THE MEANING OF MAJORITY IN THE CONSTITUTION OF NIUE

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This comment explains the meaning of simple majority, absolute majority and qualified majority in the context of the Constitution of Niue.

I INTRODUCTION

The Constitution of Niue sets out specific voting rules for decisions made in the Niue Assembly. These decisions relate to the election of the Speaker and the Premier, to the adoption of Bills and resolutions, and to constitutional amendments. As in most written constitutions, the specific requirements of these voting rules vary according to the nature of the decision at issue. For example, the adoption of a Bill will normally require some form of simple majority rule: That is, a rule that is consistent with the basic democratic principle of equality (majority rule is the only decision-making rule that gives the same weight to every vote) and that, at the same time, is flexible enough to allow the government to put in place its political programme. In contrast, decisions about amending the Constitution normally require more than half the votes of those present, and sometimes even require the direct participation of the electorate.

This 'rigidity' that usually characterises written constitutions with respect to constitutional amendments is the result of the fact that, unlike ordinary Bills, the constitution is not seen as created by Parliament, but by the people. A decision-making rule that requires a qualified majority of the votes of those sitting in Parliament (that is, something more than 50% +1) is thus seen as a way of making less likely the adoption of constitutional amendments that do not enjoy very wide support among the population. There are, however, different types of simple and qualified majority rules, and a number of alternatives in-between. The Constitution of Niue, despite being a relatively short document, includes several of these alternatives. The purpose of this short note is to describe what each of these alternatives would require, and to do so through a brief examination of the specific provisions that contain them.

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II SIMPLE, ABSOLUTE, AND QUALIFIED MAJORITIES

The Constitution of Niue contains decision-making rules that require simple, absolute, and qualified majorities. Simple majority rule means that a majority of 50% +1 of affirmative votes is sufficient to make a decision (subject to quorum requirements). This is the scheme of voting favoured by Robert's Rules, according to which: (1) a quorum is equivalent to the majority of the members of the relevant body; (2) 50% +1 of the votes is what is needed to change the status quo; and (3) only those present and voting are counted for determining whether the 50% +1 requirement is met.\(^1\) Absolute majority rule, like simple majority rule, also requires a majority of 50% +1. The main difference between absolute and simple majority rules lies in the way they treat absences, abstentions, and spoiled votes. Provided there is a quorum, simple majority rule compares the numbers of yeas to the numbers of nays and if there are more yeas than nays, the proposal passes.\(^2\) Absences, abstentions, and spoiled votes are simply ignored.

In contrast, under absolute majority rule a proposal would only pass if more than half the eligible members vote yea (and what counts as an 'eligible member' might differ among different rules that require an absolute majority). In other words, it treats absences, abstentions, and spoiled votes of the eligible members as votes against the proposal. This would normally mean that if in an assembly composed of 100 members, all members are present and voting for or against a proposal, simple and absolute majority rules would converge: both would require 51 votes for the proposal to be passed. However, if only 60 members are present and voting, 31 affirmative votes would be sufficient to pass a proposal under a simple majority rule, but not under an absolute majority rule. An absolute majority rule would still require 51 votes (in this case, out of 60), as 51 votes would be equivalent to more than half of the members of the assembly.

Qualified majority rule is different from the previous two decision making rules since it requires 50% plus more than 1 of the votes in order to pass a proposal. The most common qualified majority rules are those that require two-thirds or three-quarters of the votes. As will be seen below, the way in which qualified majority rules treat abstentions, absences, and spoiled votes, may vary.

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2 Keith Dougherty and Julian Edwards "The Properties of Simple vs. Absolute Majority Rule: Cases where Absences and Abstentions are Important" (2010) 22(1) JTP 85.
III DECISION-MAKING RULES IN THE CONSTITUTION OF NIUE

Simple and qualified majority rules ask us to look at how many votes are needed, while absolute majority rule also asks us to look at the membership of the relevant voting body, that is, at the question of how many votes of what voting body or section of a voting body are required. This section will look at the specific instances in which these decision making rules appear in the Constitution of Niue, and provide examples of their practical application.

