

*Summary of Online Lectures for First Year
Master Public Law in depth*

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English terms Scale

Coefficient: 01

Balance: 01

Second Semester

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Lecture No. (05): Political Parties and Electoral System (part2)

Electoral System

Election law is a branch of public law that relates to the democratic processes, election of representatives and office holders, and referendums, through the regulation of the electoral system, voting rights, ballot access, election management bodies, election campaign, the division of the territory into electoral zones, the procedures for the registration of voters and candidacies, its financing and propaganda, voting, counting of votes, scrutiny, electoral disputes, electoral observation and all contentious matters derived from them.

Definition and Basic Traits

The main regulatory instrument is undoubtedly the electoral law. However, from this point of view, the situation in the countries is varied. It can be said that there is a certain tendency to incorporate all of the regulations that govern electoral processes through direct universal suffrage into one single text or electoral code. But there is no shortage of examples of countries where this subject matter appears divided into various regulatory texts, which refer, for example, to elections in different territorial areas or to different governmental organs, or even to some specific aspect within the same process, such as the composition and functioning of electoral bodies.

The question therefore arises whether a minimum content is necessary for a regulation to be described as electoral. The answer is that one might, in effect, talk about a central regulatory core that should be included in these regulations, such as:

- elements of the basic right to active and passive universal suffrage, namely, an accurate determination of who may vote and be elected, how one becomes a voter and how one becomes a candidate
- conditions of the elections, which include a specific definition of the constituency, the electoral formula or principle and the form of expression of the vote
- organisational, procedural and territorial criteria--how and where voting takes place
- control mechanisms of the different procedural phases.

Function of Electoral Laws

- A law of this content is literally an electoral law, whatever its specific denomination might be, and as such it is destined basically to play a double role: On the one hand, it has to set out the elements of the electoral system contained in the constitution in such a way that they would be directly applicable.
- For example, it has to be specified how the proportional system that is established in a constitutional text is defined in practice. Given the fact that electoral systems could provoke a different distribution of the quotas of political power based on the popular votes themselves, the smaller the number or the specifications of their constitutionalised elements the wider the field of political discussion will be on the legislative level. Consequently, the regulation will be the target of greater controversy among the political groups that might find that their electoral expectations are strengthened or weakened in terms of the specific choices made.
- In this respect, any solution is controversial by nature, as it is impossible for everybody to be favoured. As a consequence, even though the agreement has to be extensive, unanimity is almost impossible. On the other hand, electoral law must provide a full range of procedural guarantees that will make the constitutional principles of the right to active and passive suffrage

fully effective. The majority of the procedural regulations should be contained precisely in the electoral law.

- There is a certain tendency towards considering the first of the functions indicated as the really vital one, as the most characteristic and politically most significant content, whilst procedural regulations are usually classified as secondary. However, that is far from true.
- Electoral regulations can survive without any harm to representativeness or legitimacy, even though they may commonly be criticised for some of the elements forming the electoral system. In this regard, the experience in the United Kingdom is classic, combining extraordinary permanence in its electoral regulations along with the criticism of the injustice of its results in terms of proportionality and of the consequences on its system of political parties, which is also permanent.
- In broader terms, this seems to be a passive admission that the characteristic mediation between votes and seats is never neutral or impartial, but that all of them, as pointed out by RAE, act within certain limits--like the legendary bailiff of Nottingham robbed the rich to give to the poor.
- On the contrary, this experience also proves that electoral regulations which are criticised on core aspects of the procedure cannot be maintained within the context of truly competitive elections if, for example, the voting conditions, honesty in counting the votes or--within certain limits--the accuracy of the electoral roll are doubted. An interesting example from this point of view, according to which procedural elements take precedence over the electoral system, was the recent experience in Russia. In December 1993, President Yeltsin instructed the Central Electoral Commission to draft a law on basic guarantees of electoral rights of the citizens of the Russian Federation, and it was finally approved on 6 October 1994.
- In the original draft, these regulations possessed the peculiarity of being simply a set of procedural guarantees of the processes, without any

reference whatsoever to elements of the system. In addition, as a basic text, it had to be observed by the laws that regulated the election of the executive and legislative branches at different territorial levels. This fact should be kept in mind when it comes to drafting or reforming an electoral law.

- The most basic premise is not to achieve perfect procedural mechanisms, but for a consensus to exist among all the relevant political forces on their honesty, so that inevitable imperfections (e.g., on the electoral roll) would be assumed as politically neutral and as such, acknowledged by all as being unable to compromise the results of an election.

Typical Contents

Setting out from these two basic elements, then, the following comprise the typical contents of an electoral law:

- definition of the sphere of the regulations (which elections are affected by them)
- regulations referring to the electoral system (constituency, number of representatives, electoral formula, etc.)
- dispositions relevant to the right to active suffrage, definition and deprivation of the right, regulations for the exercise thereof, including registration on the electoral roll
- dispositions on the right to passive suffrage, including the determination of who is eligible and who is ineligible, and the conditions for running as candidates
- regulations relevant to electoral administration (appointments, dependence or independence, procedures of operation, etc.)
- dispositions on the electoral campaign
- voting procedure(s)
- vote counting procedure(s) and announcement of those elected

- expenses and electoral subsidies

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