;
4. voting age.

Other forms of exclusion may exist and indeed have existed: race, religion, and so on.

It might be useful to define the terms ‘census’ and ‘capacity requirements’ more precisely. In most languages, the terms were derived from the French régime or vote censitaire and capacitaire. While these terms were transferred into Italian and German (voto censitario and capacitario, Zensuswahlrecht and Kapazitätewahlrecht), English does not possess such a direct equivalent; cense, censo, and Zensus signify something different from the English census, which refers mostly to population censuses.

Furthermore, the census and capacity requirements are often confused: financial or property requirements are mistakenly considered capacity criteria. Instead, capacity requirements are usually based on the levels of education or on the profession and professional accomplishments. They include criteria such as a given educational level, completion of military service, and given professions or professional categories (for example, civil servants, military personnel, etc.). Very typical of capacity exclusions is the requirement of literacy. Census requirements can be based on different criteria: property, taxation, income, lease-holding, rent, or savings.

The terms enfranchisement and universal suffrage do not entirely overlap. Voting age is not necessarily linked to universal suffrage, since the latter can co-exist with different voting ages which, historically, have continuously been reduced (see Table 2.5 in Chapter 2). Other requirements for the right to vote do not reduce in principle the scope of universal suffrage: citizenship, residence in the constituency over a given period of time, possession of civil rights, mental health.

As far as gender is concerned, women are included in the contemporary meaning of universal suffrage. This, however, was not the case historically, for the term was restricted to male suffrage. In a large part of the early literature, therefore, universal suffrage is synonymous with universal male suffrage.

A further point concerning the franchise concerns the eligibility to serve as a great elector (in indirect elections) or as a representative (member of parliament). These