

ELECTORAL SYSTEMS IN SEMI-PARTY SYSTEMS

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This article considers the recent changes in the electoral systems for Jersey and Guernsey, which are the product of over two decades of constitutional debate. It will do so in the context of an increased experimentation with party politics. It will be argued that the two systems are not compatible with full-party politics, although they are compatible with the level currently practised. In any case, with the exception of one party in Jersey, the experiment does not appear to be greatly prospering. Of particular issue is an analysis of voter choice in Guernsey, which was predicted by the Electoral Reform Society as having the “strangest” system in the world—having a 38-member single constituency, with voters casting up to 38 votes. It will be argued that the result has defied predictions that it would be a lottery.

1 A democratic constitution must be understood in terms of where the exercise of power stands in relation to the people, and not just in terms of inter-institutional relationships. There is no democratic “political constitution” without the people at its heart.¹ This article concerns the electoral systems in Jersey and Guernsey, which is at the heart of the relationship between the people and the state. It is through elections that public opinion is systematically linked to those who wield the power of the state whether through legislative, executive or administrative decision-making.

2 Last year, this *Review* published an article by David Marrani entitled the “The Jersey Voting System”, which considered the principles and theories that may affect the choice of electoral system.² This is a subject which is worth revisiting now that both Jersey and Guernsey have held their first general election following each Island’s latest round of constitutional reform. It is particularly interesting to consider the subject as both Islands have seen a growth of party politics in what have historically been strongholds of “consensual” (*i.e.* non-

¹ See S Tierney, “Whose Political Constitution? Citizens and Referendums”, (2013) 14 *German Law Journal* 2185.

² D Marrani, “The Jersey Voting System”, (2021) 25 *Jersey and Guernsey Law Review* 363.

party) politics. This article will differ in approach from Dr Marrani's which concentrated on the theory of democracy and voting. Although this will not be entirely absent, the concentration in this article is on analysis of how the new systems in Jersey and Guernsey have arisen and worked out to date.

3 Both Islands have had over two decades of constitutional debate in respect of their electoral systems and their machinery of government. The result has been for them to move from having fairly similar systems in terms of both electing their legislators and organising them into executive functions, to zig-zagging as they have headed in different directions. Both Islands have a local constitutional heritage of a somewhat oligarchical selection of legislators, with the resulting legislature vesting the executive role through a system of committees. Both have been wrestling with the pulls of local tradition and modern conceptions of democratic best practice, as well as how to organise an executive in the absence of the sort of party system that is taken for granted through the democratic world, apart from a few countries in the South Pacific and a handful of sub-federal jurisdictions.³

Elections in a world of a consensus government

4 It is useful to start with a simple functional view of legislative elections. Elections are the means of choosing the legislators. The primary function of legislators, in systems other than executive presidencies such as the USA or France, is to choose the government—as Bagehot explained, it is easy to lose sight of this role.⁴ There are therefore two basic ways in which an electoral system can be seen to fail, one democratic and one functional.

- A democratic failure is that the result of the election—the choice of legislators—is unrepresentative of the votes cast.
- A functional failure will be a failure to choose a government, or one with the desired level of effectiveness.

³ The countries without (or largely without) political parties are the Federated States of Micronesia, Palau and Nauru. In Canada, party politics is absent in the North West Territories and Nunavut, as well as most municipal levels of government. It is also absent in the Isle of Man, the Falklands, Christmas Island, Norfolk Island, Niue and Tokelau.

⁴ W Bagehot, *The English Constitution* (2nd edn, New York: Cosimo), p 130: “The main function of the House of Commons is one we know quite well, though our common constitutional speech does not recognise it. The House of Commons is an electoral chamber; it is the assembly which chooses our president.”

5 The two aims may be in tension. The Israeli and German systems are both notable for a very high degree of proportionality between votes won by parties and representation in the Knesset and the Bundestag respectively. They are also frequently notable for difficulties in actually forming a government. The systems of the United Kingdom and Canada are notable for highly disproportionate outcomes, where third parties lacking a regional base are badly underrepresented, and governments are elected with a plurality of support well shy of a majority. However, they are both notable for fairly stable government.

6 All of these examples are subject to exceptions, positive and negative. The point for present purposes is that political systems are typically judged by (1) the question of malapportionment, *i.e.* whether parties receive representation appropriate to the votes received; and (2) by the tendency to form stable single party or reasonably predictable coalition governments.

7 In the vast majority of the world, both voting and the formation of government is organised through parties. Bagehot, writing in the 19th century, argued that the remarkable thing about Parliament was that it was able to achieve anything notwithstanding the variety of views of its members, and that this was down to party organisation:⁵

“[T]he principle of Parliament is obedience to leaders ... The penalty for not doing so, is the penalty of impotence. It is not that you will not be able to do any good, but you will not be able to do anything at all. If everybody does what he thinks right, there will be 657 amendments to every motion, and none of them will be carried or the motion either.

The moment, indeed, that we distinctly conceive that the House of Commons is mainly and above all things an elective assembly, we at once perceive that party is its essence.”

8 The website of the Venice Commission, the Council of Europe’s Commission on Democracy Through Law, says this on the subject of political parties:⁶

“In addition to its electoral activities, the Venice Commission is also working on the question of political parties and their funding, which play a fundamental role in democratic life. The key points of the Commission’s ‘case-law’ in this field are the following:

⁵ *Ibid*, pp 141–142.

⁶ https://www.venice.coe.int/WebForms/pages/?p=02_parties&lang=EN (last accessed 30 August 2022).

As a specific type of ‘free association of persons’, political parties are central to the functioning of democracy. They are essential to a pluralist political society, and their role in the formation of the will of the people is fundamental ...”

9 All of which is by way of introduction to the fact that Jersey and Guernsey historically have not organised either their elections or their legislatures by way of party politics. This may be changing to a degree, particularly in Jersey. However, in both Islands a clear majority of legislators are not from parties, and the choice of Island leader (Chief Minister in Jersey; President of the Policy and Resources Committee in Guernsey) has fallen to an independent.⁷ It remains very much the case that the formation of government and policy, and the passing of legislation in the Islands requires the formation and retention of consensus within the legislature. The voters choose representatives to form that consensus—or to sit outside it and hold the majority to account. What Bagehot said about “the principle of Parliament is obedience to leaders” cannot be translated to either Jersey’s States Assembly or Guernsey’s States of Deliberation, but then neither is there a tradition of an opposition forever probing for a point of governmental weakness to attack in order to gain political advantage.⁸ The nature of an absence or only limited presence of party politics is that even if a group of legislators find themselves in constant opposition to those exercising executive functions, their electoral battles are not necessarily going to be against those whose executive decisions they are attacking. The principle of such a system is the formation of consensus within the legislature, but with an absence of any leaders capable of requiring obedience to that consensus as events come to pass.

10 This being the case, the ordinary metrics of measuring the success or appropriateness of a system are unavailable:

- It is impossible to say that a system is failing by reason of malapportionment if most of the members are elected on their own account. There is no winning party or coalition of parties about whom it can be said that they are unduly favoured by the system.
- The formation of stable government does not have quite the same meaning where the executive is meant to be formed and maintained by consensus, rather than through party discipline.

⁷ See, respectively, <https://statesassembly.gov.je/news/pages/States-Meeting-Chief-Minister-Elected.aspx> and <https://www.gov.gg/article/177386/States-Meeting-on-16-October-2020> (both last accessed 30 August 2022).

⁸ Bagehot, *op cit*, pp 181–182.

If a Chief Minister in Jersey faces a “vote of no confidence”, he or she cannot argue that they won an election and have a mandate to govern, because such concepts exist neither as a matter of legal form nor political reality.

11 The above remains largely true of both Jersey and Guernsey. However, the matter is complicated due to the arrival of political parties into the mix. Evaluating the success and appropriateness of the system requires consideration of the fairness to parties—which is particularly interesting given that, as will be seen, neither Island has an electoral system appropriate to full blown party politics.

12 Robert Dahl, the great American theorist of democracy, argued that for a democratic system to function:

“[A]ll full citizens must have unimpaired opportunities:

1. To formulate their preferences
2. To signify their preferences to their fellow citizens and the government by individual and collective action
3. To have their preferences weighed equally in the conduct of the government, that is, weighted with no discrimination because of the content or source of the preference.”

