

Representation of Minority under Deliberative Democracy and the Proportional Representation System in the Republic of Korea*

Woo-Young Rhee**

Abstract

This paper diagnoses the norms of minority representation in the political processes of constituting the legislature and of lawmaking in a representative democracy, and analyzes South Korea's proportional representation system as currently in operation primarily under the Public Official Election Act (as most recently revised by Law No. 10067, effective March 12, 2010), as it pertains to the representation of women. Under the current state of representative democracy in South Korea, democracy can be strengthened by pluralizing the modes and sites of representation, which entails that democratic institutions and practices take measures to include under-represented groups whose perspectives would likely be excluded or marginalized in political process. The most effective mechanism to implement such mandate of presence and participatory engagement of under-represented groups may function at the early phase of political process, where the representative body is constituted and the core agenda for legislation and policymaking are introduced, deliberated and determined. South Korea's proportional representation system aims to promote such goal, particularly as it pertains to the representation of women. Proportional representation as it currently operates in South Korea provides more opportunity for differentiated representation than does a system based on single-member, simple plurality electoral districts. Statistics indicate that the proportional representation system has contributed to enhance the presence of women at the legislature in South Korea both at national and local levels. The next and more constitutionally challenging task is how to improve the system so that the system itself and the system-induced increase in the presence of women at the legislature may bring in sustainable changes in perception of the constituents towards minority perspective representation in political process and, further, actual legislative and political activities in this vein.

* The research for this article was supported by the Law Research Institute at Seoul National University School of Law.

** Associate Professor of Public Law, Seoul National University School of Law.

I. Introduction

This paper diagnoses the norms and the mechanisms of minority representation in the political processes of constituting the legislature and of lawmaking in South Korea in its growingly pluralized context, and particularly analyzes South Korea's proportional representation system in this vein, as currently in operation in South Korea primarily under the Public Official Election Act (as most recently revised by Law No. 10067, effective March 12, 2010). In the course of analyzing the subject of minority representation in a deliberative democracy largely based upon majority rule, this paper first looks into the theories of representation and of legislation in a democracy. This paper then moves on to emphasize the significant constitutional ramification of the representation of the perspectives of the minority and the marginalized groups in the lawmaking body and its lawmaking. Then this paper applies these normative understandings in analyzing the current proportional representation system in South Korea in its increasingly pluralistic context.

Democracy operates largely by majority rule. It is a necessary and sufficient condition for any democracy, however, that the government is obligated to guarantee the rights of all individuals including minorities. At the same time, in a pluralistic democracy that pursues autonomy and political equality under the law of constitution, no absolute standard may be applicable to assess individual laws and policies, and the legitimacy of laws and policies may justifiably be measured and determined increasingly by the democratic legitimacy of the means and processes adopted to produce such laws and policies. The design structuring a particular system of democracy should therefore institutionally guarantee the democratic legitimacy of the means and processes that precede the decision-making for the polity, and such means and processes in turn will support the democratic legitimacy of the polity's decision-making applicable to all constituents. Under the current state of representative democracy in South Korea, the most effective mechanism to protect and enhance the rights of the minorities may function at the early phase of political process, where the representative body is constituted, and, subsequently, the core issues and agenda for legislation and policymaking are introduced, deliberated and determined. Hence, the

representation and the participatory engagement of the minorities in the earliest possible stage of the legislative and policymaking process are of particular significance.

This paper first looks into the normative connection between democracy and legitimacy, reviews the concept of representation from the perspective of inclusive political and social communication, and then, in this regard, analyzes the mechanism for minority presence and representation at the lawmaking institutions and the systems for balancing minority and majority perspectives in the lawmaking process in South Korea. Such institutions and systems for minority perspective representation have broader and deeper constitutional ramifications in today's South Korea, as the norms and values in its political, social and cultural domains are increasingly diversified and pluralized.

II. Minority Representation in South Korea's Representative-Deliberative Democracy from the Constitutional Law Perspective

1. Different Models of Democracy and the Theories of Representation

In contemporary political and constitutional theory, the basic assumption is that democracy is the best political form for restraining those with power from their inevitable temptations towards abuse of power. It is further assumed that in principle, only in a democratic political system do all members of a society have the opportunity to influence public policy or decision-making to serve or protect their interests. The corollary belief is that democratic process is the best means for promoting legitimacy.

As an effort to emphasize inclusion, political equality and accountability in the political process primarily based on an account of the model of deliberative democracy, this paper thus should first look into the normative theoretical connection between democracy and legitimacy in the sense that democratic processes serve as the means of discovering and agreeing upon the most just policies under the conditions of inclusive political equality and public reasonableness. In actual democracies, however, it is witnessed ubiquitously that some people and groups have significantly greater ability to

represent their own interests and to use democratic processes for their own ends, while others are excluded or marginalized therefrom. Discussions for public policy and lawmaking in South Korea do not occur under conditions free of such distorting influence of unequal power and control over various resources. This paper limits itself to argue that one means of breaking the vicious circle that enables the powerful to use formally democratic processes to preserve privilege is to widen democratic inclusion in decision-making processes as a means of promoting more legitimate outcomes. Such effort is all the more necessary in a growingly pluralistic society of today's South Korea.

Two models of democracy stand central in contemporary political and constitutional theory. As conventionally discussed, these are the aggregative model of democracy and the deliberative model of democracy.¹⁾ These two models share certain assumptions with respect to the basic framework of democratic institutions. For example, democracy requires the rule of law, voting is the means of making decisions or law for the polity as a whole when consensus is not possible or too costly to achieve, and democratic process requires freedom of expression.

Among the two, the aggregative model of democracy interprets democracy as the model of aggregating the interests and preferences of the constituents in choosing public officials, policies and law. The goal of democratic decision-making is to decide what representatives, policies and laws will best correspond to the most widely and strongly held preferences. A well-functioning democracy allows for the expression and competition among diverse and plural preferences, and has reliable and fair methods or processes for aggregating them to produce an outcome.

As such, the aggregative model describes democratic processes of policy formation and lawmaking as follows. Individuals in the polity have varying preferences as to what they want government institutions to do; they know

1) This understanding of models of democracy corresponds to the understanding, at a more foundational level, of the concept and nature of representation. The analysis and argument made in Section II of this paper as to the concept and nature of representation are primarily based upon readings over time of the following authorities: DIANA C. MUTZ, *HEARING THE OTHER SIDE: DELIBERATIVE VERSUS PARTICIPATORY DEMOCRACY* (2006); ADAM PRZEWSKI, SUSAN C. STOKES & BERNARD MANIN, *DEMOCRACY, ACCOUNTABILITY, AND REPRESENTATION* (1999); BERNARD MANIN, *THE PRINCIPLES OF REPRESENTATIVE GOVERNMENT* (1997); and HANNA F. PITKIN, *THE CONCEPT OF REPRESENTATION* (1972).

that other individuals also have preferences that may or may not match their own. Democracy is an open and competitive process in which political parties and candidates offer their platforms and attempt to satisfy the largest number of the constituents' preferences. Constituents with similar preferences often organize interest groups in order to try to influence the actions of political parties and elected lawmakers. Individuals, interest groups and public officials may each behave strategically, adjusting the orientation of their choices according to their perceptions of the activities of competing preferences. Assuming that the process of competition, strategizing, coalition-building and responding to choices of the others is open and fair, the outcome of both elections and legislative decisions reflects the aggregation of the strongest or most widely held preferences in the population, which in turn explains the democratic legitimacy of such decisions.

In particular, the preference aggregation model of democracy bears certain shortcomings, on a normative stance that democratic process should be connected to an interest of legitimacy. First, as each individual's preferences are taken as given, the aggregative model offers no criteria for distinguishing preferences by substance or motive. Because preferences are conceived as exogenous to the political process, there can be no account of how individuals' political preferences may change as a result of interacting with others or participating in the political process. Constituents never need to alter their own interests and preferences for or as the result of interacting with others whose preferences differ. This model thus lacks a distinct idea of a public or the public good for the community as perceived by the constituents, formed from the interaction of democratic citizens and their motivation to reach some decision, and there is therefore no account of the possibility of political coordination or cooperation.

Furthermore, the aggregative model is skeptical about the possibility of normative and evaluative objectivity or rationality, as the aggregate outcome has no necessary rationality and has not been derived by a process of reasoning or deliberation. Even when certain individuals use the concept and the language of morality, they are simply expressing and conveying a particular kind of preference or interest which is no more rational or objective than any other. The aggregative model of democracy offers no basis or means to normatively evaluate the legitimacy of the substance of decisions. This model thus offers a weak motivational basis for accepting the outcomes of a

democratic process as legitimate for those who do not share the preferences held by the most number of the constituents, except when they may feel that they have no choice but to submit given that they are in the minority in number or political power.

