

Some current issues of Representative Democracy in Armenia

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To operate properly, legal and political systems presuppose a polity with the necessary political, cultural, sociological and institutional characteristics. Absent the right prerequisites, the system malfunctions, often catastrophically. The following presentation, delivered on Jan. 7, 2021, in Armenia at a conference on legal reform to address the challenges Armenia faces in the aftermath of a devastating war and amid internal political turmoil, offers some suggestions on how to build the capacity and resilience to avoid such catastrophes, with a special focus on how representative democracy can help. While focused on Armenia, these concepts are of general application and may be of assistance elsewhere, including more mature elective democracies.

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Hello! My name is Tom Samuelian. I am a lawyer and linguist by training. In this presentation I share some ideas regarding representative democracy and how to make our public deliberation more effective, with the goal of starting a discussion on these issues.

Most of today's political institutions are legacy assets from an era of strong intermediating groups and institutions, such as the family, community, church, mass media, unions, civic groups, parties, shared religious and cultural values. However, today due to the well-documented impacts of technology, mobility, and changes in values, we live in a highly individualized world, where the forces of fragmentation and polarization have largely eroded the foundations of our legacy institutions, such as representative legislatures, making them vulnerable to hijacking by demagogues, elites, and special interest groups. The silent majority often views government services as a kind of "utility" for which taxes are paid and merely seeks to be left alone and to live decent private lives in an ordered society; and they feel marginalized, alienated, exploited, and increasingly, and understandably, angry and withdrawn. It is not sufficient to blame the silent majority for not being more active, since many do not find a suitable representative for their values and voice in the existing parties, and the political arena has high barriers to entry so they feel powerless to have any real impact. The consequent low voter turnouts facilitate the hijacking of majoritarian institutions by vocal or ambitious minorities at the expense of the silent, unrepresented majority.

Although we live in an age of increasing interdependence, paradoxically, and at our peril, we continue to operate with a fiercely competitive and wasteful system that promotes individual satisfaction and achievement, often at others' expense on an unfair playing field, when cooperation is what is needed to

solve our problems. There is no alchemy that transforms greed, ambition and self-interest into public good. This formula is showing signs of failure everywhere, even more in new democracies, where the people have been disoriented by a century or more of imperial, colonial, and modernization traumas.

More and more it appears that the common good cannot be pursued as afterthought or side effect of socio-economic “games.” If a society wants to be good, it must aim for the good. Such goodness is the mission of a society. The sportification of life, political and economic, must be recognized for the metaphorical illusion it is. Life is not a game, real people get hurt when others, especially those in or seeking power, place their personal victories above the harm done to others or the common good.

This is double goal substitution is particularly pernicious. It places the ego and ambition of contenders above the common good and misleadingly conflates winning with a true and good policy outcome. Beating one’s neighbors is not conducive to community building or societal peace and fairness.

Consequently, we live in a world of oligarchies and autocracies disguised as representative democracies, where a minority of voters lay claim to a mandate to rule as if the rest of the population did not exist, just because the “winner takes all” rules of system create a fictive majority out of this minority. One way to break the cycle of elective illiberal democracy, where the 25- 30% rule as if they are 100%, is to assure that the “silent majority” has effective representation and has levers of power proportional to its numbers.

It is no longer acceptable to degrade people and violate their rights and interests just because they did not find the offerings of the political parties acceptable and did not have the wherewithal to start their own party, the barriers to entry being too high. And forcing them to choose the lesser of evils seriously diminishes the meaningfulness of their political participation and negates their freedom of political choice. Thus, it is worth exploring whether there are practical alternatives that could afford the silent majority qualified representation rather than silencing them or forcing them to choose a candidate or party they do not support.

This paper identifies some mechanisms and features of system for enhancing representative democracy to help assure everyone has equal representation and to avoid hijacking, polarization, gridlock, and fragmentation, common to many current party-based systems. The options discussed are not exhaustive or exclusive, but suggestive, targeting the diagnosed problems of the current system. Most of these mechanisms and features already exist in various other systems, but they have not, to my knowledge, been assembled in this way before for this purpose.