13 A system must thus be capable of housing the participatory choices of its citizens. If those citizens choose to participate through political parties, then this should be possible. If parties are formed and voted for, but the system preserves power elsewhere, then it will be acting as a “closed hegemony”.⁹ Such a system must change, although participation might override the intentions of design. The Irish electoral system was designed to discourage party politics, but ended up with decades of two-party politics¹⁰—had it been unable to adapt to the participatory choices of voters to vote largely for Fianna Fail or Fine Gael, the system would have created institutionalised privilege to minority parties.

14 For Guernsey and Jersey, the question is how well the systems work in a world where consensus politics nominates, but party politics has arrived to a degree.

⁹ This was the democratic objection to the retention of a special role for the *tenants* in Sark’s Chief Pleas following the first attempts at electoral reform.

¹⁰ L Cahillane, “Anti-Party Politics in the Irish Free State Constitution” (2012) 35 D.U.L.J. 34, p 43.

Historical background

15 It is useful, particularly for those less familiar with the Islands, to set out the basics of the constitutional position and constitutional history of Jersey and Guernsey.

16 We can for present purposes skip over the Islands' constitutional relationships with the United Kingdom. Although, historically, the two Bailiwicks have seen decisive constitutional and legal interventions from London, any power on the part of the Crown to impose legislation on the Bailiwicks on its own authority fell into disuse in the 19th century at the latest. Whilst we find Orders in Council issued from London imposing a semi-codification of Guernsey's customary law in 1583, and bringing in important constitutional reforms to Jersey in 1771, the internal constitutions of Jersey and Guernsey have been determined locally since then. This is not quite true of the smaller jurisdictions within the Bailiwick of Guernsey. Sark (particularly its feudal system) created problems with the European Convention of Human Rights, and thus issues that necessarily attracted London's attention.¹¹ Other than this, the determination of constitutional reforms has been a local matter. There was an influential Privy Council report on the local constitutions in 1947,¹² but the decisions have been local.

17 Similarly, we can skip over the internal organisation of the Bailiwick of Guernsey comprising as it does the island jurisdictions of Guernsey, Alderney and Sark. This is despite the fact that Alderney sends two Deputies to Guernsey's legislature as part of the "transfer functions" arrangement with Guernsey.¹³ What concerns us here is the system by which Guernsey (*i.e.* the Island of Guernsey itself) elects the other thirty-eight Deputies.

A short history

18 Both Islands have their own legislatures with roots lost in recorded history. Jersey has its States of Jersey, and Guernsey has its States of Deliberation. They have always been unicameral. Originally, their membership represented the different powers within the Island: the Rectors for the Church; the jurats (lay judges of the respective Royal Courts) for the Crown; and representatives of the secular Parish

¹¹ *E.g. R (Barclay) v Seigneur of Sark* [2010] 1 AC 464.

¹² For a readily accessible summary, see G Dawes, "Documents of Constitutional Importance for the Channel Islands: Reflection on a *Rencontre*", (2015) 19 *Jersey & Guernsey Law Review* 6 at paras 32–34.

¹³ States of Guernsey (Representation of Alderney) Law 1978.

authorities. This feature of multiple types of member of the legislatures endured until recently in Guernsey, and still endures in Jersey.

19 Over time the membership became less oligarchical and more democratic. Parishes elected deputies on a franchise that steadily became universal. When in both Islands the jurats were removed from their respective legislatures following World War II, both Islands replaced them with a new class of all-Island representative. In Jersey these were called senators, and elected by voters with the Island as a single constituency. In Guernsey, these were called *conseillers*, and they were originally chosen by an electoral college known as the States of Election.

20 As of 2000, putting to one side the small Alderney delegation in Guernsey's States of Deliberation, both Islands' legislatures were made up of:

- Deputies elected on the basis of Parish constituencies (known as People's Deputies in Guernsey).
- All-Island representatives (senators in Jersey, *conseillers* in Guernsey) elected on an "Island-wide" basis, which means that the Island is a single multi-member constituency.
- Parish representatives—in Jersey this would be the Constable elected to be in charge of Parish administration, whereas in Guernsey it would be representatives of the *Douzaines* (i.e. the parish councils).

21 This convergence was not just in terms of the basics of their electoral systems. The States Assembly and the States of Deliberation both organised their executive functions not through an identifiable government. Instead, both legislatures would delegate administration to committees of the States,¹⁴ meaning that there was no identifiable executive in the sense that would be understood by students of the British constitution nor that of most other countries. This had been the case in both Islands for centuries.

22 Since this point of general convergence around 2000, both Jersey and Guernsey have embarked on constitutional reform on two separate,

¹⁴ In respect of Jersey, see Bois, *A Constitutional History of Jersey*, 1972, Ch. 6 for the history of Jersey's States Assembly. In respect of Guernsey, see D. Ogier, *The Government and Law of Guernsey* (States of Guernsey: St Peter Port, 2012), pp.32-40. See also Richard Hocart's 1988 text *An Island Assembly, The development of the States of Guernsey, 1700 to 1949*. See also the Royal Court website here: <http://www.guernseyroyalcourt.gg/article/1947/States-of-Deliberation---History> (last accessed 3 September 2022).

but interrelated areas, (a) “the machinery of government”, and (b) the electoral system.

23 Although this article is interested in the election of legislators not the organisation of legislators into an executive, we are nevertheless interested in at least an overview of the machinery of government of the two Islands for the purposes of context. As noted above, in most electoral systems the purpose is to find a winner who will have a right to govern. In Jersey and Guernsey, the question of who will form the government is not clear from the election due to the absence of parties, but it is in both Islands the first business of a newly elected legislature.

Machinery of Government reforms

1. Jersey

24 In March 1999, the States of Jersey commissioned Sir Cecil Clothier, QC to report on the Machinery of Government for Jersey, the appropriateness of the current model, and any recommendations for change.¹⁵ Supported by a committee drawn from Jersey and elsewhere, the Clothier Report was published the following year.

25 The recommendation was for the Committees to be replaced Ministers in charge of the civil service departments, which the Report hoped would be reduced to no more than seven.¹⁶ The Ministers would form a Council of Ministers chaired by a Chief Minister, who would be appointed by the States Assembly. The Ministers would be appointed and dismissed by the Chief Minister, subject to the approval of the States Assembly. This is essentially the system that exists today.¹⁷

26 It is worth noting that the Clothier Report touched on the absence of political parties in Jersey, but believed that these were not necessary for government accountability.¹⁸

¹⁵ Terms of Reference at p 5 of the Report of the Review Panel on the machinery of government in Jersey (2000) (“Clothier Report”), see <https://statesassembly.gov.je/assemblyreports/2000/18291-20601-2622010.pdf> (last accessed 29 August 2022).

¹⁶ Clothier Report, *ibid*, para 5.1 and 5.2.

¹⁷ Part 4 of the Machinery of Government (Miscellaneous Provisions) (Jersey) Law 2018.

¹⁸ Clothier Report, *op cit*, paras 4.9–1.14 believed that effective scrutiny can come through select committees whose business is not meant to be party political. Hence the recommendation and establishment of “Scrutiny Committees” in Jersey’s States Assembly.

2. *Guernsey*

27 Also reporting on Guernsey's machinery of government in 2000 was the Harwood Panel. This was chaired by a Guernsey advocate, Peter Harwood. As well as representatives of Guernsey's civil society, the Panel drew on expertise from the other Crown Dependencies, and also the former Labour MP and renowned political broadcaster, Brian Walden, who had retired to Guernsey.

28 The Harwood Report similarly recommended Ministerial government. However, in this case the recommendation was not followed. There were many reasons why Guernsey's States of Deliberation ultimately decided against the move. High on the list of reasons to retain the Committee system was the absence of political parties. When the matter was considered again in 2012 by the States' Review Committee, a lack of party politics was first on the list of reasons for unanimously rejecting the move.¹⁹ The other reasons given were fairly generalised, but amounted to the point that whilst they risked a committee system that had "disadvantages and challenges", the same would most likely be true of Ministerial government. There are now six "Principal Committees" in charge of particular policy areas, with a senior "Policy and Resources Committee" to provide leadership and co-ordination.²⁰

Plurality-at-large

29 Before exploring the approaches in Jersey and Guernsey to electoral reform, it is useful to note that both Islands use a plurality-at-large basis for all relevant elections—a type of "first-past-the-post", although where multi-member constituencies are more in evidence. The system is also known as "multiple non-transferrable vote" or "block vote".²¹ What this means in practice is that the highest scoring candidates will fill the required number of posts that are up for election. There is no distribution of second-preference votes for those who fail to reach a majority, run-off elections, or any other such device.

¹⁹ See <https://www.gov.gg/CHttpHandler.ashx?id=88518&p=0>, p 18 (last accessed 29 August 2022).