On the other hand, in the deliberative model, democracy is a form of reason and deliberation. The basic frame under this model is that participants in the democratic process offer proposals for how best to solve problems or meet legitimate needs for the community, and they present arguments through which they aim to persuade others to accept their proposals. Participants arrive at a decision not by determining what preferences have greatest numerical support, but by determining which proposals the collective agrees are supported by the best reasons as expressed and deliberated. A number of theories of deliberative democracy have appeared and developed in recent years, renewing interests in reasoning, persuasion, acceptance, inclusion, accountability, publicity, and normative appeals in democratic politics.²⁾

First, on this model, a democratic decision is normatively legitimate only if all those affected by it are included in the process of discussion and decisionmaking. Second, as a normative ideal, democracy means political equality. Not only should all those affected by a certain decision be nominally included in decision-making, but they should be included on equal terms. All should have an equal right and effective opportunity to express their interests and concerns, and the ideal model of deliberative democracy hence promotes free and equal opportunity to speak. Third, however, this can be maintained only when participants have a disposition to be reasonable. Reasonable individuals discuss to solve collective problems with the aim of reaching agreement. It is true that often they will not reach agreement and they need to have procedures for reaching decisions. However, reasonable individuals understand that dissent tends to produce deeper and wider insight, and that decisions and agreements should in principle be open to new challenge. Therefore, participants in discussion intend to reach agreement through deliberation when entering the discussion, though actually reaching consensus is thus not a requirement of deliberative reasoning.

2) *Id.*

The conditions of such inclusion, equality and reasonableness entail that the interaction among participants in a democratic decision-making process forms a public in which individuals hold one another accountable.³⁾ A public consists of a plurality of different individual and collective experiences, interests, opinions and perspectives that face one another to discuss collective problems under a common set of procedures. When members of such a public speak to one another, they know that they are responsible for that plurality of others. This plural public-speaking context requires participants to express themselves in ways accountable to all those plural others. Here, the content of an expression does not have to be immediately understood or accepted by all to be public, but, rather, the expression only should aim in its form and substance to be understandable and acceptable.

This latter deliberative model responds primarily to democracy's purpose as a protection against tyranny and the ability of individuals and groups to promote and protect their interests in politics and policy. Also, as crucial to the main argument in this paper, the interactive aspect of this model accounts for its greater comprehensiveness. In the deliberative model, political actors not only express preferences and interests, but they engage with one another about how to balance these under circumstances of inclusive equality. Because this interaction requires participants to be open and attentive to other participants, to justify their claims and proposals in terms acceptable to all, the orientation of participants moves towards what is publicly assertable. Interests and preferences continue to have a place in the processes of deliberative democracy, but not as given and exogenous to the process. Most proponents of deliberative democracy emphasize that this model conceptualizes the process of democratic discussion as not merely expressing and registering, but as transforming the preferences, interests, beliefs and perspectives of participants. Through the process of public discussion with a plurality of differently opinioned and situated others, individuals often gain new information, learn of different perspectives and experiences of their collective problems, or find that their own initial opinions are founded on lack of

3) Publicity and accountability are at the core of Amy Gutmann and Dennis Thompson's conception of deliberation. See AMY GUTMANN & DENNIS THOMPSON, *WHY DELIBERATIVE DEMOCRACY?* (2004); AMY GUTMANN & DENNIS THOMPSON, *DEMOCRACY AND DISAGREEMENT* (1998).

information or on prejudice.

The analyses and discussions in the following part of this paper are based upon the basic outlines of the model of deliberative democracy as indicated above. Although this model also needs further refinement in order to serve a theory of inclusive democratic process, it enables us to think of democracy from the perspective of legitimacy of politics of inclusion.

2. Majority Rule, Minority, Participation and Representation under South Korea's Representative-Deliberative Democracy

Democracy operates primarily under majority rule. In a liberal democracy, majority rule justifies decision-making of and for the polity among equal individuals, operating as a method of decision-making and institutional mechanism for maintaining and developing the community. In turn, however, majority rule may be justified in a liberal democracy to the extent that minority interests, opinions and perspectives are respected and deliberated in decision-making processes and that minorities may become majority upon persuading the majority.

Under the very fundamental premise of liberal democracy of inalienable human rights, all individuals including minorities are entitled to be respected and to pursue happiness, and, in the contemporary constitutional democracy including South Korea's, the Constitution guarantees the fundamental rights and certain core elements of constitutional institutions for all constituents to whom the Constitution applies and not merely for those constituting majority under particular criteria. Liberal democracy is thus defined as ruling by majority through majority's persuasion of minorities.⁴⁾ Under this definition, a liberal democracy should recognize, respect and pursue diversity among

4) Kyong Whan Ahn, *Law and Legal Reasoning for Minority Protection*, 2 LAW & SOC'Y 114, 115-118 (1990). Joon-II Lee maintains that implementation of democracy is possible only when the opportunity is open and available to the minority to be part of majority. Joon-II Lee, *Minority and the Principle of Equality*, 8(4) CONSTITUTIONAL LAW 219, 223 (2002). In Sup Han reasons that, for every person simultaneously belongs to a potential majority and a potential minority, exclusion of minorities is equivocal to retraining upon all their sovereignty. In Sup Han, *Why Human Rights for Minorities and the Weak?* in HUMAN RIGHTS OF MINORITIES 20 (Korea Human Rights Foundation ed., 2000).

different yet equal individuals on the basis of human dignity and autonomy,⁵⁾ and should protect itself from coercive imposition of unjustified decisions made by majority upon minorities.

Notwithstanding such normative importance ubiquitous to discussions in the law and the practice of constitution, the concept of minority has been employed in South Korea both in academic and other various contexts with only a very loose, rather than any clear, definition.⁶⁾ Conspicuous is Professor Kyong Whan Ahn's definition of the minority as "those standing in a different position from the position considered to be dominant due to the causes of ethnicity, gender, economic capability, ideology, morality and others, in various political, social, economic, cultural and other domains within a polity."⁷⁾ From such definition, some of the core elements of minority as constitutional law concepts as applicable to the discussions in the following part of this paper are derived as follows.

First, minorities are individuals situated outside of or in the periphery of the core position of power in relation to the majority, while belonging to the polity. Second, the numerical size of such minority groups do not alter their nature as minority, as women as a group in South Korea, though numerically more than men, are minorities from the perspective of constitutional law for their position outside of current core political, social and economic power structure in South Korea. Third, minorities as criteria that are meaningful in constitutional law analysis and discussion are those understood in the historical context of a particular political community, such as in the specific historical context of South Korea, and not merely at a then-current point of time. Fourth, the concept of minority is relative and fluid, as concurrent and overlapping criteria may apply to constantly divide and consolidate individuals

5) On this account, for a detailed argument, see Bal-Rae Lee, *Minority Protection System under Human Rights Laws and Judicial Scrutiny on Discrimination*, 9(1) CONSTITUTIONAL LAW 337, 337 (2003).

6) Encyclopædia Britannica defines the term "minority" as follows: a culturally, ethnically, or racially distinct group that coexists with but is subordinate to a more dominant group. As the term is used in the social sciences, this subordinancy is the chief defining characteristic of a minority group. As such, minority status does not necessarily correlate to population. In some cases one or more so-called minority groups may have a population many times the size of the dominating group, as was the case in South Africa under apartheid (c. 1950-91).

7) Ahn, *supra* note 4; Kyong Whan Ahn, *Rule of Law and Minority Protection*, 12 LAW & SOC'Y 6, 9 (1995).

within a polity upon various issues and subjects.

Decision-making of a political community may be made through diverse processes and means. However, under the constitution that pursues democracy based upon human dignity, liberty and equality, all individuals are at least as a matter of principle entitled to participate in the process of decision-making that will bind them and their community. As discussed in the preceding part of this paper, representative democracy is based upon the premise that it may implement free and equal access to and participation in the political processes of all constituents. However, in the actual reality in South Korea, the cost of participation in political process has risen, thereby weakening such equal access and participation in the politics.

This situation has particularly been conspicuous in South Korea in recent years, as the South Korean society has been rapidly pluralized,⁸⁾ whereas the relevant law and systems have not been sufficiently supportive of or productive in expressing, discussing and deliberating in public domain further diversifying perspectives held by its constituents. A currently low voter turnout at public elections in South Korea, with more notable cases at local elections,⁹⁾ is an indicative example of the challenge the South Korean representative democracy faces now. In the present-day South Korean constitutional politics, the possibility of alternation between majority and minority positions is growingly conceived to be possible only by and at public elections due to the politically and institutionally rising cost of participating in

8) The Korean Constitutional Law Association held a nationwide conference in March of 2010 at the Constitutional Court building in Seoul, Korea, on the pluralism and the response thereto of the Constitution and the constitutional law in South Korea that encompassed various relevant subjects (the 58th regular conference of the Korean Constitutional Law Association, titled "Pluralistic Society and the Constitution"). An effort to analyze pluralism in South Korea is ongoing in South Korea across different disciplines. An independent effort in this direction can be seen at, for example, Jin-Wan Park, *Equality and Diversity*, 6(1) CONSTITUTIONAL LAW 182 (2000).

9) The voting rate in the recent public elections in South Korea is falling in general. At the presidential election, the voting rate was 80.7% of all who were entitled to vote in 1997, 70.8% in 2002, and 63.0% in 2007. At the general election to constitute the national legislature, i.e., National Assembly, the voting rate was 57.2% in 2000, 60.6% in 2004, and 46.15% in 2008. At the local election to constitute local council and to elect the chief executive officer of the local government, the voting rate was 52.7% in 1998, 48.9% in 2002, and 51.65% in 2006. Statistics and other relevant information concerning the voting rate at South Korea's various public elections is available at National Election Commission of the Republic of Korea's URL at www.nec.go.kr.

political process, causing the constituents or the members of the community to distance themselves from the representatives. Without appropriate institutional efforts, this phenomenon is to be exacerbated as the South Korean society is further pluralized.