A Simple Majority Requirements

There are at least three examples of simple majority rule requirements in the Constitution of Niue. The first two are contained in article 22(3) and article 35(1)(a)(i). Article 22(3) establishes that: "Except where this Constitution otherwise provides, every question before the Niue Assembly shall be decided by a majority of the votes of the members present." Article 35 (1)(a)(i) requires a simple majority on the first reading of a Bill amending the Constitution. These provisions assume that the quorum requirement contained in article 22(6) is satisfied. According to that provision, "no business shall be transacted at any meeting of the Niue Assembly if the number of members then present, including any member presiding in place of the Speaker, is less than 10". The total membership of the Niue Assembly is 20.

The decision-making rule in articles 22(3) and 35(1)(a)(i) means that if 16 members vote in favour of a Bill or resolution, then a decision may be made by a majority of 9 votes to 7 votes. As noted above, the 4 members absent are not counted in the calculation of what constitutes a majority. If one of the 16 members spoils their vote, then a simple majority would be constituted by 8 votes (that is, 8 of 15 votes are in favour of the proposal). That is to say, spoiled votes, like absences, are ignored.³ Article 35(1)(b)(ii) of the Constitution requires a simple

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³ This is the interpretation of these provisions more consistent with the traditional understanding of what constitutes a simple majority. Under this interpretation, the reference to "majority of the votes" in art 22(3) is understood as equivalent to "majority of the valid votes". If the provision is not interpreted in that way, then it could result in the following type of situation. A proposal is being considered in the Assembly, and 19 members are present. There are 10 votes in favour, 1 spoiled vote, and 8 votes against. If the phrase "majority of the votes" is understood as including spoiled votes, then the proposal would not pass even with a majority of 10 to 8. This would be an unusual result, particularly since theoretically only 6 affirmative votes out of 4 are needed to pass a proposal (6 being a majority of 10, 10 being the quorum). In other words, under that alternative interpretation, simple majority would be equivalent to "an absolute majority of the members present and voting", a phrase that is used in other parts of the Constitution that will be discussed below. Nevertheless, the favoured interpretation of art 22(3) is complicated by the fact that art 35(1)(b)(i) and (b)(ii) refers specifically to "votes validly cast". However, as will be shortly noted, the fact that these provisions refer to popular polls, not to votes in the Assembly should be taken
majority in the context of some popular polls. That article requires that a Bill amending the Constitution (without repealing or amending the provisions of sections 2 to 9) is submitted to a poll, and that it receives the support of "of a majority of the votes validly cast".

This means that if 500 electors participate in the poll and cast valid votes, then a majority of 251 votes would be enough to ratify the proposed amendment. If of those 500 electors, 100 leave their votes blank or spoil them in any other way, then a simple majority would be constituted by 201 votes (of a total of 400 valid votes). The reference to 'votes validly cast' in this provision may be seen as superfluous since, as noted earlier, the traditional conception of majority rule ignores spoiled votes. Nevertheless, the intention of the framers of the constitution was likely to make clear that in constitutional polls (which are of a different nature than votes in an Assembly), votes left blank or spoiled are not to be counted. That is to say, it warns citizens that, if they wish to spoil their votes as a sign of protest or to send some other political message, their votes will be ignored for the purposing of determining whether the proposal passes. The reference to 'votes validly cast' is also included in the context of popular polls on Bills amending or repealing the provisions of sections 2 to 9, which are subject to a qualified majority rule.

B Absolute Majority

An absolute majority rule requires a majority of 50% +1, but with relation to a particular voting body. For example, it could be a 50% +1 majority of the total membership of a legislature. In the context of the Niue Assembly, a requirement of an absolute majority of its total membership would mean that 11 affirmative votes are always needed, regardless of how many members are present. However, the Constitution requires an absolute majority in the case of the election of the Premier and the Speaker, but it does so not with respect with the total membership of the assembly, but in relation to the members "present and voting". Here, it must be noted that article 22(4) of the Constitution establishes that "Subject to any law requiring any member of the Assembly to refrain from voting...every member present when any question is put to the Niue Assembly shall vote thereon". That is, the members present in the assembly will usually be required to vote.