²⁰ It bears a resemblance to the model of Cabinet government proposed by Leo Amery in the 1950s, where a policy cabinet would provide the leadership and be comprised of members who were not representing the interests of their own departments, see LS Amery, *Thoughts on the Constitution* (1964, OUP), ch 3.

²¹ R Palese, "Are Guernsey about to conduct the strangest election in the World," Electoral Reform Society, 6 October 2020 (<https://www.electoral-reform.org.uk/are-guernsey-about-to-hold-the-strangest-election-in-the-world/>) (last accessed 29 August 2022.)

30 Another feature of how plurality voting has been organised in Jersey and Guernsey is that the voters are able to cast as many votes as there are places to fill. If, for example, there were four places to fill, then the top four candidates would be elected. This need not always be the case with such systems. For example, in Gibraltar, the number of votes that electors can cast is lower than the number of seats to be filled, *i.e.* 10 votes per voter in order to elect 17 Members of the Gibraltar Parliament.²²

31 We will return at paras 56–70 to describing in greater detail the particular issues thrown up the use of this system. The reason for the split is that for the next sections it is necessary to know what the system is as a matter of background. It is only later that the issues around the system become directly relevant.

Approaches to electoral reform in Jersey and Guernsey

1. *Developments in Jersey*

32 Until recently, Jersey retained essentially the same system as at the turn of the 21st century and described above.

33 The system was not entirely static. There were some changes in respect of the all-Island representatives. The number of senators was reduced from twelve to eight in 2011. The terms of office were reformed, so that all elected members served for four years, and there would be a general election where all members would be elected at the same time.²³

34 The principal driver for this change is recorded in the proposition to the States Assembly brought by the Privileges and Procedures Committee that led to the change.²⁴ There was a desire to have a “true single general election”, something which had very strong support in an opinion poll carried out earlier. This necessitated equal terms for all members. Previously, the twelve senators were elected for six years,

²² See s 22 of the Parliament Act 1950 (Gibraltar).

²³ See the amendments to the States of Jersey Law 2005 made by arts 2–4 of the States of Jersey (Miscellaneous Provisions) Law 2011. The latter change could in the long run have undermined the original purpose of Senators as representing seniority and experience. An established Deputy might think of moving up in rank and standing for Senator. With the move to elect Deputies and Senators at the same time, such a step might prove dangerous. A Deputy trying to “step up” to being a Senator risked losing their membership of the Assembly altogether.

²⁴ See p 118/2010, pp 4–5 (<https://statesassembly.gov.je/assemblypropositions/2010/39478-27353-2082010.pdf> (last accessed 29 August 2022)).

with six senators coming up for election every three years. However, were all twelve senators to be elected at the same time, there would be a risk that some senators would be elected with a very low percentage of the vote.²⁵

35 This reform took place on the backdrop of a wider debate on electoral reform. An electoral commission was established, which reported on 11 January 2013. This proposed that the States Assembly should comprise of forty-two members. The senators would be abolished. There would be a referendum on retaining the constables as States Members. The Island would be divided into six multi-member constituencies, with either seven or five members depending on whether the vote was to retain the constables.²⁶

36 The Electoral Commission's principal driver was the concern that the number of voters per Deputy varied greatly between Parishes. In St Mary, 1,340 voters elected a single Deputy; in St Peter there were 4,010 voters again electing just one Deputy. The Commission emphasised that international standards set out by the Venice Commission recommended that the variation in the power of votes should be kept to a minimum:²⁷

“The permissible departure from the norm should not be more than 10% and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).”

37 A referendum was held on these proposals in 2013. Three options were in fact placed:²⁸

- (a) Removing both senators and constables;
- (b) Eliminating the senators only;
- (c) Retaining the status quo.

²⁵ *Ibid*, p 4.

²⁶ States of Jersey Electoral Commission, *Final Report*, January 2013, see <https://statesassembly.gov.je/SiteCollectionDocuments/States%20Assembly/Electoral%20Commission%20Final%20Report.pdf> (last accessed 29 August 2022).

²⁷ Venice Commission, *Code of Good Practice in Electoral Matters*, 2002, para 2.2(iv) [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e) (last accessed 15 August 2022).

²⁸ See States of Jersey, “Referendum on the States Assembly Composition”, <https://www.gov.je/Government/HowGovernmentWorks/ElectoralCommission/Pages/HaveSayComposition.aspx#anchor-2> (last accessed 29 August 2022).

38 No option won a majority, leading to a redistribution of second choices for the least popular option (the status quo). The final result saw a victory for option “b”, the recommendation of the electoral commission.

39 The turnout was 26%. Partly as a result of this low turnout, the States Assembly ultimately did not approve any change.²⁹

39 The following year, 2014, a referendum was held at the same time as the General Election on the single question of whether Constables should be retained in the States Assembly. The results were as follows:

Parish	2014 % for Connétables
St Brelade	61%
St Peter	66%
St Clement	63%
Grouville	69%
St Martin	72%
St Helier	49.8%
St John	71%
St Lawrence	64%
St Mary	78%
St Ouen	71%
St Saviour	57%
Trinity	77%

40 Retaining the Constables in the States Assembly won by 62%–38%, and carried a majority in all Parishes except St Helier, where there was a narrow majority the other way.

41 There matters may have rested, except for a report by the Commonwealth Parliamentary Association, Election Observation Mission.³⁰ The 2018 report was strongly critical of Jersey’s electoral system on what the Privileges and Procedures Committee of the States Assembly summarised as:³¹

²⁹ The referendum result was to be implemented by the draft States of Jersey (Amendment No.7) Law 201-, proposed by P.64/2013. This was voted down on 16 July 2013, see <https://statesassembly.gov.je/Pages/Votes.aspx?VotingId=2881> (last accessed 30 August 2022).

³⁰ <https://www.uk-cpa.org/media/2417/eom-jersey-2018-final-report.pdf> (last accessed 30 August 2022).

³¹ P.126/2019, p 4, see <https://statesassembly.gov.je/assemblypropositions/2019/p.126-2019.pdf> (last accessed 29 August 2022).

“[1] an electoral system which remains overly complicated and cumbersome

[2] constituency boundaries not drawn in line with international standards

[3] areas of concern including the number of uncontested elections

[4] disparity in the equality of the vote across districts and parishes

[5] low voter turn out.”

42 This led to the States Assembly’s Privileges and Procedures Committee (“PPC”) to propose drastic reform in Proposition P.46/2019.³² PPC concentrated primarily on the inequality of voting power, setting out the point starkly in the following table:³³

Parish	Population	Deputies & Connétables	Senators	Population per rep	Deviation
St Brelade	11,400	4	8	2,850	24%
St Peter	5,390	2		2,695	17%
St Clement	9,940	3		3,313	44%
Grouville	5,280	2		2,640	15%
St Martin	4,050	2		2,025	–12%
St Helier	36,140	11		3,285	43%
St John	3,140	2		1,570	–32%
St Lawrence	5,840	3		1,947	–15%
St Mary	1,890	2		945	–59%
St Ouen	4,420	2		2,210	–4%
St Saviour	14,640	6		2,440	6%
Trinity	3,410	2		1,705	–26%
Total	105,540	41	8	2,302	28%

43 The Venice Commission recommends that there should be equal voting power for citizens. As noted earlier, where there are different

³² P.46/2019, see [https://statesassembly.gov.je/assemblypropositions/2019/p.46-2019\(re-issue\).pdf](https://statesassembly.gov.je/assemblypropositions/2019/p.46-2019(re-issue).pdf) (last accessed 29 August 2022).

³³ *Ibid*, p 16. The statistical analysis is not perfect. It omits the senators where Parish is irrelevant to the strength of individual votes. It also calculates the population votes per (non-senatorial) representative by averaging the figure for each parish, when it should divide the total population (105,540) by the number of relevant representatives (41). This would not alter the point being made: that the deviation was greater than desirable under international standards.

constituencies, they should ideally be of equal size. As also noted earlier, the Venice Commission recommended that any variation in size between constituencies should be no more than $\pm 15\%$.

44 Although the goal of simplification of the system was taken into account, it was the issue of equality of voting power that dominated the eventual proposals for reform.