Taking some of the examples of institutional designs under the South Korean law in this regard, National Assembly, i.e., the national legislature, is primarily constituted through simple plurality vote where one candidate is elected per electoral district (Public Official Election Act, Article 21(2)), although South Korea also has the proportional representation system under which 1/5.5 members of the representatives at National Assembly are elected from the lists prepared by the political parties due to the ratio of votes given to the political parties (Public Official Election Act, Articles 47, 150(3), 189(1)-(3) and 190). At the same time, the nation's President is elected also through simple plurality vote (Constitution of the Republic of Korea, Article 67), while relatively much power and authority is concentrated on the office of the President. These systems together make it easier for larger political parties to increase their influence upon political decisionmaking processes and national politics overall.¹⁰⁾

Substantive decline of representative democracy in South Korea bears direct relevance to the issue of minorities, as the system of representative democracy under the South Korean Constitution is justified and operates under majority rule. A representative democracy may be justified only when diverse interests, opinions and perspectives of the constituents are sufficiently expressed and deliberated through representative decisionmaking. In South Korea, while the political reality indicates such representative mechanism has not been successful, the design of legal system itself is not only largely incapable of overcoming such reality but also rather exacerbating the phenomenon as will be discussed in further detail in the following part.

In order to justify the function of the representatives and the exercise of the constitutional public authority in growingly pluralizing South Korean society,¹¹⁾ more than anything else, the mechanisms of composing the decisionmaking bodies and of decisionmaking processes should have

10) Jung-Kwan Cho, *To Improve the Quality of Korean Democracy*, 7(1) KOREAN J. LEGISLATIVE STUDIES 6, 31 (2001).

11) See Park, *supra* note 8.

procedural and substantive legitimacy under the applicable concepts of representation and deliberative democracy so that such mechanisms may persuade the constituents or the members of the community concerning the result of decisionmaking through such mechanisms. This ultimately calls for an institutional effort to harmonize law and society in a pluralized society. Such effort should not aim for implementing unison decision throughout the polity; instead, this effort should aim for guaranteeing diversity and plurality stemming from human nature that pluralism recognizes as the fundamental purpose and function of any polity. In any democracy, including South Korea's representative democracy, such effort should embrace as the constitutional mandate the presence and participation of minorities in the political process. The constitutional relevance of representative political process and pluralism, as perceived in the current-day South Korea, lies here.

Strong democracy requires many occasions when citizens and their representatives meet to discuss issues and experiences with each other. Theorizing democracy as a process of communication to arrive at decisions, however, has not yet sufficiently stated the need to conceptualize democracy as de-centered and pluralized in complex mass societies. In a polity as such, South Korea being one example, democratic communication consists in overlapping and diverging discussions and decisions, dispersed across the community and also over time. In the context of such complex and mass politics, instances of exclusion invoke norms of representation. It is often claimed that the political or social groups they find themselves in or with which they claim affinity are not properly represented in public discussions and decision-making bodies, including legislatures, boards, media coverage of issues, and so on. Such claims recognize in turn that in a large polity with many complex issues, formal and informal representatives mediate the influence individuals have. For these reasons many recent calls for greater political inclusion in democratic processes argue for measures that encourage more representation of under-represented groups, especially when these groups are minorities or subject to structural inequalities.¹²⁾

12) As discussed in Section III of this paper, South Korea has adopted a proportional representation system to enhance the representation of diverse perspectives including those of women as well as other political, social and political minorities in the national and local legislatures. It has been claimed that legislatures peopled mostly by men cannot be said

Both the idea and practice of promoting specific representation of minorities are controversial, however, and the arguments and the policies for the special representation of minority or marginalized groups face many objections. Such objections presume a commitment to attend to, rather than submerge, political and social differences, within any of such minority or marginalized groups as defined in whichever way. It should be noted here that the unifying process required by group representation freezes flexible and multifaceted relations into a unified identity, which can recreate exclusions. However, calls for special institutions or mechanisms of representation of minority or marginalized groups do not seem to be muted by these critiques, because, in the context of practical affairs, many people believe that such measures are the best way to gain voice for many unfairly or wrongly excluded issues, analyses and positions. This paper, in the following paragraphs of this section, aims to clarify the meaning of such group representation, and to provide persuasive arguments for such differentiated representative practices as an important enactment of inclusion from the constitutional law perspective.

Doubts about such practices derive at least in part from misunderstandings about the nature of representation. Much discourse about representation implicitly assumes that the person who represents stands in some relation of identity or substitution with the many that are represented, that the representative is present for the represented in their absence. This paper conceptualizes representation, against such an image of representation as identification or substitution, as a differentiated relationship among actors in a polity who are engaged in its political processes that extend over different domains and also over time. Adding the dimensions of time and mediated space involved in the process of representation decentralizes the concept. Many objections to practices of the specific representation of structurally disadvantaged groups derive from the assumption that groups do not have one set of common interests or opinions. However, being similarly positioned in the political and social field generates a political and social perspective the inclusion of which in public discussion processes of group representation may

properly to represent women, and, South Korea has enacted, in response to such claims, legislation designed to encourage more women legislators, requiring that party lists include a certain portion of women.

facilitate.

There are certain anti-representation positions indeed that representation alienates political will at the cost of genuine democratic self-government. However, it is given that representation is necessary, as the current-day political and social life connects the action of some people and institutions in one place to consequences in many other places and institutions. As such, features of time and interaction produce de facto representation. Under such circumstances, political equality may best be served by institutions of formal representation, because the rules concerning who is authorized to speak for whom are public and there are some norms of accountability. Hence, under normative ideals of communicative democracy, representative institutions do not stand opposed to participation of the represented, but require such participation in order to function well. Representation does not rely on the logic of identity or the metaphysics of presence. Rather, in an ideal democratic decision-making situation, the represented are co-present with their representatives.

Political representatives usually have a large constituency that is diverse in its interests, backgrounds, experiences, beliefs, values and so on. Also, it is most likely more difficult to imagine a shared will for the residents of a metropolitan legislative district than for members of an ethnic group. If we accept the argument that representation is necessary, but we also accept an image of democratic decision-making as requiring a co-presence of the represented as well as the representatives, and that representation is legitimate only if in some way the representative is identical with the constituency, then representation is necessary but impossible. However, taking seriously the pluralized and decentralized nature of mass democracy serves as an exit out of this paradox in that it entails discarding images that the representatives should be present for the represented. Instead, it now becomes possible to conceive democratic discussion and decision-making as mediated through and dispersed across the polity and over time. Rather than a relation of identity or substitution, the representation from the constitutional law perspective should be thought of as a process involving a mediated relation of the constituents to one another and to the representative.¹³⁾ Representation

13) Conceiving representation as such as a differentiated relationship among plural actors

systems sometimes fail to be sufficiently democratic not because the representatives fail to stand for the will of the constituents, but because they have lost connection with them.

The major normative problem of representation now is the threat of disconnection between the representative and the many she or he represents. And the constitutional importance of minority representation as discussed in this paper lies here. When representatives become too separated, constituents lose the sense that they have influence over policymaking or lawmaking, become disaffected, and withdraw their participation. Establishing and maintaining legitimate and inclusive processes of representation thus calls up responsibilities for both representatives and constituents. The constituents should be willing and able to mobilize one another actively to participate in processes of authorizing and holding to account the representatives. The representatives should listen to these public discussions and diverse claims, stay connected to the constituents, and be able to convey reasons for their actions and decisions in terms that recollect their discussions. Such mobilization, listening and connectedness can be either facilitated or impeded by the design of representative institutions.

As such, representation and participation are not alternatives in an inclusive democracy that South Korea pursues under its Constitution, but, instead, require each. Institutions of representation help organize political discussion and decisionmaking, introducing procedures and a reasonable division of functions, and the representatives thus should respond to such participatory process. As such, since the representative is necessarily different from the constituents, a democracy is better or worse according to how well those differentiated positions are connected. Democracy in this regard can be strengthened by pluralizing the modes and sites of representation.

Systems of political representation cannot make individuals present in their individuality, but should represent aspects of a person's identity, beliefs,

dissolves the paradox of how one person may stand for the experience and opinions of many. There is no single will of the constituents that can be represented. Because the constituency is internally differentiated, the representative does not stand for or refer to a union opinion or interest shared by all the constituents which she or he should advocate. Thus, the representatives are different from the constituents, but should also be connected to the constituents. At the same time, constituents should also be connected to one another.

activity or experience where she or he has affinity with others. Potentially there are many such aspects or affinity groups, and some of the general modes through which a person can be represented include those according to interests, opinions and perspectives. A person may be represented in several ways within each of these modes, and explication of what it means to represent perspective particularly provides arguments for the special representation of disadvantaged or underrepresented social groups while avoiding the problem of attributing to all members of those groups common interests or opinions. Although individuals belonging to a broadly defined social group may and do have varied interests and opinions since individuals are multiply positioned in complexly structured societies, individuals interpret the society from a multiplicity of social group perspectives. Though interests, opinions and perspectives do not exhaust the ways people can be represented, these are salient in the way we discuss representation in contemporary politics, and in answering the conceptual and practical problems posed for group representation to be discussed in the following section of this paper.