1. Establish the institution of at-large “accredited representatives” (cf. court appointed counsel, ombudsmen, patient or consumer advocates)
2. Allocate seats in the parliament proportionally to reflect the entire electorate
3. Use weighted voting in the parliament
4. Elect Members of Parliament (MPs) from multimember districts

The hybrid model of representative democracy proposed herein takes as a starting point the goal of assuring that everyone is equally represented, which is a principle around which there still appears to be a

broad consensus around the world. Thus, the hybrid model contemplates representation both for the “silent majority” that approaches government as a public service or utility and for the more vocal, partisan minorities that still prefer to contend for their ideas in more adversary ways. Both temperaments exist (and a range in between), so why shouldn’t they be contemplated and accommodated? Suppression is unacceptable and does unnecessary injury to decent people whose only expectation is a zone of predictable fairness. It is the contention of this concept paper that many of the ills of modern democracy, such as special interest hijacking, gridlock, polarization and fragmentation, arise from depriving the members of the silent majority of their right to equal representation in public decision-making, particularly in the legislative process.

As reasonable as it sounds to assure everyone equal representation for all, there will be opposition to this democratizing and representation-enhancing proposal from the very elites, special interests, and oligarchs that currently dominate corridors of power around the world for their own interests.

The following hybrid model of Representative Democracy is not a panacea, but it may be a transitional form of representative democracy that at least eliminates some of the worst side effects of the legacy systems that now undermine freedom and security in many new democracies, and increasingly, the old democracies whose foundations are eroding.

While subscribing to T.S. Eliot’s warning that “dreaming of systems so perfect that no one will need to be good” is a delusion, it is also true that fatally flawed systems can make things unnecessarily worse. As Confucius said more than 2500 years ago, to see something is not working and not try to fix is failure of virtue.

In this spirit the following ideas are offered for consideration by those concerned about the future of their societies.

Parliament. A place for consultation

- Current constitutional structures
- The paramount issue of the common good
 - Necessary security
 - Other desirable goods
- Representation and division of labor
- The fate of our collective life
 - The imperative not to harm ourselves

I will begin with some familiar and widely accepted basic principles of current legal and political systems. Constitutions delimit certain rights and responsibilities for the common good, which includes both necessary security and other desirable goods. Citizens, as members of society and holders of a common interest in their countries, have an overriding interest in the making and implementation of proper decisions for that end.

Since it is impractical to make and implement such decisions through deliberation among millions of people and their joint efforts, in the modern world, this is organized based on the principles of representation and division of labor. To this end, the citizens temporarily authorize officials and official bodies to act on their behalf, entrusting them with a very grave and important responsibility, that is, the fate of our collective life.

The constitution sets a most important limit – “do not harm us, or first do no harm.” This is the unwritten social contract, for which leaders are responsible. That means not only carrying out the letter of the law, but also the spirit of the law, in order to secure the people’s necessary and desirable goods.

Leader and Society

- Leader – captain of ship of state
- Freedom and respect
- The necessity of representation
 - Assure all have the right to be heard
 - Assure everyone is respected

This much it appears suffices for basic principles for this presentation, widely accepted in current political systems around the world.

Two observations about the foregoing:

1. Leading is like being a ship captain, upon whose proper performance depends, the fate of the captain, the passengers, the crew, and the ship; thus, each action must be performed with care and with responsibility for all of this.
2. People feel secure and protected, when their persons, their values, their ideas, and their problems are respected.

For a political system to exhibit these two characteristics of leadership and security through respect, the system must have capacity, be accountable and be representative, so that each citizen has confidence that they have wise and caring leaders and competent representatives.

Representativeness

- Disagreements are natural and inevitable in public life.
- The National Assembly is the people’s representative Armenian Constitution, Art. 88

Because in any society there are people with different concerns and different views, it is necessary to listen to them and to the extent possible make decisions satisfactory to all, accounting for the common good and individual rights.