45 PPC's original proposal was to end the position of senator and remove the Constables from the States Assembly.³⁴ There would be nine multi-member constituencies of roughly equal sizes each electing five members (except St Saviour, which would elect six). Some Parishes would be grouped together to form constituencies of the required size; and St Helier would continue to be broken down into three constituencies. The result would have meant a slight over-representation for the Parishes of Grouville and St Martin by reference to the $\pm 15\%$ recommended by the Venice Commission, but PPC thought that this was acceptable "given the positive outcome achieved overall".³⁵

46 Ultimately, the States adopted a system fairly similar to that which had won the 2013 referendum.³⁶ PPC's proposals on multi-member constituencies were largely adopted. However, the Constables remained in the States Assembly. The number of Deputies per constituency was adjusted to achieve the best possible overall equality of voters per representative. Hence, St Helier is now over-represented viewed in terms of Deputies, but it has only one Constable for a population almost twenty times the size of St Mary, the smallest Parish. By balancing these factors, the number of representatives per voter is kept within the acceptable limits.

Constituency	Number of Deputies
St Helier South	4
St Helier Central	5
St Helier North	4
St Saviour	5
St Clement	4
St Brelade	4
St Mary, St Ouen and St Peter	4
St John, St Lawrence and Trinity	4
Grouville and St Martin	3

³⁴ P.126/2019, *op cit*.

³⁵ *Ibid*, p 8.

³⁶ P.139/2020, which paved the way to the passing of the Constitution of the States and Public Elections (Jersey) Law 2021. See <https://statesassembly.gov.je/assemblypropositions/2020/p.139-2020.pdf> (last accessed 30 August 2022).

2. Developments in Guernsey

47 Under reforms in 2002, Guernsey abolished the role of *conseiller* (i.e. the members elected on an Island-wide basis), and abolished representation of the Parish authorities. What remained were the “People’s Deputies”, who were elected by multi-member constituencies on a plurality-at-large basis. The representation was as follows:

St. Peter Port South	5	(includes Herm and Jethou)
St. Peter Port North	6	
St. Sampson	6	
The Vale	6	
The Castel	5	
The West	5	(comprises St Saviour, St Pierre du Bois, Torteval, Forest)
The South-East	5	(comprises St Martins and St Andrew)

48 It will be immediately apparent that this system is essentially the same as that proposed in Jersey by PPC in 2019. The Islands could have re-converged on equivalent voting systems, except Jersey would retain Parish representation and Guernsey would back an even more radical change.

49 The idea of Guernsey electing all its People’s Deputies on an all-Island basis had been recommended by the States Assembly and Constitution Committee in 2010. The crucial step towards this was taken in 2015. A *Requête* (i.e. the procedure in the States of Deliberation for members to make policy proposals) was presented to Guernsey’s State of Deliberation proposing a referendum on the introduction of a degree of all-Island voting.³⁷ The driver for this was to a considerable extent a response to perceived public opinion. As noted in the *Requête*:³⁸

“Public consultation during 2010 conducted by the States Assembly and Constitution Committee indicated that many members of the general public believed that island wide voting should be introduced. During the consultation 3,676 forms were returned showing the views of 6,837 individuals, which equates to

³⁷ *Requête on Island Wide Voting*, presented on 17 November 2015. Incorporated in *Billet d’État*, 16 February 2016 at pp 1044–1117. The importance of the 2010 decision of the States of Deliberation is at p 1060. See <https://www.gov.gg/CHttpHandler.ashx?id=99842&p=0> (last accessed 29 August 2022).

³⁸ <https://www.gov.gg/CHttpHandler.ashx?id=99842&p=0> at p 1044 (last accessed 29 August 2022).

14% of the population aged 16 and over. This still is the largest ever response to a States of Guernsey consultation.”

Such a means of polling opinion is not respectable in the psephological world,³⁹ but, as we shall see, in this case the faith in this method was vindicated.

50 The proposal that was originally made in the 2015 *Requête* was not the same as the 2010 recommendation. Instead, the idea was that seven or twelve should be elected on an all-Island basis, with the number of People’s Deputies reduced accordingly.⁴⁰ Essentially, a return for the position of *conseiller*.

51 What was adopted on 19 February 2016 by the States of Deliberation was considerably more radical, and a reversion to the 2010 proposals:

“That for the 2020 General Election and thereafter all deputies shall be elected on an island-wide basis and all voters shall have the same number of votes as there are deputies’ seats provided that such a system shall first have been approved in an island wide referendum.”^[41]

To direct the States Assembly and Constitution Committee to report to the States as expeditiously as possible detailing the proposals to give effect to Proposition 1 including the methodology of the election and the holding of a referendum.”

52 As a result, Guernsey held a referendum with five options:⁴²

³⁹ Such a means of ascertaining public opinion is known as a “voodoo poll”. It is enough to look up “Gallup”, “Readers’ Digest” and the 1936 US Presidential Election on the internet. Essentially, it is not the size of the opinion poll, but its representativeness that gives it accuracy.

⁴⁰ *Requête on Island Wide Voting* at p 1044:

“6. Your Petitioners are of the opinion that a form of partial island wide voting should be introduced, with a minority of States Members being elected on an island basis with the remainder elected under the current district system. It is felt that an appropriate balance of island wide and district voting would be achieved by electing seven or twelve Members on an island wide basis, with the remaining 38 or 26 elected through the districts.”

⁴¹ <https://www.gov.gg/CHttpHandler.ashx?id=118074&p=0>, pp 4–5 (last accessed 29 August 2022).

⁴² <https://gov.gg/article/160142/Referendum-on-Guernseys-Voting-System> (last accessed 29 August 2022).

(a) Option A: One Island-wide constituency with thirty-eight members elected every four years.

(b) Option B: Seven constituencies with five or six members each elected every four years.

(c) Option C: Two constituencies, with nine or ten members, with a four-year cycle of elections, half elected every two years.

(d) Option D: Four electoral constituencies, with nine or eleven members elected every four years.

(e) Option E: One Island-wide constituency with a six-year electoral cycle, and a third of members elected every two years.

Each system would involve plurality-at-large, with voters having the same number of votes as there were places to fill.

53 The least popular system would be eliminated at each round. Of the proposals, only A, B and C had significant support. A had the plurality (5,304 in the first round, against 3,486 for the status quo, and 3,760 for two constituencies). Ultimately, the status quo was eliminated in round three of the voting, and Option A was a reasonably clear winner.⁴³

54 At this point it is worth noting that the system adopted went against the expert, external advice that Guernsey had received. As is recorded in the policy letter of 19 May 2017 setting out the thinking behind the referendum options, the Electoral Reform Society had in 2007 cautioned strongly against having a single-constituency system:⁴⁴

“There are possible models for all-island voting, but unfortunately they all present significant practical difficulties because of the size of the States of Deliberation and the lack of political parties in Guernsey ... a nationwide constituency system could only feasibly operate in Guernsey if ... candidates coalesced into political parties or (at the very least) electoral blocs [or] there were fewer seats to be filled ...”

55 There was no reply to this concern recorded in the policy letter, although at appendix 4 there is a note on the general subject of political parties. Also, a theme of the opinions recorded in the policy letter is that a single-constituency system would allow all voters to have a say in the

⁴³ See <https://www.gov.gg/CHttpHandler.ashx?id=118074&p=0> at [2.3] (last accessed 20 August 2022).

⁴⁴ See <https://gov.gg/CHttpHandler.ashx?id=107720&p=0> at [16.2] (last accessed 20 August 2022).

election of all members. It was suggested that this might in fact compensate for the lack of party politics.⁴⁵

Plurality-at-large—multi-member constituencies

56 We have set out the basic nature of “plurality-at-large” as an electoral system. We shall soon be moving onto the detail of how it has been used in the latest reforms in Jersey and Guernsey, and so we shall now deal with the issues thrown up by the system in detail.

57 Dr Marrani points out, where there are multi-member constituencies, voters may vote *en bloc* for particular parties:⁴⁶

“[W]e may see unpredictable and sometimes undesirable impacts on election results. For instance, voters may cast all their votes for the candidates of a single party, pushing the most disastrous disadvantage of the first past the post system of disproportionality. This might effect a serious distortion of a parliamentary system ...”

58 Although the result of voting *en bloc* may distort the outcome of an election viewed in terms of votes per successful candidate, such a block-voting dynamic is natural. Where there is an established party system, the general rule is as the great Ivor Jennings pointed out in respect of the British system: the legal form may be that voters elect candidates rather than parties, but voters are usually more interested in which party Smith or Jones represents than they are in anything particular to those candidates.⁴⁷ Consider the following hypothetical scenario:

- Lilliputia operates a single-constituency plurality-at-large system with 20 members of the legislature.
- Both the Big-endian Party and the Little-endian Party put up 20 candidates.