3. Representation of Minority and Marginalized Groups in Legislature and Political Process under Representative-Deliberative Democracy in Light of Democratic Legitimacy

It is hardly deniable in contemporary politics in many democracies including South Korea's that members of less privileged structural social groups are underrepresented.¹⁴⁾ Structural social and economic inequality often produces political inequality and relative exclusion from influential political discussions on policymaking and lawmaking. In most political systems including the one in South Korea, women occupy a small proportion of elected or appointed offices generally. Minority cultural groups and those positioned in devalued racial positions usually also lack effective political voice. Many regard this political exclusion or marginalization of subordinate groups and persons as wrong because it undermines promises of equal opportunity and political equality implied by democratic commitments.

14) See Park, *supra* note 8.

Borrowing the language from the previous section, such perception of the injustice of political inequality may be used to break the circle by which formal and majority-rule-based political democracy tends to reproduce social inequality. More inclusion of and influence for currently underrepresented minority groups may help a society confront and find some remedies for structural social inequality.

One important way to promote greater inclusion of members of underrepresented social groups is through political and associational institutions designed specifically to increase the representation of women, working-class people, racial or ethnic minorities, and so on. Proportional representation, quotas in electoral lists, reserved seats, have all been proposed and many implemented to promote group representation. Social movements increasingly call for forms of group representation not only in legislatures, but also in various kinds of commissions and boards, private corporate governing bodies, and civic associations, as well as state institutions. Proposals for group representation are almost always controversial. However, structural exclusions that lead to such proposals do not disappear without solution at the level of institutional design. At the same time, it should also be indicated that specific representation of otherwise marginalized and underrepresented groups does not follow immediately from commitment to political equality, and additional normative arguments are required.

One of the most common critiques against specific representation of women or of other minority groups is the suggestion that the physical or membership attributes of people as such are grounds for their representing those with similar attributes thus defined. However, advocates of the specific representation of women or other minority groups argue that women or others defined as a minority or marginalized group have similar experiences that only others of the same group can understand with the same immediacy. Yet, others worry that justifying group representation in terms of experiences, interests or opinions allegedly shared by all members of the group obscures differences within the group, wrongly reduces all members of the group to a common essence, and thereby also divides groups so much from each other that understanding and cooperation across the differences might become impossible.

Here, the theory of representation offered in the previous sections of this paper may respond to some of these concerns about and oppositions to group

representation. Group representation is not properly conceived as an attention only to attributes people share, nor is it a making present of some set of interests, opinions or experiences that all members of the group supposedly share. The theory of representation offered in this paper rejects the assumption that a person's participation in large-scale politics may somehow be individualized.

All systems and institutions of representation group individuals according to some kind of principles and criteria, and none are neutral in this regard. Whether the principle of constituency is geography, organizational or occupational interest, or social group interest or position, members of the constituency are better represented when they organize together to discuss their agreements and differences with each other and with the representatives. In the first place, any constituency is internally differentiated and has to be organized in relation to a representative. Furthermore, individuals are better represented when representative bodies are plural, and when individuals have plural relationships to representatives, in both political and civic organizations. Distinctive modes of representation by interest, opinion and perspective already describe such pluralization. Among these, the notion of representing a perspective specifically aims to respond to objections to group representation which claim that social groups cannot be defined by common interests or opinions. To the extent that what distinguishes social groups is structural relations, particularly structural relations of privilege and disadvantage, and to the extent that persons are similarly positioned in those structures, then they have similar perspectives both on their own situation and on other positions in the society.

Arguments for the special representation of structural social groups that would otherwise be underrepresented, therefore, appeal to the contribution such practices can and should make to inclusive political discussion and engagement with those who are different and with whom there may be conflicts. First, when there has been a history of exclusion or marginalization of some groups from political influence such as policymaking and lawmaking, members of those groups may be apathetic or positively refuse to try to engage with others to solve shared problems. Under such circumstances, the specific representation of underrepresented groups encourages participation and engagement. Second, where some structural social groups have dominated political discussion and decision-making, these social perspectives

have usually defined political priorities and are often taken as universal. Special representation of otherwise excluded social perspectives reveals the partiality and specificity of the perspectives already politically present.

The argument that the perspective of differentiated social groups should all be represented in political decision-making does not specify who does or should do the representing. The question that becomes relevant here in general and particularly to the proportional representation system in South Korea to be discussed in the following section is whether it is necessary that the person who represents a social group perspective in a particular political context be a member of that group. If representation consists in a relationship between the constituency and the representative in which the constituency contests within itself about the issues to be represented and calls the representative to account, then a social group constituency certainly can and should ask how well a person with the presumed descriptive attributes in fact represents a social perspective. Further, it cannot be assumed that all those positioned by structures in a similar way will express issues conditioned by this situated perspective in the same unified way. Therefore, a system or institution of group representation would and should do best to pluralize group representation. Representation of the perspective of women, for example, in a legislative body or commission would be better done by means of a committee of women rather than just one woman. A committee can contain some of the differences and variances in perspectives that cross the group as well as the differences in individual experience and judgment that can better enable the committee to analyze social situations from the gendered perspective of women and express this perspective to a broader public.

To summarily reiterate the argument made in this paper so far, commitment to political equality entails that democratic institutions and practices take measures explicitly to include the representation of social groups whose perspectives would likely be excluded from expression in discussion or marginalized in political process without those measures. They are either a numerical minority or they are socially or economically disadvantaged, or the prevailing political discourse is dominated by other perspectives. Social groups should be recognized and included in their specificity in deliberative democratic processes. Then the question arising now is how such specific group representation should be accomplished through which institutional designs and arrangements.

There are many ways that democracies can apply the principle that discussion and decision-making should take special measures to include social groups whose perspectives would likely be excluded or marginalized without those measures. Which is best depends on the political situation, the nature of the structural distinction of the polity, possible trade-offs with other political values, and the institutional context for representation. The goal of bringing more members of underrepresented or marginalized groups into representative bodies of polity decision-making may be applicable not only to the national legislature but also to local legislatures, official political committees and commissions, organs of political parties and so on. Further, such goal can be achieved by many means, such as by designating seats, by other electoral schemes, and so forth.

Although there are no general formula for applying a principle of inclusive representation, discussions in the following part concentrate on the institutional efforts to increase group representation in legislatures and lawmaking processes, as this is the context in which issues of group representation are most contested and relevant. One means of group representation is to reserve a specific number of seats or positions in a representative body for representatives of a particular group. Reserving seats for particular groups may tend to freeze both the identity of that group and its relations with other groups in the polity, however, therefore some less rigid procedure is desirable for adapting to changing social relations. Reserving seats may also tend to freeze the specially represented group members out of additional representational opportunities in other contested seats, thus possibly isolating and marginalizing the specifically represented group at the representational level. For these reasons, reserving seats in authoritative decision-making bodies should be a last resort and temporary option for representing otherwise excluded or marginalized perspectives.¹⁵⁾

On the other hand, quotas for women in party lists as analyzed in detail in the following section of this paper, or, more generally, rules mandating a

15) Having group-designated seats in non-elected bodies such as committees and commissions seems less problematic, however, because these bodies usually are temporary and have a limited charge. These are representative bodies in a constitutional-political sense only if there are some organized constituencies that claim the commission should be accountable to them.

certain proportion of minority group members to be present in party list, are often acceptable and desirable ways of promoting the inclusion of diverse perspectives and interests, as this method does not disconnect group members from others, but include them in wider party deliberations. Depending on the number of parties and the voting procedures, voters from all groups continue to have several candidate options. David Ryden argues that strengthening the formation and active deliberation of political parties is the best way to foster the representation of politically interested social groups with different perspectives,¹⁶⁾ to which point this paper returns in the later parts as it discusses South Korea's current proportional representation system.

Political parties can be an important tool for applying principles of the inclusive representation of diverse and pluralized social perspectives, as the South Korean experience in more recent decades with its proportional representation system indicates. However, especially larger and more established parties with some political influence are likely to suffer the same biases towards representing the interests and perspectives of more privileged social segments that state institutions have, without affirmative measures in party practices to attend to social group representation in decision-making bodies and candidate lists. To promote the inclusion of the broadest possible social perspectives in political communication and decision-making, then, political parties should require special attention to groups and compensatory measures for underrepresentation.

Proportional representation that institutionally requires political parties under the relevant election rule to attend to minority representation tends to increase party competition and enable more parties to obtain legislative seats than do simple winner-take-all systems. Systems of such proportional representation also allow voters more opportunity to join with others in various structural social groups. These arguments are persuasive as grounding the claim that proportional representation provides more opportunity for differentiated representation than does a system based on

16) DAVID K. RYDEN, *REPRESENTATION IN CRISIS: THE CONSTITUTION, INTEREST GROUPS, AND POLITICAL PARTIES* 110-138 (1996). Ryden argues that special measures for social group representation in the formal state representative institutions would tend to freeze group identity and fragment politics, and it is better to use party politics as the vehicle for contesting and constructing group representation.

single-member, winner-take-all electoral districts.