The performance of this task is the duty of all branches of government, especially the parliament, which is defined in the Constitution as follows: “The National Assembly is the people’s representative body.” (Art. 88)

Consultation and Representation

- Disagreements are natural and inevitable in public life.
- *Government* from the Greek, *cyber κυβερ*, which is the core meaning of the Armenian *ղեկավարելնի ghek* ‘helm’ –a- *varel* ‘operate’
- The necessity of consultation/deliberation
- The significance of representative democracy
- Truth and the good are not dependent on the number of supporters.
- In a properly functioning system, issues should be resolved in the parliament, not in the street.

In our public life, differences of opinion are natural and inescapable. The place where these differences are ironed out is the parliament. However, in order for the parliament to perform this function, it must be actually representative, representing all voices, and not just the winners and participants in the most recent election. Returning to the image of the ship captain, on a ship there is no winner or loser, there is no government or opposition. If the ship is damaged or sinks, everyone is harmed. Those on the ship are without discrimination “in the same boat” with the same fate. Perhaps for this reason, we have taken from the ancient Greeks the word *Government* as the name for the structure that orders our collective life. It comes from the Greek *cyber*, which means helm of a ship, from which comes the Armenian *ղեկ-ւ-վարել ghek* ‘helm’ *varel* ‘operate’ which conveys the same meaning.

In our everyday life, when solving important problems, especially those that relate to our own or others’ fates, we do not make decisions alone. We consult. We consult with different people, to hear different opinions. We have a particular duty to consult with those for whom the decision to be made could have significant consequences.

For this reason, starting with the Bible and the ancient Greeks, they advise consultation before making decisions. It is not surprising that the first words written in the Armenian alphabet are exactly about this.

Making decisions alone there is a great danger of omissions. If made by a few people, we can still err, especially if we only consult with those who think like us. If made by many, or even everyone, it is, of course, still possible to make mistakes.

The true and good are values of the type that do not depend upon the number of people that agree with them. In any event, the more opinions we listen to and consider, the more likely we will avoid mistakes.

In public life, the parliament is the designated place for such consultation. For this reason, both the ancient philosophers and the modern world have settled on representative democracy as the preferable, though far from perfect, constitutional form.

Although there is still no guarantee that we will not err, consultation reduces that risk.

The National Assembly is responsible for all the passengers on the “ship of state.” Otherwise, those who are not represented are forced to take their concerns to the street, which is not the best place to find effective or logical solutions. This constitutes discrimination between the represented and the

unrepresented. Indeed, the parliament is provided for specifically for this purpose: to bring together people of different views in order to search for broadly acceptable solutions.

For this reason, the right to representation set forth in the Constitution must be realized, not only in words on the paper, but in the formation of the parliament itself.

Meaningful Representation

- The rights of the “silent majority” and making their voice heard.
- Is the constitution norm of representation meaningfully realized when a large portion of the people do not participate in elections?
- The silent majority should not be represented by a party or political force that they chose not to support by not voting.

As you know, not only in Armenia, but around the world, in nearly all elections, for various reasons a large number of people who have the right to vote do not take part in the elections.

Not everyone finds the ideology of this or that party attractive. Or among the candidates, they do not find a figure or party that is acceptable to them, a *representative* (երես yeres ‘face’ փոխան pokhan ‘instead of’) in the true sense of the word. However, this silent majority should not be blamed for indifference or deprived of their constitutional right to be represented. They too are citizens and their voice should not be represented by parties or candidates, whom they did not vote for.

Their representation should be provided through a non-partisan represented dedicated to them.

Some ways to enhance representative democracy

1. Establish the institution of at-large “accredited representatives”
2. Allocate parliamentary seats proportionally to reflect the entire electorate
3. Use weighted voting in the parliament
4. Elect MPs from multimember districts

These options are not exhaustive, but suggestive, drawing on mechanisms and experience in Armenia and around the world.