⁴⁵ *Ibid* at para 20.8:

“Option E would be as effective as Option A at responding to the arguments which tend to be advanced in favour of every Deputy being elected on an island-wide basis. Some people argue that it would strengthen democracy in the Island. Certainly it would enable every elector to have some influence over every seat in the States, which in the absence of political parties is seen by some people as the best way of securing a legitimate democratic mandate for the whole of the States.”

⁴⁶ Marrani, *op cit*, at para 42.

⁴⁷ WI Jennings, *The British Constitution* (5th edn, Cambridge: Cambridge University Press, 1966), pp 16–17.

- Each voter has 20 votes.
- There are 10,000 Big-endian supporters, but they tend to be particular about who they vote for. As such, they only use 18 of their votes, meaning that the average Big-endian candidate gets 9,000 votes.
- There are 9,500 Little-endian supporters, who are not so particular. They use all 20 of their votes for party candidates, so each receives 9,500.

59 In one sense, block voting distorts the result in that the party with the plurality can expect to receive 100% of the seats in a constituency. However, for a voter not to vote *en bloc* for their favoured party is to give only partial support. In that sense, the dynamic of voting *en bloc* is not so much a distortion of plurality-at-large but the natural state of affairs which must be priced into the choice of electoral system.⁴⁸ If the result is unacceptably distorted, then the jurisdiction should consider choosing a different system.

60 Another way of viewing the Big-endian vs Little-endian example above is that systems normally punish parties whose voters are less committed. This is usually felt through turn-out. Voting has a “time and effort” cost for voters, and it has been troublingly demonstrated that taking the time to go to a polling station and vote is an irrational use of an individual’s time on a cost-benefit analysis.⁴⁹ Hence, any party whose supporters are less committed will be punished as greater numbers will simply find something better to do in the time they had notionally allotted. In a plurality-at-large system, this can take the form of having supporters who are sufficiently uncommitted that they allow their objections to individual candidates to override their concern for the overall election result.

61 Understood in those terms, the extent of voting *en bloc* performs a function in measuring intensity of party support. Whether the overall national result is skewed unacceptability is a matter for how the system

⁴⁸ This is why, in Gibraltar, voters have only 10 votes to elect 17 Members of the Gibraltar Parliament. The principal groupings (the GSD and GSLP/Liberal Alliance) both put up a list of ten candidates. The one with the most support will win ten seats; the other will normally win seven. Only once has a third party or independent candidate managed to upset the system’s tendency to duopoly. In reality, not every voter votes for all of a party list—some will have particular favourites or particular dislikes.

⁴⁹ A Downs, “An Economic Theory of Political Action in a Democracy”, (1957) 65 *Journal of Political Economy* 135, pp 146–147.

tends to work out in practice when the results are tallied across the jurisdiction.

62 This leads to a fundamental point to be made of “plurality” systems including the United Kingdom’s “first-past-the-post” system where there are a large number of single member constituencies. Whether they work acceptably or not depends to a large degree on how things work out in practice. There is no attempt to provide anything like fair representation of parties at a constituency or regional level—the aspiration is that they deliver acceptable results overall.

63 It is easy to demonstrate theoretical scenarios in which first-past-the-post/plurality-at-large give rise to bizarre results—indeed there are good practical ones even without considering gerrymandering.⁵⁰ The question is how they work in real life in terms of delivering what is desired. In most systems this means that the outcome of the election should seem fair considering how the votes were cast; which in turn implies that there should be a winner. A system where winners persistently lack at least a plurality of votes, or win with comparatively small percentages, are likely to be seen as failing.⁵¹ However, a system where voting *en bloc* leads to skewed results in particular regions, may see an acceptable balance when votes are tallied at a national level.

Defining constituencies

64 We can see from the above the sense of the Venice Commission demand for equality in constituency sizes. It is most easily seen when viewed from party political perspective. If Big-endian leaning constituencies are significantly smaller than Little-endian leaning constituencies, then the Big-endian party can win a national general election with a significantly smaller vote. The same can be true in consensus politics—if areas disposed to a centre-right outlook have smaller constituencies than those disposed to be more centre-left, centre-right thinking has an in-built advantage. To return to what was quoted from Robert Dahl at the start of the article: there should be equal

⁵⁰ In the USA, the system has gone from almost never producing a President who lacked a plurality of votes, to having done so twice this century (2000 and 2016), with the 2020 election being not so far from producing the same outcome.

⁵¹ It still depends on the facts. In the Canadian 2019 and 2021 election, the Liberal Party won 33% of the vote and about 160 seats, just short of a majority. The Conservatives won 34% and 119 seats. However, most of the rest of the votes were split between parties more naturally allied to the Liberals, so the result is more tolerable.

opportunity to participate politically, and this is impaired if the system creates an in-built handicap for one or other opinion group.⁵²

65 The Venice Commission's recommendations do not stop at recommending constituency size. Because use of "first-past-the-past" voting systems in countries divided into constituencies produces disproportionate results—and to many it is a positive advantage that a plurality of national votes will frequently be enough to produce a single winning party—the vagaries of constituency definition have obvious risks. This is not just in terms of constituency size, but how borders are drawn between constituencies. The practice of "gerrymandering" can be used so that, even if constituencies are identically sized, they are drawn to ensure that opposition votes are unnaturally concentrated in a small number of constituencies. Alternatively, a minority group might be deliberately spread between constituencies so that it loses any representation.

66 If we pull out the Venice Commission's recommendations on this issue of voter equality, we see:

- "ii. It entails a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged.
- iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration.
- iv. [The rule on constituency sizes set out above,]
- v. To guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods.
- vi. With multi-member constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries.
- vii. When constituency boundaries are redefined—which they must be in a single-member system—it must be done:
 - impartially;
 - without detriment to national minorities;

⁵² See above, *op cit.*

- taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities.”

67 The fundamental ideas are those of (a) equality, and (b) any inequality should not be the result of manipulation by winners. This does not mean equality in terms of every vote being cast in a competitive constituency, but rather that the risks of casting a fairly meaningless vote in a safe constituency should fall according to impartial criteria such as long-standing administrative boundaries. There is, for example, no obligation for the USA to break up the electoral college voting-blocks states of California or Indiana because the Democrat and Republican parties uselessly pile up votes in those areas in Presidential elections.⁵³

68 The reference to “possibly” taking account of “the number of people actually voting” is an example of how ostensible unfairness may be rendered purely theoretical by the facts. Consider:

Party	Seats won	Average constituency size	Average turn out	Average margin of victory
Big-endian	10	10,000	50%	10%
Little-endian	12	8,000	70%	10%

69 The Big-endians might well complain that they are unfairly disadvantaged by differences in constituency size. The Little-endians may well reply that they rightly win the election as they actually receive more votes on a national level. An apparently objective and principled move to constituency size equality may in fact have unprincipled results.

70 All of this is really to say that any plurality-based system may be acceptable in its homeland depending on how things work out in practice. However, it is easier to measure the vagaries of the system and how well things turn out in practice if there is an objective metric—and the most obvious metric is to look at how national party representation works out as against votes cast nationally.

⁵³ There is sporadic interest in the United States in such reform, but it is a matter for the States. Only the small states of Maine and Nebraska potentially divide their votes.

The elections

71 Before setting out what can be learnt from the recent elections in Guernsey and Jersey under the reformed system, it may be useful to set out the sources used. This is because when it comes to explaining the results of the elections and analysing, the same sources will be used repetitiously:

(a) In respect of the Guernsey elections, it is the Guernsey Election 2020 website, the precise citation being given below at fn 58.

(b) In respect of the Jersey elections, the results are on the vote.je website.⁵⁴ That website also gives party affiliations, but for the results in a format which gives affiliations directly, the BBC Online coverage will suffice.⁵⁵

72 As the Jersey system benefits from a more detailed analysis than the simpler Guernsey system, an appendix to this article contains three tables which may be of use.

1. Guernsey

73 It is important to restate the key features of Guernsey's electoral system.

74 First, there are thirty-eight members to be elected from a single constituency.

75 Secondly, a plurality-at-large system has been adopted, meaning that the top thirty-eight scoring candidates are elected.

76 Thirdly, there is no difference in voting power in the States of Deliberation between different Members no matter how great a difference there is in terms of votes won. (It is impossible to think of a legislature where such a distinction is made but given the wide disparity between the votes received by different members, it is worth noting for present purposes.)

77 Fourthly, each voter has thirty-eight votes that they can cast. As explained above it is possible to have a system where the number of votes is more limited, as is the case in Gibraltar.

78 With this in mind, the Electoral Reform Society, which had recommended very much against this system a decade before, published

⁵⁴ See <https://www.vote.je/news/22-election-results/> (last accessed 30 August 2022.)