III. Proportional Representation System and Minority Representation at the Legislature in South Korea

1. *Evolution of the Proportional Representation System in South Korea, 1963-Present*

The current election system for National Assembly, i.e., the national legislature, consists of (i) the single-member simple plurality electorate system through which constituents elect one representative per electoral district for 245 out of its 299 seats,¹⁷⁾ and (ii) the proportional representation system through which the rest of 54 representatives are elected out of a single national district from the list prepared by respective political parties in proportion to the votes given to the parties.¹⁸⁾ The voters are to exercise two separate votes, (i) one for the individual candidate within applicable electoral district either nominated by a political party or by a certain number of electoral district residents, and (ii) the other for the political party whose name appears on the ballot paper whose list of candidates for proportional representation seats are presented to the voters in advance to the election date in a fixed order or priority out of a single national district. For proportional representation, only political parties may prepare and present the list of potential proportional representatives.¹⁹⁾

The proportional representation system as applicable to National Assembly was initially introduced in 1963 under the Constitution of the Third Republic of Korea, and has been in place since the general election held in 1963 that constituted the 6th National Assembly (1963-1967). Prior to 2001, the voters were given one vote and had to vote for one individual candidate from the electoral district they belong, and the seats under the proportional representation system were assigned to political parties in proportion to the

17) DAEHANMINGUK HEONBEOP [CONSTITUTION OF KOREA], art. 41(2); GONGJIKSEONGEOBEOP [PUBLIC OFFICIAL ELECTION ACT], art. 20(1).

18) GONGJIKSEONGEOBEOP [PUBLIC OFFICIAL ELECTION ACT], art. 21(1).

19) *Id.*, art. 47(1) and 48(1).

number of votes each party earned in the above electoral district election. This “one vote per voter for both electoral district representative and proportional representative” system was held unconstitutional by the Constitutional Court of the Republic of Korea in 2001,²⁰⁾ and the current “one voter two votes” system, under which each voter votes separately (i) for the individual candidate running for the electoral district representation and (ii) for the political party for the proportional representation, was introduced for the first time at the general election in 2004 that constituted the 17th National Assembly (2004-2008). For presidential election, South Korea has a relative plurality or simple plurality system. At the local council level, at elections to constitute local legislatures, the “one voter two votes” system also applies, under which the representatives are partly elected by earning the most number of votes from the electoral district²¹⁾ and partly elected through the party list.

South Korea’s proportional representation system was introduced in order to better address minority perspectives in political process and to increase expertise of the representative body,²²⁾ which are known shortcomings of simple plurality electoral district system that has long been the basic design of South Korea’s election system. Under a simple plurality electoral district system through which one who earns simply the most number of votes is elected per electoral district, it is generally easier for larger and more established political parties with more resources to secure seats at the legislature, causing many of dead votes,²³⁾ thereby reducing the opportunity for varied perspectives including those of minorities to be present and

20) Decision of July 19, 2001, 2000Hun-ma91 (Constitutional Court of Korea) on PUBLIC OFFICIAL ELECTION ACT, art. 146(2).

21) There are two levels of local government in South Korea. JIBANGJACHIBEOP [LOCAL AUTONOMY ACT] art. 2. Among these, at metropolitan units of provinces and metro-cities, one representative is elected from each of the electoral districts; at the smaller units of Si/Gun/Gu, two representatives are elected from each of the electoral districts.

22) Myungsoon Shin, *A Critical Analysis of the National District Electoral System in Korea*, 28(2) KOREAN POL. SCI. ASS'N. J 239 (1994); SOON-CHUL AHN, A COMPARISON OF ELECTORAL SYSTEMS: INSTITUTIONAL IMPACT AND POLITICAL INFLUENCE (2000); Ah Ran Hwang, *Introduction of One Person Two Votes System in the 17th General Election*, 12(2) NAT'L STRATEGIES 61 (2006); Ah Ran Hwang, *Suggestions for the National Assembly Electoral District Reform*, in Young Jae Jin (ed.), ELECTION IN KOREA (IV) (2002).

23) On this point, see REIN TAAGEPERA & MATTHEW SOBERG SHUGART, SEATS & VOTES: THE EFFECTS AND DETERMINANTS OF ELECTORAL SYSTEMS (1989).

represented at the legislature.²⁴⁾

Proportional representative system, on the other hand, lowers by its design the entry barrier to the legislature for minorities, thereby widening the forum for public discussion and deliberation of minority interests, opinions and perspectives through official political processes of decision-making and, therefore, in the public domain of the polity. Also, proportional representation system is to contribute to heightened expertise of the legislature overall, as individuals from wide spectrum including experts in various fields may enter National Assembly or local council with no burden of managing the electoral district or campaigning, with few exceptions.

The proportional representation system was initially introduced to South Korea through its constitutional revision in 1962 (the 5th constitutional revision), and has been implemented since the general election in 1963 that constituted the 6th National Assembly (1963-1967). During the years immediately following its introduction, the proportional representation system in South Korea was operated for the purpose of increasing dominance of the ruling party over National Assembly, by providing certain institutional premium to the political party that obtained the most number of electoral district seats by intended design. Prior to the introduction of the “one person two votes” system in the 2004 general election that constitute the 17th National Assembly (2004-2008), the proportional representation system in South Korea under “one vote for both electoral district representatives and for national district proportional representatives” system, as South Korean political scientists have unequivocally analyzed, functioned to fortify dominance of the ruling party over National Assembly,²⁵⁾ to enlarge influence of the party leadership upon assemblypersons of the same party membership,²⁶⁾ and to

24) M. Kenneth McElwain, *Manipulating Electoral Rules to Manufacture Single-Party Dominance*, 52(1) AM. J. POL. SCI 32 (2008); DAVID M. FARRELL, *ELECTORAL SYSTEMS: A COMPARATIVE INTRODUCTION* (2001).

25) Meen-Geon Kim & Ji-Yeon Shim, *Strategic Intentions in Changes in Electoral System in Korea*, 36(1) KOREAN POL. SCI. ASS'N. J. 139 (2002); Wan-Ki Ahn, *Relationship Between Electoral System And Political Party Structure in Korea*, 7 KOREA NORTH EAST ASS'N. J. 23 (1998); Young-Kook Chung & Myungsoon Shin, *National District Proportional Representation System and National Assembly*, KOREAN LEGISLATIVE STUDIES INSTITUTE 1992-1993 RESEARCH PROJECT PAPER (1994); Yong-Ho Kim, *Changes in General Election And Their Political Effects*, in Nam-Young Lee, *ELECTION IN KOREA* (1993).

26) HYUNG-SUP YOON, *POLITICS IN KOREA* (1992).

relieve the party's financial burden.²⁷⁾ The institutional purpose of proportional representation system was defeated further, as the voters were not provided with the opportunity to distinguish between their preferences for individual candidates and those for the political parties under the previous "one vote for both" system, although the electoral district representatives and the proportional representatives were chosen through separate mechanisms.²⁸⁾

Under the previous or the "Third Republic" proportional representation system, although the proportional representation system was in place, such seats were assigned to the political parties in proportion to the number of votes that respective parties gained at the electoral district election. The political party that received the most number of votes at the electoral district election was given proportional representation seats of maximum of 2/3 of all proportional representation seats, if it obtained of or over 50% of all votes; if the votes were short of 50% of all votes, then the party was given 1/2 of all proportional representation seats. As the political situation at that time operated in favor of the ruling party, such proportional representation system skewed in favor of the ruling party functioned to further strengthen ruling party's dominance over the national legislature.

What followed through the constitutional revision in 1972 (the 7th constitutional revision) was a change in the proportional representation system to further increase the dominance over National Assembly of the ruling party and the nation's President. Beginning at the 1973 general election that constituted the 9th National Assembly (1973-1978), 146 assemblypersons out of its full membership of 219 were elected from the electoral district through direct votes of the voters; however, the rest of 73 members of National Assembly were chosen not by the direct vote but by the electoral college of "People's Council for Unification and Autonomy," consisting of approximately 2,500 members. The People's Council was an institution established by the Constitution that elected proportional representatives for National Assembly as such, as well as the nation's President. President, in turn, served *ex officio* as the chair of the Council. Under this design, the ruling party could safely control the national legislature. Subsequently, the

27) Shin, *supra* note 22.

28) JONG-BIN YOON, ELECTION AND DEMOCRACY IN KOREA (2007).

constitutional revision in 1980 (the 8th constitutional revision) reshaped the proportional representation system so that it returned to the original proportional representation model under the Third Republic (1962-1972). Out of 276 seats at National Assembly, 92 seats, equivalent to 1/3 of the entire membership, were designated to proportional representatives. These proportional representation seats were assigned to political parties in accordance with the ratio of votes respective parties received at the electoral district election cast for the individual candidates. The political party that secured the most number of seats through electoral district election gained 2/3 of the proportional representation seats, and the rest of the parties that secured 5 or more seats at National Assembly through electoral district election were assigned according to the ratio the rest of the proportional representation seats.

Under the current Constitution of the Sixth Republic of Korea (1988-present), the proportional representation system has gradually yet significantly evolved. At the 1988 general election that constituted the 13th National Assembly (1988-1992), the proportional representation seats were assigned to the parties according to the result of the electoral district election as in the previous election. The political party that gained the most number of electoral district seats obtained 1/2 of the proportional representation seats for the claimed purpose of stability of national politics, thereby securing a higher ratio of seats at National Assembly than the actual ratio among valid votes earned at the electoral district election.²⁹⁾ At the general elections in 1992, 1996 and 2000, which constituted the 14th (1992-1996), 15th (1996-2000) and 16th (2000-2004) National Assembly respectively, there were changes in the number of proportional representation seats and the minimum requirement for distributing proportional representation seats in terms of the number of seats earned through electoral district election, and so forth, and the party that gained the most number of seats at electoral district election could no longer take 1/2 of the proportional representation seats. However, it remained unchanged that the proportional representation seats were assigned out to political parties according to the result of the electoral district election under

29) The number of proportional representation seats at National Assembly was 75, or equivalent to one-fourth of the entire membership of 299.