1. Establish the institution of Accredited Representatives

Accredited representatives must be knowledgeable about public affairs and able to formulate laws and policies in different spheres, who take responsibility for being nonpartisan representatives, always working transparently and accountably for the people.

To organize this, of course, requires various systems, for example:

- a. Qualifications
- b. Transparency
- c. Replacement mechanism
- d. Term limits, staggered terms

a. Accredited Representative Qualifications

- Accredited representatives must meet certain criteria, such as
 - Experience, knowledge, ethical background check, professional knowledge of some relevant area
 - Impartiality, commitment to fiduciary responsibility to perform duties
 - Presence of Accredited representatives reminds everyone to think and act in the interests of the entire population.
 - Assure that the population, in its diversity, has qualified representation: age, gender, urban-rural, religious, ethnic, diaspora, etc
 - Periodical performance evaluations
 - Desirable to apply similar criteria for all key office holders

1. Accredited Representative quality assurance

Accredited representatives must be well-prepared, capable and dedicated in order to perform their duties properly. Laws and policies are never perfect. They must be continuously developed, improved and evaluated based on the situation and results. Carrying out these functions demands experience, knowledge, dedication, and ethics. Fortunately, there are quite a lot of such capable and well-prepared people among us; however, they are not involved in public decision-making for various reasons. This institution will give the opportunity to engage such capable, well-prepared, experienced people, dedicated to the public good, who are prepared to serve the public in an unbiased way, by giving a voice to the unrepresented citizens. Also, their presence in the parliament will remind everyone that the parliament and government must think and act in the interest of the entire society, and not just in the interests of the “winners” or the mere “majority.” Those applicants who exhibit the required qualifications are then placed in the pool of Accredited Representatives candidates from which as the need arises Accredited Representatives are selected to serve in the parliament.

- It is desirable that such standards also be set for all key positions in the The candidates for such positions should be screened before appointment to assure that they meet the criteria for the position, including experience, knowledge, ethics, the scale of the operation, in short, that they are really suited to handle the position to be entrusted to them.
- Experience can be acquired either in the public sector or through a comparable private sector work experience.

b. Transparent, consultative decisionmaking

- Transparent, consultative, accountable, participatory decisionmaking, for example,
 - Consultation with constituency before making decisions
 - Decisionmaking on the public record, prior disclosure of rationale for decisions,
 - **Meaningful due process** – opportunity for citizen comment, duty to consider and respond to comments
 - Periodic meetings with constituents
- ### 1. transparent, consultative decision-making, asking and taking into account citizen’s concerns, for example,
- Accredited Representatives must clarify problems by consulting with citizens before making any This must be done transparently, on the public record, accessible to all, through a participatory internet platform. Periodically they must conduct meetings with their constituents in the electoral district. They must respond on the public record to the concerns of the citizens, assuring that decisions and votes are substantiated, transparent, accountable, and trustworthy. Before each vote they must publicly post in writing their position, explaining why the way they are voting is in the public

interest, identifying any possible negative consequences of the proposed decision, and certifying that their decision/vote is uninfluenced by any personal or other interest or motive than the public's best interest.

c. Recall/Replacement and

d. Term limits, staggered terms

- - In addition to regular performance evaluations
 - By constituent initiative, an Accredited Representative can be replaced.
 - Five-year maximum service in as an accredited representative
 - Staggered terms, 1/5 replaced automatically each year.
1. Replacement Mechanism – in addition to the regular yearly performance evaluation, Accredited Representatives may be replaced based on a petition signed by the Accredited Representatives constituency (only those who did not vote). The details of this mechanism need further elaboration in due. The replaced representative cannot serve as an Accredited Representative again.
 2. Term limits, for example, the following might be applied, to assure independence and avoid the development of vested interests:
 -
 - staggered terms, if the parliamentary elections are every 5 years, then the Accredited Representatives are divided into 5 more or less equal groups, and serve staggered terms, 1/5 being replaced each year, through the same random selection from the pool of Accredited Representatives.
 - service limit: an Accredited Representatives cannot serve more than 5 years in total in the Parliament. E.g., the Accredited Representatives served 1 time for 2 years, then returns to the pool, and if selected again, can serve another 3 years.