⁵⁵ See <https://www.bbc.co.uk/news/world-europe-jersey-61880331> (last accessed 30 August 2022).

a piece declaring that, “The election is likely to be a difficult and overwhelming experience for voters.”⁵⁶ The principal reason was summed up in the following table:

	Total Standing	New Candidates	Current Deputies	Previous Deputies
Non-affiliated	78	55	18	5
Alliance Party	11	11	-	
Guernsey Partnership of Independents	21	6	11 ⁵⁷	4
Guernsey Party	9	9	-	-
Totals	119	81	29	9

79 The Electoral Reform Society thought that the existence of 119 candidate statements would make the election unmanageable from the perspective of the voters. The Society noted:⁵⁸

“Dr Alan Renwick of the UCL Constitution United commented that election would be a ‘lottery for who gets voted in’ given that the low number of voters relative to candidates makes it impossible to make meaningful choices. While simply giving voters more votes might appear to enhance democratic choice, a single nationwide constituency, combined with a lack of political parties and an unrepresentative electoral system, is unlikely to help generate meaningful engagement among the population.

A fairer electoral system, such as the Single Transferable Vote, based on smaller, multi-member constituencies and which allows voters to rank candidates in order of preference, would give real power to voters. How successful Guernsey’s new system, and their experiment in mass multiple non-transferable vote remains to be seen.”

80 It should be noted that the principal criticism is not the lack of a single transferable vote system—though Dr Renwick is very much a supporter of the use of such a system in the Channel Islands, having

⁵⁶ R Palese, “Are Guernsey about to conduct the strangest election in the World,” Electoral Reform Society, 6 October 2020 (<https://www.electoral-reform.org.uk/are-guernsey-about-to-hold-the-strangest-election-in-the-world/>) (last accessed 29 August 2022).

⁵⁷ The table as presented by the Electoral Reform Society attributed these 11 to the Alliance Party—in fact all serving Deputies who stood for election were either non-affiliated or members of Guernsey Party of Independents.

⁵⁸ See fn 56, above.

given such advice to the States of Jersey in 2013.⁵⁹ The key point being made here is not the fairness of the system, but that the task of selecting one's favourite 38 candidates in single constituency would be too complex to be intelligently performed, particularly given that the choice is not greatly organised into established parties.

The results in Guernsey

81 The 2020 Guernsey general election may have seen the start of party politics, although it is unclear how far it has been embraced. The basic points are:⁶⁰

(a) Of the 119 candidates for 38 seats, 41 belonged to political parties:

- 21 from the Guernsey Partnership of Independents, of whom 10 were elected.
- 9 from the Guernsey Party, of whom 6 were elected.
- 11 from the Alliance Party, of whom none was elected.

(b) There was a considerable spread of votes for the party candidates:

- The Guernsey Partnership of Independents candidates polled between 13,927 and 3,579 votes (including the two highest placed candidates).
- The Guernsey Party candidates polled between 11,398 and 3,404 votes (including the fourth highest placed candidate).
- The Alliance Party candidates polled between 3,385 and 1,397 votes, although eight were bunched between 1,397 and 1,895 votes.

(c) The Guernsey Partnership of Independents was the only party to field enough candidates to win a majority, but might be better described as a loose association of candidates rather than a political party in the traditional sense. It has since dissolved.

(d) The highest number of votes for a successful candidate was 13,927.

(e) The lowest number of votes for a successful candidate was 6,477.

⁵⁹ A Renwick, "Extracts from: 'The Jersey States Assembly in Comparative Perspective. A Report for the States of Jersey Electoral Commission'", 9 August 2012, reproduced in P.88/2016. See <https://statesassembly.gov.je/assemblypropositions/2016/p%2088-2016.pdf> (last accessed 29 August 2022).

⁶⁰ See www.election2020.gg (last accessed 30 August 2022).

(f) The eighteenth and nineteenth most successful candidates secured 8,812 and 8,699 respectively, whereas the most successful gained 13,927. This is interesting in that a party that fielded twenty candidates that secured a block vote of 8,700 would have won the election despite having secured fewer votes than seventeen other candidates, and gained the support of 35.3% of the 24,627 voters who cast ballots.

(g) In terms of the fate of new candidates, sitting deputies and previous deputies, it was as follows:

	New candidates elected/total new candidates standing	Sitting Deputies re- elected/total sitting Deputies standing	Previous Deputies re- elected/total previous Deputies elected
Non-affiliated	10/55	12/18	0/5
Alliance Party	0/11	-	-
Guernsey Partnership of Independents	3/6	6/11	1/4
Guernsey Party	6/9	-	-
Totals	19/81	18/29	1/9

82 There are two important things to stress. First, there is the lack of partisan voting. Voters did not follow party slates of candidates. In Gibraltar, which has a similar system, except that voters have ten votes to elect seventeen members of their Parliament, the top ten candidates all came from the same “alliance” in the 2019 election. This suggests voting was largely for individuals rather than parties. Secondly, the parties themselves were not fielding enough candidates to be seeking a majority—even the Partnership of Independents only just fielded enough candidates to theoretically achieve that goal.

83 Perhaps the most startling statistic in respect of the election, given that the most respectable of British electoral commentators had predicted the “strangest election in the world” was the turn out:

Eligible voters:	30,899
Ballots cast:	24,627
Turnout:	79.7%
Votes cast:	637,567
Average votes cast per voter:	25.9

84 Despite the reservations of the Electoral Reform Society, voters did turn out in considerable numbers—higher than in any British general elections since 1918 other than those in 1950 and 1951.⁶¹

85 Whilst it is doubtful if many voters read all personal statements, a lack of personal attention to politics by much of the electorate is a general feature of democracy.⁶² It is not as if the average voter reads the manifestos of all major parties in British general elections. It is as Downs argued out in the 1950s, voters typically rely on ideological shortcuts when deciding how to participate.⁶³ In small Islands, there may well be different short-cuts for reaching opinions on candidates, and some candidates may fail to elicit even an opinion on their merits, but the principle is the same. Not considering the merits of all candidates does not mean that voters are not reaching preferences and voting accordingly. A high-level analysis of the results suggests that, far from being a lottery, clear choices were being made. There was a distinct advantage to incumbency, with 18 out of 29 incumbent People's Deputies being re-elected. However, that means that 11 were voted out, with the lowest receiving 2,788 votes. Furthermore, former People's Deputies were the most unsuccessful grouping, with only one out of nine being successful. Some politicians had achieved popularity and were re-elected; others had not, and suffered at the polls. Whatever the rights and wrongs of these choices, they are choices, and not a lottery. The following features in the voting can readily be seen:

- Considerable differences in support between parties.
- Considerable differences in support within the Guernsey Partnership of Independents and the Guernsey Party groupings.
- Incumbent People's Deputies were considerably the most successful (62%), followed by new candidates (23%), and finally former People's Deputies (11%).
- There was a considerable spread in votes:

⁶¹ Source, <https://www.statista.com/statistics/1050929/voter-turnout-in-the-uk/> (last accessed, 28 August 2022).

⁶² R Dahl, "A Democratic Paradox?", (2000) 115 *Political Science Quarterly* 35, p 35.

⁶³ A Downs, "An Economic Theory of Political Action in a Democracy", (1957) 65 *Journal of Political Economy* 135, pp 141–142.

Votes	0– 1999	2000– 3999	4000– 5999	6000– 7999	8000– 9999	10,000– 11,999	12,000– 13,999
Number of candidates	16	32	28	17	18	5	3

86 The results on their face appear very much to owe themselves to human choice rather than to a lottery.

Jersey 2022 election

87 The Jersey system for electing deputies has the same theoretical objections as attach to plurality-at-large and need not be repeated.

Parties in the Jersey election 2022

88 In the Jersey 2022 election, 76 candidates stood overall in the nine-constituencies for Deputy. A further fifteen candidates stood for the position of Constable, meaning that three of the twelve Parish elections for that position were contested.

89 Four parties registered under the Political Parties (Registration) (Jersey) Law 2008 fielded candidates in the 2022 election.⁶⁴ Of these the Jersey Liberal Conservatives and the Progress Party allied and will be treated here for convenience as if a single party (“JLC/Progress”). The number of party candidates were as follows:

(a) The Alliance Party stood thirteen candidates for Deputy (with at least one standing in each constituency), and one unopposed candidate for Constable.

(b) JLC/Progress stood nine candidates for Deputy across seven constituencies.

(c) Reform stood fourteen candidates for Deputy across seven constituencies.