“one vote for both electoral district representatives and proportional representatives” system.³⁰⁾

In July 2001, a decision of the Constitutional Court brought in a breakthrough in South Korea’s proportional representation system.³¹⁾ In this decision, the Constitution Court held that the mechanism of distributing proportional representation seats in accordance with the result of the electoral district election under “one vote for both” system was unconstitutional. The Constitutional Court based its decision on the ground that the assumption of the then-current election law fictitiously identifying the voters’ preferences for individual candidates in electoral district as those for the political parties at national district for proportional representation seats violates the principles of democracy, direct vote and equal vote, thereby infringing the fundamental right to vote held by individual voters. Subsequently, the relevant statutes were revised in compliance of this Constitutional Court decision, introducing the “one person two votes” system to the general election and to the local council election in South Korea.³²⁾ The mechanism of distributing the proportional representation seats also changed accordingly.

Under the current system, the entire membership of National Assembly consists of 299 seats.³³⁾ Among these, 245 seats are for the representatives elected through electoral district election by simple plurality under one person per district rule; the other 54 seats are for the proportional representatives chosen from the party list in the order fixed and disclosed prior to the election,

30) Through revisions in election law in 1991, the proportional representation seats were assigned to respective political parties in proportion to the number of seats each party earned through electoral district election, with no premium of set proportion for the party that secured the most number of seats at electoral district election. Through a subsequent revision of the Public Official Election Act in 1994 (Law Number 4739, effective March 16, 1994), the proportional representation seats at National Assembly began to be assigned to political parties in proportion to the ratio of votes each party received against all valid votes cast at the electoral district election.

31) Decision of July 19, 2001, *2000Hun-ma91* (Constitutional Court of Korea) on PUBLIC OFFICIAL ELECTION ACT, art. 146(2).

32) See, e.g., PUBLIC OFFICIAL ELECTION ACT, art. 189 and 190-2. This system has been consistently and affirmatively acknowledged by the Supreme Court of the Republic of Korea in relevant cases as well. See, e.g., Decision of June 11, 2009, *2008Do11042* (Supreme Court of Korea).

33) CONSTITUTION OF KOREA, art. 41(2); PUBLIC OFFICIAL ELECTION ACT, art. 21(1).

now through the separate vote for the political parties.³⁴⁾ In order to obtain proportional representation seat, a political party should either gain five seats at National Assembly through electoral district election, or earn 3% or more of valid votes cast to political parties.³⁵⁾ To the political parties that satisfy such minimum requirement, proportional representation seats are assigned in proportion to the ratio of votes each of such political parties has earned at the vote given to the parties.³⁶⁾ This mechanism intends to lower the entry barrier to the national and the local legislatures for minority or smaller political parties. Furthermore, the statute requires that any political party place women to all odd-numbered queues in preparing the list of individuals for proportional representation seats,³⁷⁾ thereby mandating one-half or more of the proportional representation seats to be filled by women.³⁸⁾

At the level of local council or local legislature, South Korea also has the proportional representation system. At the local level, the number of seats under proportional representation system is 10/100 of the entire number of seats at respective council.³⁹⁾ Here, those political parties that have gained 5/100 or more of the valid votes given to the parties take proportional representation seats in accordance with the ratio of valid votes respective parties earned, while at the same time no single political party may take more than 2/3 of the proportional representation seats.⁴⁰⁾ At the local council level, political parties should nominate female candidates at all odd-numbered

34) PUBLIC OFFICIAL ELECTION ACT, arts. 21(1) and 25(2).

35) *Id.*, art. 189(1).

36) *Id.*, art. 189(1).

37) *Id.*, art. 47(3).

38) This requirement applies to the nomination of candidates for proportional representatives at the local council as well (PUBLIC OFFICIAL ELECTION ACT, art. 47(3)). Should a political party be in violation of this requirement, such party may not register any of the candidates it endorses and nominates (PUBLIC OFFICIAL ELECTION ACT, art. 49(8)), or the registration, if completed, is rescinded (PUBLIC OFFICIAL ELECTION ACT, art. 52(1)). However, to the proportional representation system at general election to constitute National Assembly, these penalty provisions do not currently apply, which calls for a revision to this effect applicable to general election. As a relevant matter, under Public Official Election Act Article 47(4), a political party should make its best effort to nominate women for 30% or more of its candidates for electoral district seats at National Assembly and local council, in which case the party is entitled to additional subsidy for election purposes.

39) PUBLIC OFFICIAL ELECTION ACT, arts. 22 and 190-2(1).

40) *Id.*, art. 190-2(2).

Table 1. Number of National Assemblywomen in South Korea, 1948-Present

National Assembly (Election Year)	Number of Representatives at National Assembly	Number of Female Assemblypersons (Percentage)	Number of Assemblywomen Elected from Districts (Percentage among Elected Representatives)	Number of Female Proportional Representatives (Percentage among Proportional Representatives)
1 st (1948)	200	1 (0.5%)	1/200 (0.5%)	-
2 nd (1950)	210	2 (0.9%)	2/210 (0.9%)	-
3 rd (1954)	203	1 (0.5%)	1/203 (0.5%)	-
4 th (1958)	233	3 (1.3%)	3/233 (1.3%)	-
5 th (1960)	233	1 (0.4%)	1/233 (0.4%)	-
6 th (1963)	175	2 (1.1%)	1/131 (0.7%)	1/44 (2.3%)
7 th (1967)	175	3 (1.7%)	1/131 (0.7%)	2/44 (4.5%)
8 th (1971)	204	5 (2.5%)	0/153 (0.0%)	5/51 (9.8%)
9 th (1973)	219	12 (5.5%)	2/146 (1.4%)	10/73 (13.7%)
10 th (1978)	231	8 (3.5%)	1/154 (0.6%)	7/77 (9.1%)
11 th (1981)	276	9 (3.3%)	1/184 (0.5%)	8/92 (8.7%)
12 th (1985)	276	8 (2.9%)	2/184 (1.1%)	6/92 (6.5%)
13 th (1988)	299	6 (2.0%)	0/224 (0.0%)	6/75 (8.0%)
14 th (1992)	299	8 (2.7%)	1/237 (0.4%)	7/62 (11.3%)
15 th (1996)	299	11 (3.7%)	3/253 (1.2%)	8/46 (17.4%)
16 th (2000)	273	16 (5.9%)	5/227 (2.2%)	11/46 (23.9%)
17 th (2004)	299	39 (13%)	10/243 (4.1%)	29/56 (51.8%)
18 th (2008)	299	41 (13.7%)	14/245 (5.7%)	27/54 (50.0%)
Total Numbers	4,403	176	49	127

queues in their list for proportional representation seats.⁴¹⁾

The following two tables indicate the number of female representatives throughout South Korea's parliamentary history both at the national and local levels, under different designs of its proportional representation system.

41) *Id.*, arts. 47(3), 49(8) and 52(1). See *supra* notes 37 and 38.

Table 2. Number of Female Candidates and Elected Representatives at Local Council Elections in South Korea, 1991-Present⁴²⁾

	1991		1995		1998		2002		2006	
	Total Number of Representatives	Female Representatives (Percentage)	Total Number	Female (%)						
Governors & Mayors/ Local Government Presidents	-	-	56	2 (3.6%)	40	0 (0.0%)	55	0 (0.0%)	66	4 (6.1%)
Metro-politan Units	-	-	15	0 (0.0%)	16	0 (0.0%)	16	0 (0.0%)	16	0 (0.0%)
Local Government Presidents	-	-	943	4 (0.4%)	677	8 (1.2%)	750	8 (1.1%)	848	23 (2.7%)
Si/Gu/ Gun Units	-	-	230	1 (0.4%)	232	0 (0.0%)	232	2 (0.9%)	230	3 (1.3%)
Elected Representatives	-	-	230	1 (0.4%)	232	0 (0.0%)	232	2 (0.9%)	230	3 (1.3%)
Representatives at Local Council	2,885	63 (2.1%)	2,446	38 (1.6%)	1,571	37 (2.4%)	1,531	48 (3.1%)	2,068	107 (5.2%)
Elected from Electoral Districts	858	8 (0.9%)	875	13 (1.5%)	616	14 (2.3%)	609	14 (2.3%)	655	32 (4.9%)
Si/Gu/ Gun Units	10,159	123 (1.2%)	11,970	206 (1.7%)	7,754	140 (1.8%)	8,373	222 (2.7%)	7,995	391 (4.9%)
Elected Representatives	4,303	40 (0.9%)	4,541	72 (1.6%)	3,489	56 (30.0%)	3,485	77 (2.2%)	2,513	110 (4.4%)
Proportional Representatives at Local Council	No Applicable	No Applicable	178	68 (38.2%)	180	54 (30.0%)	209	116 (55.5%)	211	136 (64.5%)
Si/Gu/ Gun Units	97	42 (43.3%)	74	27 (36.5%)	73	49 (67.1%)	78	57 (73.1%)	78	57 (73.1%)
Elected Representatives	No Applicable	No Applicable	74	27 (36.5%)	73	49 (67.1%)	73	49 (67.1%)	78	57 (73.1%)
Si/Gu/ Gun Units	1,025	327 (32.0%)	1,025	327 (32.0%)	1,025	327 (32.0%)	1,025	327 (32.0%)	1,025	327 (32.0%)
Elected Representatives	13,044	186 (1.4%)	15,593	318 (2.0%)	10,222	239 (2.3%)	10,918	394 (3.6%)	12,213	1,411 (11.6%)
Total Numbers (Percentage)	5,161	48 (0.9%)	5,758	128 (2.2%)	4,427	97 (2.2%)	4,415	142 (3.2%)	3,867	529 (13.7%)

2. South Korea's Proportional Representation System from the Perspective of Representation of Minority and Marginalized Groups in a Pluralized Society

1) South Korea's Proportional Representation System and the Representation of Minority Perspectives in the Legislature

One of the important intended purposes of the proportional representation system is to serve as a vehicle that conveys to the legislature the interests, opinions and perspectives held by diverse individuals and groups including minorities. For any meaningful discussion for institutional improvement of proportional representation system in South Korea, a diagnosis should precede with respect to whether it contributes to enhance the presence and the representation of minorities or their interests, opinions and perspectives, at South Korea's policymaking and lawmaking institutions and processes, while South Korean society is growingly diversified and pluralized.