Some ways to enhance representative democracy

1. Establish the institution of at-large “accredited representatives”
2. **Allocate parliamentary seats proportionally to reflect the entire electorate**
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2. Proportional allocation of seats to reflect entire electorate

- Allocate seats to reflect the actual number of voters; for example, if Parliament has 100 seats:
 - If **60% of the voters took part in the election**, the deputies they elected should have **60 of the 100 seats**.
 - The remaining 40 seats represent the other 40% of the electorate.
 - The remaining seats would be filled from **the pool of pre-qualified, accredited representatives**:
 - By **random selection**
 - **Qualified** by experience, knowledge, commitment, ethnics and specialization
 - **Reflecting the diversity of the population**, age, gender, urban-rural, religion, occupation, ethnicity, diaspora, etc.
2. Allocate parliamentary seats proportionally to reflect the entire electorate

This is easiest understood through an example. Suppose we have 2.5 million voters and a 100-seat parliament, on average, each seat represents 25,000 votes.

If 60% of the electorate takes part in the elections and all the candidates satisfied the minimum threshold for a seat in Parliament, then 60% of the voting power in Parliament should be allocated to the party candidates who satisfied the minimum threshold.

The remaining 40% of the voting power would be allocated on a random basis to non-partisan, accredited representatives from a pool of previously screened qualified candidates. These accredited representatives represent those voters who did not take part in the elections, as well as those who voted for candidates or parties that did not meet the minimum threshold for election.

The accredited representatives can be selected to reflect the diversity of the population, e.g., age, gender, city-country, religion, ethnicity, diasporan, etc.

Some ways to enhance representative democracy

1. Establish the institution of at-large “**accredited representatives**”
2. Allocate **parliamentary seats** proportionally to **reflect the entire electorate**
3. Use **weighted voting in the parliament**
4. Elect MPs from **multimember districts**

3. Use weighted voting in the parliament

- Assume 2.5 million voters, 100-seat Parliament, each MP on average represents 25,000 eligible voters.
- A candidate that receives 75,000 votes represented 3 times as many voters as one that receives 25,000 votes,
- **Inequitable and non-representative** if they have the same vote in parliament.
- The MP elected with 75,000 votes should have 3 votes in Parliament, while the MP elected with 25,000 votes should have 1 vote.
- Automatically implements **proportional representation** without party list.
- For precision, fractional weighted votes can be used and easily tabulated electronically in Parliament.
- Weighted voting is widely used, especially in international organizations, where representation and equality must be guaranteed.

3. Weighted voting in parliament

In order to assure citizens' representation and equality before the law, it is possible to apply weighted voting in parliament. Each deputy in party would reflect the number of votes received in the election. Continuing with the previous example, in a 100-seat parliament with 25,000 votes per set, if a candidate received 75,000 votes, then that candidate would represent 3 times as many voter/citizens as the candidate elected with 25,000 votes. Thus, in order not to violate the legal equality of all citizens, in decisionmaking, the candidate receiving 75,000 votes should have a large voice, in this case 3 votes, while the candidate elected with 25,000 votes would have 1 vote.

For more accuracy, fractional weighting can be used, so that no voter's voice is ignored. Each accredited representative would have only 1 vote, since each Accredited Representative represents 25,000 voters.

Weighted voting is widely used in international organizations in order to assure that everyone's voice is heard, while respecting the equality of the represented constituents.