90 Writing as a guest contributor to the Electoral Reform Society website, Dylan Difford summarised the results as follows, arguing that the new system had led to a distorted result:

⁶⁴ <https://www.vote.je/election-22/candidates/> (last accessed 23 August 2022).

	Percentage vote (calculated by Deputy votes)	Seats	Percentage of seats
Independents	62	35	71
Reform	16	10	20
Alliance	11	1	2
Progress/JLC	11	3	6

91 It should be noted that Difford includes the Constables in terms of “seats won” and “percentage of seats won”. The 11% of Deputy votes cast for the Alliance in fact won no seats—their only successful candidate was in the uncontested Constable election for Trinity Parish.

92 If we remove the Constables from the analysis, we see:

	Percentage vote (calculated by Deputy votes)	Deputies elected	Percentage of Deputies elected
Independents	62	24	65
Reform	16	10	27
Alliance	11	0	0
Progress/JLC	11	3	6

93 However, it is unclear if such an analysis paints that useful a picture. Difford follows the conventional way of considering the total votes cast for a party divided by the total votes cast. Such an approach—which is undoubtedly the best available—does not work perfectly when the parties do not field a complete slate of candidates. For example, Alliance and Progress/JLC have the same percentage of votes because the former fielded more candidates. Reform received 16% of the votes cast, but if we look at the analysis in table A of the appendix to this article, we can see that every Reform candidate received votes from at least 28% of the constituency’s voters. Also, only the Alliance Party stood candidates in all constituencies. However, as the aim is to consider whether a party is under or overrepresented in the legislature, parties are logically limited to the number of candidates it presented, and whether it ought to have won had it contested all the seats.

94 Perhaps, then, the peculiarity of Jersey’s 2022 election is that the electorate seldom had the opportunity for voting *en bloc* as the parties simply did not field enough candidates:

- In St Helier Central, the Reform Party fielded five candidates and duly won all five seats. This is effectively a repeat of the 2018 result when the party won three out of three of the seats of the then St Helier 1 Constituency.

- In St Helier South, the Reform Party fielded three candidates for the four seats. They topped the poll, and most probably would have won four out of four had they fielded a fourth candidate. In 2018, Reform had run three candidates for the three seats in the then St Helier 2 Constituency, but none had been elected.
- In St John, St Lawrence and Trinity, the Alliance ran three candidates for the four seats, and won between 11 and 31% of the vote.⁶⁵
- In other seats, no party ran more than two candidates for the seats, and in all cases bar one there was a 10%+ difference in terms of percentage of voters who supported them.⁶⁶

Governmental accountability

95 As will be appreciated from the description of Jersey's ministerial system, there is something far more like a "government" than in Guernsey that may be held to account in an election, *i.e.* the members of the Council of Ministers. Of the twelve members of Jersey's Council of Ministers as of the date of the 2022 election:

- Four did not stand for election.
- Two stood for re-election for the Jersey Alliance (including the outgoing Chief Minister), but neither was re-elected.
- Five stood for election as independent candidates for Deputies, of whom three were successful. The two who were not re-elected were both Deputies for St Helier South, and saw their votes reduce as the *bloc* vote for Reform increased.
- One stood unopposed as an independent for Constable and was elected.

96 The voting patterns showed that government was not treated as a single group. However, half did lose their seats, as did all but one candidate who joined the same party (the Alliance) as the sitting Chief Minister. One columnist for the local newspaper, admittedly a former candidate for the Reform Party, declared herself baffled by the overall highly variable pattern of the fate of government members.⁶⁷

⁶⁵ See the appendix, table A, column 5.

⁶⁶ The only bunching was between the two Alliance candidates for St Clement, who received support from 29% and 31% of the voters.

⁶⁷ A Southern, "The people have spoken, but what have they said? As ever, I am baffled by the way voters choose", *Jersey Evening Post*, 6 July 2022.

Contested elections

97 One of the key criticisms of earlier Jersey elections was that many elections were uncompetitive. In 2022, there were more contested elections. This included more contested Constable elections (three), although we shall leave this to one side as there were no relevant changes to this part of the electoral system.⁶⁸

98 In 2018, there were seventeen constituencies for Deputy, of which four constituencies saw unopposed elections. No Deputy standing for re-election in their constituency lost their seat. In several constituencies, the election was barely competitive, *e.g.* Trinity and St Ouen, where the sitting candidate received over 80% of the vote. In fact, it should be noted that in the 2018, only two sitting members of the States Assembly who fought the election lost their membership. In one case, this was due to the sole contested Constable election (St Mary's); in the other it came from a St Clement's Deputy vacating his seat in order to stand, albeit unsuccessfully, to be a Senator. Incumbency appeared to rule in 2018.

99 In 2022, all the Deputy elections were subject to a real contest. Eleven States Members who stood for re-election as Deputies lost, of which the following can be seen:

- Five were members of the Alliance
- One was a member of JLC/Progress
- Two were Independents but members of the previous Council of Ministers—the ones, as noted earlier, who lost to increase in the Reform *bloc* vote in St Helier South
- One was Reform, but had moved constituencies
- Two were Independents and not in the previous Council of Ministers, but had been subject to personal controversy

100 Fifteen States Members were re-elected as Deputies:

- Six could be described as pure Independents, not having been members of the previous Council of Ministers.⁶⁹
- Three were Independents but had been members of the previous Council of Ministers.⁷⁰

⁶⁸ There was a minor change in that there is a “re-open nominations” choice in every election where there are not more candidates than seats being contested. This option was available in the nine uncontested Constable elections, although no candidate lost as a result.

⁶⁹ These were Deputies Gardiner, Le Hegarat, Ahier, Morel, Moore and Doublet.

⁷⁰ These were Deputies Gorst, Farnham, and C Labey.

- Six were members of parties: five for Reform, one for JLC/Progress.⁷¹

101 The reason for this dry grind through the results is that it helps consider the extent to which the logic of party politics has played its part in Jersey's election. The question is, perhaps, how far Jersey voters have acted like British voters, being more interested in the party label than the candidate? Also, how far the Parties have themselves followed the logic of the electoral system?

102 First, the voting *en bloc* for Reform Party candidates in St Helier Central and in St Helier South is a clear example of voters participating by voting for party. We obviously cannot discount the possibility that each would have been elected as an Independent, but it is hard to ignore that Reform Party candidates in these constituencies were the clear victors.

103 Secondly, Reform itself acted rationally in respect to the logic of the electoral system. It had fourteen candidates, and eight stood in the two seats where they (correctly) judged itself strongest. Had it behaved otherwise, it could have lined itself up for a series of near misses in other seats.

104 Thirdly, if we look at table A in the appendix, it is true that most Reform members were elected with a number of votes that would have seen them lose in other seats. But it is also true that they received a percentage of votes that would have seen them elected in most other seats. Also, the hope for any "first-past-the-post" style system is to achieve an acceptable degree of fairness across the election.

105 Fourthly, the electorate showed itself able to turn against a party, as they did with the Alliance.

106 Fifthly, there is a stark contrast with countries such as the United Kingdom with established party systems. It is notoriously difficult to stand as an independent in the United Kingdom given that people overwhelmingly vote (whether positively or negatively) according to party labels. Voters may genuinely take the view of "plague on all your houses" but must still make their choice knowing that either Labour or Conservative will almost definitely lead the next government. In Jersey, there may be an equal and opposite difficulty for anyone wishing to establish a party: viable independent candidates may occupy similar political space. A voter does not have a binary choice between Alliance and Reform, or even a three-way choice between Alliance, JLC/Progress and Reform. If a voter does not like any of the parties standing

⁷¹ These were Deputies Mezec, Tadier, Southern, Alves, Ward and S Luce.

in their constituency, they are not faced with the knowledge that one of them must win—they are much freer to exercise their participation by voting Independent. And this is what was seen in the results.

107 Finally, as in Guernsey, there is evidence in the voting figures of electors not voting by party label even when voting for party candidates. There is a breakdown in columns four and five of table A of the appendix, which shows that voting numbers and percentages for Alliance and JLC/Progress candidates varied massively. For example, the three successful JLC/Progress candidates received support from a very respectable 50%, 49% and 40% of electors, whereas the support for the unsuccessful candidates was (with one exception) much lower. In contrast, the Reform candidates outside of St Helier South and St Helier Central poll tended to poll around 30%.⁷²

108 However, as with the analysis of Guernsey, it is important to end with consideration of turnout. This is particularly important in the case of Jersey as one of the longstanding goals of the electoral reform debates has been to improve election participation. Turn out went down from 43.4% in 2018 to 41.6% in 2022.⁷³

Electoral changes—success or failure

109 Having considered the nature of the changes in electoral systems, and the outcomes of the subsequent elections, it is necessary to wrap up the argument by asking whether the changes have been successful in their aims and are likely to endure.