Preceding studies on this aspect of South Korea's proportional representation system have been made mainly in the eyes of political science since early 1990s. They include those works analyzing the social and economic backgrounds of proportional representatives as opposed to those of electoral district representatives,⁴²⁾ the pattern of assignment of proportional representatives to standing committees within National Assembly as opposed to that of electoral district representatives,⁴³⁾ the political relations and dynamics between potential proportional representatives and the party leadership through the preparation process for the party list,⁴⁴⁾ the legislative activities of proportional representatives as opposed to those of electoral district representatives,⁴⁵⁾ and, more generally, the overall influence resulting

42) Ehwa Yoon, *Analysis of the Gender Quota for Proportional Representation System in Korea*, 11(2) KOREAN AUTONOMOUS LOCAL GOV. SOC'Y J. 69, 80 (2009).

43) Young-Kook Chung, *Analysis of Standing Committee Activities of the Proportional Representatives in National Assembly*, 11(1) KOREA AND WORLD POL. 53 (1995); Shin, *supra* note 22; YOON, *supra* note 26.

44) Chung, *supra* note 43.

45) Shin, *supra* note 22; YOON, *supra* note 26.

46) Sang-Joon Ka, Byung-Kwon Son, Jong-Bin Yoon & Jun-Young Choi, *A Comparison Of Characteristics And Outcome of Legislative Activities Between Electoral District Representatives And*

from the implementation of the proportional representation system in South Korea.⁴⁷⁾ A both comprehensive and in-depth analysis over all such important aspects pertaining to South Korea's proportional representation system from constitutional law perspective is now due.

One of the recent research efforts to the point intended to see whether the ideological positions, propensities or inclinations of proportional representatives did indeed differ from those of electoral district representatives to the extent that such difference is statistically meaningful.⁴⁸⁾ The basic premises of this research project are as follows: first, the dispersion of ideological positions of proportional representatives spread over wider spectrum than that of electoral district representatives; and, second, the ideological positions, beliefs and value structures of proportional representatives differ from those held by electoral district representatives.⁴⁹⁾ Pursuant to this research, up until the 16th National Assembly (2000-2004), no statistically meaningful distinction is found between proportional representatives and electoral district representatives in light of the purpose of representing various perspectives including those of minorities at the legislature.

Yet, this research indicates that, at the 17th National Assembly (2004-2008) constituted through the 2004 general election following the introduction of "one person two votes" system and the "gender quota on party list" rule for proportional representation system, a considerable disparity existed between proportional representatives and electoral district representatives, particularly in the case of assemblypersons with Democratic Party ("Min-Joo" Party) and Uri Party⁵⁰⁾ memberships.⁵¹⁾ Finally, this research shows that, at the current

Proportional Representatives in National Assembly, KOREAN LEGISLATIVE STUDIES INSTITUTE RESEARCH PAPER (2007); Eun-Hee Song, *The Past And Present Of The National Assembly And Women In Korea: On Women's Sharing Of The Assembly Seats*, 30(3) KOREAN POL. SCI. ASS'N J. 61 (1996).

47) Shin, *supra* note 22; Kim, *supra* note 25.

48) Sang-Joon Ka, *A Comparative Study of Ideological Differences between Proportional Representatives and District Representatives*, 14(1) LEGISLATIVE STUDIES 109 (2009). In this research, the author analyzes the legislative activities at the 17th (2004-2008) and 18th (2008-2012) National Assembly in comparison with the 16th National Assembly (2000-2004), to see the outcome of the "one person two votes" system and the gender quota as intended, by way of in-depth written interviews with assemblypersons over several times.

49) *Id.*

50) Uri Party was established in 2003 and was voluntarily dissolved in 2007.

51) Ka, *supra* note 48.

18th National Assembly (2008-2012), while a constitutionally meaningful difference in ideological dispersion between the proportional representatives as a whole and the electoral district representatives as a whole still exists, such difference disappears within a political party. Rather, the research proceeds to indicate that the ideological stance of practically all proportional representatives across different political parties is more homogenized now than the past.⁵²⁾ These together mandate certain institutional modifications and changes of South Korea's proportional representation system for the system's intended normative goal of having minority perspectives present and represented in its legislature and political process in general.

2) *Gender Quota applicable to South Korea's Proportional Representation System in Light of Representation of Minority Perspectives under Representative-Deliberative Democracy*

Another distinctive aspect of South Korea's current proportional representation system is that the law requires the political parties nominate female candidates to all odd-numbered queues in their list for proportional representation seats both at national and local legislative levels.⁵³⁾ This is to guarantee that 50% or more of all proportional representation seats to be occupied by female representatives.

At National Assembly, in the inaugural National Assembly through the 5th Assembly over the period of 1948 to 1963, only a few women took the seats at National Assembly. They were elites rather than those representing the cross-section of the female constituency, who mostly had previously been involved in the political and social movement for, for example, independence from Japanese colonial rule. The ratio of female representatives across National Assembly during this period was approximately 1%. It is worth noting here that voting rights for women were obtained in South Korea simultaneously with those for men, without much of relevant public debates or political struggle, as the voting rights for both women and men were included in the inaugural 1948 Constitution upon establishment of the First Republic of Korea. Therefore, at least from institutional standpoint, women were able to

52) *Id.*, at 122-125.

53) PUBLIC OFFICIAL ELECTION ACT, art. 47(3).

participate in the political process on par with their male counterpart. However, in actual reality across the community life, patriarchal modes of thinking and living remained largely unchanged, resulting in hardly any participation, activities or election of women in or through public elections.⁵⁴⁾

Following this initial period, in the 6th National Assembly through the 10th National Assembly over the period of 1963 to 1981, the authoritarian regimes proactively induced participation of women in politics as part of the effort to compensate their lack of democratic legitimacy in obtaining and maintaining the political power. Major changes were made to the electoral system, including the introduction of the proportional representation system operating concurrently with the single member simple plurality electorate system. During this period, there was a notable increase in the number of assemblywomen. However, such a change was brought in primarily to fortify dominance of the ruling party and the incumbent government over National Assembly.⁵⁵⁾

Next, in the 11th National Assembly through the 14th National Assembly over the period of 1981 to 1996, the law and the system for increased female participation in politics for its symbolic and actual impact began to be seriously discussed in the public and official domains of the community. Gender issues and Gendered issues became part of official policy agenda in the public sector and women entered the positions of policymaking, thus enlarging the opportunities for women to participate in policymaking processes. Participation and presence of women in politics grew both quantitatively and qualitatively. From this period on, each political party conspicuously began to make election promises relevant and applicable to women. This indicates that the political parties began to perceive votes of female voters as an independent variable or element for determining the outcome of any given election, which in itself has a significant meaning in South Korean constitutional-political history.

In the 15th National Assembly through the 17th National Assembly over the period of 1996 to 2008, the status of female representatives as legislative

54) Jin-Sun Ryu, Participation of Women in National Assembly General Election in Korea (2006) (Ph. D dissertation, Chosun University).

55) *Id.*

experts was palpably established. Simultaneously, with the rule of authoritarian government coming to an end, the perception of and the concern for minorities rose in general in South Korean society in the context of liberalization, democratization and pluralization. Against this background, the South Korean politics showed mounted interests and understanding in and of women and the issues pertaining to women.⁵⁶⁾ This enabled the issue of participation in politics and policymaking on the part of women to be centrally situated as one of the main objects of public debate and discussion.

On the part of law and legal system, a female quota system applicable to the party list for proportional representation seats was introduced and implemented through revisions of the Public Official Election Act and the Political Party Act. At its initial step, the law required the political party to nominate 30% or more of female candidates in preparing its list for proportional representation seats. The first general election following the introduction of such gender quota system was the 2000 general election that constituted the 16th National Assembly (2000-2004). Since the 2000 general election, the number of female representatives at National Assembly has sharply increased. With the changes in election law encouraging the parties to nominate women to 30% or more of candidates at electoral district election and mandating the parties to nominate women to 50% of candidates for proportional representation seats,⁵⁷⁾ this trend is ongoing. Through the 2004 general election that constituted the 17th National Assembly (2004-2008) and the most recently held 2008 general election that constituted the currently sitting 18th National Assembly (2008-2012), the number of female representatives at National Assembly has constantly grown. In terms of legislative and other parliamentary activities, the National Assemblywomen in recent years have proactively been exercising their expertise in various standing committees and beyond.