The previously mentioned examples of absolute majority are contained in article 4(1) and article 20(1). Article 4(1) establishes that "There shall be a Premier of Niue, who shall be elected to that office by an absolute majority of the members

into consideration when interpreting art 22(3). For a recent judgment that interpreted a reference to the term "votes" to mean "valid votes" in the context of a constitutional decision-making procedure, see Popular Democratic Movement v Electoral Commission and Attorney General (SCA 16/2011, 9 December 2011).
present and voting at a meeting of the Niue Assembly". Article 20(1), on the other hand, establishes that: "The Speaker of the Niue Assembly shall be elected to that office by an absolute majority of the members present and voting at a meeting of the Niue Assembly." This decision-making rule ("absolute majority of the members present and voting") is different from the simple majority rule as it requires not only a 50% +1 of the votes (that is, more votes in favour than against), but a majority of all the votes cast (even if they are spoiled).

For example, in the case of the election of the Premier and the Speaker, if only 15 members are present, they all will be normally required to vote (according to the previously mentioned article 22 (4)), and a simple majority requirement would be satisfied by 8 affirmative votes (assuming no votes are spoiled). However, in order for the requirement of an "absolute majority of the members present and voting" to be satisfied, 8 affirmative votes will be needed even if some of the votes are spoiled. For example (continuing with the case in which 15 members are present and voting), if three members spoil their votes, there will only be 12 validly cast votes but 8 votes will still be needed in order to satisfy the 'absolute majority of the members present and voting' requirement.

C Qualified Majorities in the Constitution of Niue

As noted earlier, a qualified majority refers to any voting rule that requires a majority of 50% plus more than 1. This is the case, for example, of several provisions of the amendment rule of the Constitution of Niue, which requires that certain decisions are made by a two-thirds majority. The first of these provisions is article 35(1)(a)(i) which requires that Bills amending the Constitution receive "On both the final reading, and on the reading which preceded it, the affirmative votes of not less than two-thirds of the total membership of the Assembly" (and are then approved by the people in a poll according to article 35(1)(b)(i) and (ii)). In the case of this article, the reference to the "total membership" of the Assembly means that two-thirds of the votes of those present in the Assembly may not be enough.

That is to say, in order to pass a Bill that amends the Constitution, 14 votes are always needed in the second and final readings, regardless of how many members are present, as 14 votes is the equivalent to two-thirds of 20 (20 being the total membership of the Assembly). For example, if there are only 15 members present in the Assembly, 14 votes would still be needed in the second and final readings of a Bill amending the Constitution. The other provision establishing a qualified majority requirement is article 35(1)(b)(i), which states that a Bill repealing or amending the provisions of sections 2 to 9 of the Constitution or articles 1 and 69 of the Constitution must be submitted to a poll, and that it needs to receive the support of "two-thirds of the votes validly cast" in order to be passed. This means
that if 600 electors cast valid votes, then 400 votes would be enough to ratify the Bill (400 being two thirds of 600 votes).

If 600 electors cast their votes, but there are 300 invalid votes, then 200 votes in favour of the Bill would be enough to ratify it (200 being two thirds of 300 valid votes). These qualified majority provisions are interesting since, in a certain way, they combine attributes of both simple and absolute majority rules. For example, by requiring "two-thirds of the total membership of the Assembly", article 35(1)(b)(i) establishes a fixed quantity of required affirmative votes. By combining elements of qualified and absolute majority rule, this provision seeks to create a stringent amendment rule, directed at making constitutional change difficult. On the other hand, article 35(1)(b)(ii), although requiring a qualified majority, contains some elements of simple majority, namely, an implicit mandate to ignore abstentions, absences, and spoiled votes.

IV CONCLUSION

This short note examined the different decision-making rules contained in the Constitution of Niue. The importance of properly applying these rules cannot be understated, since they reflect the degree of flexibility and rigidity considered appropriate by the framers of the Constitution. In other words, these rules indicate to both Parliament and the people what are the type of decisions that the framers thought should be susceptible of being made through a simple majority, and those that, because relating to questions that the framers considered more important, are subject to more stringent rules of change.