110 The Guernsey system was described by the Electoral Reform Society as creating the “strangest election” in the world. Certainly, requiring electors to choose their between 119 candidates was an above average burden on the Guernsey electorate which required greater participatory costs in terms of time and effort from voters than most national elections, but there is every sign that they rose to the challenge. The position is perhaps summed up by a writer from ITN, James Webster.⁷⁴ He argued that the electorate had chosen the system in a referendum, and thrown themselves into the spirit of it. Whether or not

⁷² The exception being Deputy Tadier, the long-term Deputy in St Brelade, who had the support of 48% of those voting in his constituency.

⁷³ See respectively <https://archive.vote.je/archive/statistics-2018/> and <https://www.vote.je/news/election-22-breakdown-of-results/> (last accessed 29 August 2022).

⁷⁴ See <https://www.itv.com/news/channel/2020-10-14/james-webster-did-guernseys-strangest-election-in-the-world-live-up-to-the-name> (last accessed 29 August 2022).

they had read all 119 candidate statements, they had taken the election and the choices seriously. Almost 80% of the electorate turned out, and they cast their votes in a way that was far from the lottery predicted.

111 Guernsey had notably ignored their own experts, the Electoral Reform Society, and adopted a system which they were advised was unworkable. There is nothing in the 2020 result to suggest that it is unworkable, but whether it works depends on the appropriate participation of citizens. This is true of all systems, of course. There is a cautionary tale from Sark, whose first democratic general election in 2008 (which adopted the same single-constituency plurality-at-large system) saw 57 candidates and a turnout of 87%, to elect 28 *conseillers* of the Chief Pleas.⁷⁵ To understand the level of interest, there were only 474 eligible voters, so over 10% of these were candidates. In later Sark elections, not only have candidates been elected unopposed, but at times there have been by-elections due to an insufficiency of candidates.

112 This article cannot speculate as to whether Guernsey's system will suffer from the same trend. The point is that success and failure is ultimately about the participatory choices of the voters, not any abstract quality of the system. For the moment, there are no proposals for further electoral reform, so it is to be expected that the system will be tested in practice at least one more time.

113 In Jersey, by contrast, there is much to note.

114 In the negative, and a significant negative, is that the change of system did nothing to increase voter turnout. This cannot be attributed to the complexity of the system—if Guernsey voters can rise to the challenge of choosing between 119 candidates, keeping track of different types of elected-member ought to be comparatively simple. Voters did not participate in greater numbers, and any surveys as to what voters agree might make them more likely to vote are unfortunately worthless.⁷⁶

115 It may or may not be that party politics will lead to greater interest as voters will choose winning parties to govern, but there is little in the results to encourage this prospect. In the political space occupied by Reform, there is probably little incentive for aspiring candidates to participate other than through Reform. The party did very well in two

⁷⁵ See https://www.bbc.co.uk/guernsey/content/articles/2008/12/11/sark_election_results_feature.shtml (last accessed 29 August 2022). One candidate withdrew ahead of the election, but his name remained on the ballot paper.

⁷⁶ A Wells, "Why you should be wary of agree/disagree statements", UK Polling Report, 2 April 2019, (archived at <https://ukpollingreport.co.uk/blog/archives/10054> (last accessed 30 August 2022)).

of the St Helier constituencies and was competitive in most other places where they stood candidates. But there was little in voting patterns to incentivise other opinion groups to form parties. Perhaps the greatest hurdle for future party politics is more prosaic. The purpose of a political party is to compete for power. Of the six party/party groups standing across the Island, only the Guernsey Partnership of Independents put forward enough candidates potentially to achieve that. The other parties fell far short of this aim. There will be no full party politics until at least two parties put forward a slate theoretically capable of taking a majority.

116 In truth, there was more than enough party politics to potentially inspire higher turnout. In the parish of St Clement, the leader of the Alliance Party and the leader of JLC/Progress stood against each other: the turnout was a below average 40.1%. In St Helier South, two long-standing Independent Deputies who were serving members of the Council of Ministers stood against the block of three Reform candidates including the party leader: turnout was 34.6%.

117 From an objective perspective, the move to multi-seat constituencies for Deputies eliminated dead or uncompetitive elections. It also created a phenomenon where there is perhaps no such things as a safe seat. In Guernsey, a top politician would have to sink far to fall below 38th in the listings—although some sitting Deputies did this, and by considerable distance. This may or may not in the long-term inspire increased interest in voting on the part of Jersey's electorate, but it should concentrate the minds of those who hold or stand for office.

118 Perhaps most important is that neither has designed a system that will work for full party politics. The Guernsey system could lead to one party holding all seats, or gaining power by hoovering up the lower voting seats. The Jersey system may or may not lead to a reasonably fair outcome in respect of Deputies if future elections involve a competition of votes between the Reform Party and equivalents to its right. However, twelve of the forty-nine members are elected as Constables to be heads of their Parish administration. It is one thing to have Constables as States Members where their role is to participate in consensus politics—it is another thing if the general election is meant to be an exercise in counting public votes to find a winning party or party coalition. Either the election of Constables would have to be politicised—and only one candidate for Constable stood on a party label—or their position in the States Assembly would quickly become untenable.

119 For the time being, however, both Jersey and Guernsey have achieved sufficient equality of voting power to fall within the Venice Commission guidelines. What happens next will depend on the realities of public participation. Will Guernsey's electorate continue to rise to

the challenge of their “strange” system? Will both Islands take more interest in parties? Will prospective politicians in Jersey be deterred from forming parties?

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Appendix

Table A:

Constituency	Total votes	Highest Independent candidate	Average votes for party (Individual votes where more than one candidate)	% voters support for Party	Seats for Party	Seats for others
Grouville and St Martin Alliance	3,307	1,981	792 (1)	24%	0	2
JLC/Progress			1,616 (1)	49%	1/1	
St Brelade Alliance	3142	2,370	421	13%	0	3
JLC/Progress			995 (1,328 662)	32% (21-42%)	0	
Reform			1,195 (1,502 888)	38% (28-48%)	1/2	
St Clement Alliance	2480	1,485	750 (779 721)	30% (29-31%)	0	3
JLC/Progress			1,251 (1)	50%	1/1	
Reform			929 (1)	38%	0	
St Helier Central	1,541	524				

Constituency	Total votes	Highest Independent candidate	Average votes for party (Individual votes where more than one candidate)	% voters support for Party	Seats for Party	Seats for others
Alliance			430 (1)	28%		
JLC/Progress			358 (1)	23%		
Reform			863 (961 937 847 836 734)	56% (48–62%)	5/5	0
St Helier (North)	2350	1665				
Alliance			591 (737 444)	25% (19–31%)	0	4
Reform			656(1)	28%	0	
St Helier South	1739	616				
Alliance			220 (1)	13%	0	
JLC/Progress			277 (1)	16%	0	
Reform			782 (955 713 679)	44% (39%–55%)	3/3	1

Constituency	Total votes	Highest Independent candidate	Average votes for party (Individual votes where more than one candidate)	% voters support for Party	Seats for Party	Seats for others
St John, St Lawrence and Trinity Alliance	3779	2,688	861 (1,166 997 421)	22% (11–31%)	0	4
St Mary, St Ouen and St Peter Alliance	3685	2730	1,025 (1)	28%	0	4
JLC/Progress			1,053(1)	29% ¹	0	
Reform			1,050 (1)	29%	0	
St Saviour Alliance	3271	1,541 ²	590 (1)	18%	0	3
JLC/Progress			1045 (1320 770)	32% (40%–24%)	1/2	
Reform			1032 (1)	32%	1/1	

¹ The lowest elected candidate polled 30%, at 1101.

² The lowest elected candidate polled 31%, at 1000 votes precisely.

Table B

Constituency	Total votes	Lowest vote of elected candidate	% vote of that candidate
Grouville and St Martin	3307	1481	45
St Brelade	3142	1503	48
St Clement	2480	979	39
St Helier Central	1541	734	42
St Helier (North)	2350	999	43
St Helier South	1739	616	35
St John, St Lawrence and Trinity	3779	1722	46
St Mary, St Ouen and St Peter	3685	1101	30
St Saviour	3271	1000	31

Table C

Party	Candidates	Elected	Seats contested	Seats successful
Jersey Alliance	14	1	9	1
JLC/Progress	9	3	7	3
Reform Jersey	14	10	7	4