Some ways to enhance representative democracy

1. Establish the institution of at-large “accredited representatives”
2. Allocate seats in the parliament proportionally to reflect the entire electorate
3. Use weighted voting in the parliament
4. **Elect MPs from multimember districts**

4. Multimember districts

- **Why?** Problems with Majoritarian and PR systems accepted and tested alternative to “winner-take-all” **majoritarian** or party-list based **proportional representation (PR)** systems and **avoids** many of the **negative side effects** of both.
- **Independent candidates** would be permitted (unlike current PR system), based on constituent nomination, assuring a wider selection of qualified candidates
- In theory and practice, **proportional representation** systems result in **polarization, fragmentation and political instability**.
- **Voter satisfaction: Multimember districts assure** that most of those who voted will be represented by the candidate of the party of their choice in parliament.
- **How?** Again, assume 2.5 million voters, 100-seat Parliament, and the country is divided into 10 electoral districts with 250,000 voters, so if everyone voted, 10 deputies from each district, each representing on average 25,000 votes
- For example, in Electoral District A 175,000 voters took part in the election,
- 4 surpassed the electoral threshold, receiving an aggregate of 150,000 votes, 60%. 6 votes in parliament proportional to votes in the election,
- The remaining 40% of the electorate represented by Accredited Representatives, one vote each, representing 25,000 of electorate (1%)

4. Elect MPs from multimember districts

Why multimember districts? Problems with majoritarian and proportional representation systems

Multimember electoral districts are used in many countries as an alternative to “winner-takes- all” majoritarian or party-based proportional representation. Majoritarian systems deprive the “losers” of having an elected representative. Proportional representation systems allot from a party list a candidate, in a non-transparent way, with little screening for qualifications, other than minimal constitutional and ethical requirements. The voter often knows little about the candidate and the candidate has no connection with the constituency or electoral district. Theoretically and in practice, proportional representation systems lead to polarization and political fragmentation, which is apparent in Armenia, and in many countries where it manifests in unstable parliaments, which must be dissolved and reelected every couple of years, because they cannot work with their political competitors due to polarization and non- cooperation. Also, with party-based PR systems such as the one provided by Armenia's current electoral code, individuals are barred from running for office, which both infringes their right to freely participate in political activity and deprives the voters and country of perhaps very well-qualified candidates. Finally and perhaps most importantly, Voter satisfaction: Multimember districts assure – that most of those who voted will be represented in parliament by the candidate/party of their choice.

How does it work? Continuing with the same example, if there are 2.5 million voters and 10 equal districts of 250,000 voters, and a 100-seat parliament, then 10 deputies could be elected to the parliament from each. (If the districts are not equal, then the 100 seats are distributed proportionally among the 10 districts, assuring the equality of all citizens and deputies). The candidates can belong to a party or can run as independents (by citizen nomination based on collection of a certain number of signatures). The candidate can only run in one district. In the elections all the candidates who receive more than the threshold number of votes (e.g., 25,000 votes, which 1% of the total electorate), are elected deputies.

For example, suppose in District A 175,000 voters (out of 250,000) participated. There were 8 candidates, of which 4 surpass the threshold, together receiving 150,000 votes in total.

150,000 votes is equal to 6 votes (150/25) in Parliament, so those 6 votes would be distributed among the 4 them (using the weighted voting system above) proportionally to the votes they received in the election. Candidate B received 75,000 votes so has 3 votes in Parliament, Candidate C, D and F received 25,000 each and each have 1 vote in parliament.

The other 40% of the eligible voters for this district would be represented by accredited representatives, each with one vote. The same would be done in all the districts. Thus, all the voters are represented in parliament. (In order to make it easier to follow, round numbers have been used. In a real case, fractional weighted votes in Parliament could be used to assure precise representation and legal equality of both citizens and deputies).

What can be done right now?

- Some of the ideas discussed, while consistent with the constitution and international norms of human rights, require **change in law**.
- However, **on a voluntary basis**, current MPs, based on their constitutional duty to represent the people, could implement the spirit of the law right now.

Postscript – What can be done now in January 2021?

After this short presentation, one may wonder whether any of this can be applied to the current situation?

Perhaps.

Although some of the above ideas would require legislative changes, nevertheless, if there are current deputies who, based on their constitutional duty, are prepared on a voluntary basis to represent the unrepresented, it might be possible to implement some of these ideas right now.