At local council or local legislatures, the ratio of female representatives is still extremely low,⁵⁸⁾ although the conventional competition among men has

56) Also, during this period, policy institutions and research centers dedicated for specifically addressing and discussing gender and women issues such as the Korean Institute for Women and Politics, which was established in 1989, were formed and began to function, thereby proactively engaging the constituents across the polity in such issues.

57) PUBLIC OFFICIAL ELECTION ACT, arts. 47(3) and 47(4).

58) See Table 2 inserted in the text.

been relatively low and mitigated compared with that at the level of national politics, in the process of constituting and operating local council.⁵⁹⁾ The ratio of women representatives at local council almost doubled from the initial local council election under the current Constitution in 1991 by the time of the 1995 local election, as each of the political parties, facing the direct election for the chief executive of the local government, adopted the strategy of nominating relatively many of female candidates at local council election in order to appeal to the female population.⁶⁰⁾ Experience at local election cumulatively shows that such proportional representation system as institutionally mandating at least 50% of the seats for women by designating the positioning on party list, as well as the electoral district election that elects two or more representatives than one from each electoral district has been more productive in increasing the female presence at the local council.⁶¹⁾ Also, under the same legal system, more women were elected to local council in larger cities than in rural areas, indicating perception pertaining to women's presence and participation in political process and public sphere still varies significantly due to the socio-economic and cultural backgrounds in the 1990s and beyond.⁶²⁾

Facing the 2000 general election, the Political Party Act was revised to a 30% quota for the party list for proportional representation seats at the local council. Now, through revisions in the Public Official Election Act and the Political Party Act in 2002 that aimed for the local election then upcoming in the same year, political parties are encouraged to nominate 30% or more of women candidates at the local electoral district election for the metropolitan local government units, and are required to nominate 50% or more of women

59) In South Korea, local autonomy system was restored in as late as 1991, after all local councils under the previous local autonomy system were dissolved immediately following the military coup d'état in May 1961; and the governors, mayors and other local government heads began to be elected through the residents' direct election in 1995. A detailed analysis of the current situation of female representation at the local council is found, for example, in Chae-Bok Park, *Solution for Political Parties to Increase Female Representation at Local Elections*, 18 *WORLD REGIONAL STUDIES J.* 37 (2002).

60) At the 1995 election, approximately 10% of the nominated candidates in the party list for proportional representation seats for local council were women across all political parties that participated in the election.

61) Yoon, *supra* note 42.

62) Han-Soo Choi, *An Analysis of the Outcome of 1998 Local Elections*, 47 *KOREAN AUTONOMOUS LOCAL GOV. SOC'Y J.* 25 (1998).

candidates for proportional representation seats at all local council under the local autonomy system. However, the result of the 2006 local election indicates that, while the number of female candidates almost doubled from the 2002 local election, the number of elected female representatives did not increase much from the 2002 local election.⁶³⁾

A closer look at the outcome of the recent local elections shows that, while the same law pertaining to the proportional representation system is applicable to both metropolitan local government units and smaller Si/Gun/Gu local government units, more women representatives enter the Si/Gun/Gu local council. This is at least partly due to the mandate of positioning women candidates at all odd-numbered queues on the party list for proportional representation seats, as the number of seats at local council at Si/Gun/Gu local government units is smaller than the number of seats at local council at metropolitan local government units.⁶⁴⁾ The number of women representatives across the local council in South Korea has gradually increased. However, the ratio of female representatives at local council reached 10% for the first time at the most recent local election in 2006. Apart from the proportional representatives, the ratio of female representatives elected to the local council through electoral district election is still less than 5%. This reality calls for a further effort to enhance the representation and participation of female population in the political process and the overall politics in South Korea at the level of institutional design.

63) Many of new systems and incentives were introduced in the 2006 local elections such as remuneration for local council members, medium-sized local electoral district, party nomination of the candidates, proportional representation system at non-metropolitan Si/Gun/Gu local government units, which makes it difficult to single out and analyze the effect of gender quota for the party list for proportional representation as an independent variable since 2006. However, there is no doubt that the intended purpose of the gender quota for the party list for proportional representation at the local council level is to institutionalize the long-standing demand for increased presence and representation of women in the political process and to secure support for the political parties involved. Ah Ran Hwang, *The Impact of Political Parties on Women's Representation in Local Councils: An Analysis of the 2006 Local Election in Korea*, 20(3) LOCAL ADMIN. J. 51 (2006).

64) A more detailed analysis to this effect is found in Jae-Hun Chung, *Analysis of the Impact of Local Election Law: A Case Study of the 2006 Local Election* (2007) (LL. M dissertation, Mokwon University).

IV. Concluding Remarks: Some Suggestions for South Korea's Proportional Representation System in Light of Broader Constitutional Ramifications of Minority Representation in Legislative Body and Political Process under Representative-Deliberative Democracy

There have been 135 women altogether at South Korea's National Assembly, from the inaugural 1948 National Assembly to the 17th National Assembly constituted in 2004. A research over 131 nations in the world indicates that, as of 2008, the ratio on average of female representatives at the national legislature in respective nations is approximately 11%.⁶⁵⁾ In South Korea, the ratio of female representatives at the 17th National Assembly (2004-2008) and the 18th National Assembly (2008-2012) is approximately 13%. However, the ratio through the 16th National Assembly in the prior constitutional history is, on average, 2.8%, with most of the female representatives during this period were proportional representatives and only 35 women who were elected to National Assembly through direct vote of the voters at electoral district election. At the current 18th National Assembly (2008-2012), the ratio of female representatives among the electoral district representatives is just over 5%.

Under such statistics, it may not be gainsaid that the proportional representation system in South Korea has, as a system, contributed to enhance the presence and the representation of women at the nation's legislative body. The next and more constitutionally challenging task is how to improve the system, both at the institutional and real-life levels, so that the system itself and the system-induced increase in presence and representation of women at the legislature may bring in sustainable changes in perception and motive of the entire constituents towards minority perspective representation and participation in political process including that of women. This should lead to further increased participation and representation in the policymaking and lawmaking institutions and processes of the constituents including minorities based on the inclusive expression and exchange of interests, opinions and

65) Yoon, *supra* note 42, at 69, 90.

perspectives. A comprehensive effort to study and improve the relevant law, institutions and systems should continue. The following includes some of the thoughts on South Korea's proportional representation system as it currently exists, in light of the representation of minority perspectives.

Under the relevant provisions of South Korea's Constitution and statutes, a functional proportional representation system may be an effective addition to the current "one person two votes" system that combines the electoral district election and the proportional representation of nationwide district from political parties' lists, both symbolically and practically.⁶⁶⁾ In this vein, an increase in the number of proportional representation seats at the legislature may serve to more effectively achieve the purpose, as intended in various occasions both within and outside National Assembly and local legislatures.⁶⁷⁾

The current proportional representation system, as indicated in the previous part, counts upon political party's nomination of potential representatives for obtaining the goal of the enlarged presence and representation of various perspectives across South Korean society, including those of minorities. Certain perspectives and groups such as NGOs engaged in environmental protection or consumer rights protection did actually march into National Assembly, thereby entering the forum for public discussion and debates and are actively participating as new voices in policymaking and lawmaking processes currently, due to the proportional representation system. However, the current design of proportional representation system heightens an opportunity for the ruling party to become the party with the most number of seats at National Assembly and at local council, due to the fact that the

66) NAK-IN SUNG, CONSTITUTIONAL LAW 178-179 (10TH ed. 2010). Nak-in Sung observes that it is rare that a state with approximately the same population and of approximately the same size as South Korea has a national constituency system for proportional representation. *Id.* at 177.

67) This effort has been made more actively since 2003, facing the then-upcoming 2004 general election to constitute the 17th National Assembly (2004-2008). The advisory committee within National Assembly, the Pan-National Committee on Political Reform, officially advised National Assembly to increase the number of proportional representation seats to 100 and reduce the number of electoral district representatives to 199, on December 8, 2003. An effort to revise the relevant statutes including the Public Official Election Act to this effect followed both at the 16th National Assembly (2000-2004) and at the 17th National Assembly (2004-2008), though such bills were discarded due to the expiration of terms. Such legislative efforts can be traced at South Korean National Assembly's URL at www.assembly.go.kr.

proportional representatives may only come from the party list. This, as combined with the relevant law and system pertaining to the formation and activities of the political party-based negotiation groups within the legislature,⁶⁸⁾ might hinder the minority members from assuming the role of expressing and representing the interests, opinions and perspectives in the appropriate political processes. This also might serve as an institutional barrier against peaceful transition of regimes between the ruling party and the opposition party.

As such, for South Korea's current proportional representation system exclusively designates the list prepared by each of the political parties as the gate to the legislature, a self-directed and voluntary effort on the part of respective political parties to search for, listen to, and engage themselves in the voices, perspectives and demands from across the polity is the key to the outcome intended by South Korea's proportional representation system for more and better representation of minorities including women. South Korea's current proportional representation system may serve to obtain the intended purpose, only on the premise of democratization of and within political parties.

Despite relatively short history of political party system under the Constitution and frequent changes, splits and mergers of and among fractions of political interest groups within and across various political parties, the phenomenon of "political party state" is readily observed in South Korea, as witnessed at recent electoral district elections where voters growingly tend to vote for candidates endorsed by the political party they support than for those not nominated by political parties. Under the current proportional representation system, the voters cast a separate vote outright for the political party they support, and the democratization of political parties is even more crucial therefor. The political parties should initiate an effort to establish and present standards and rules for party nomination of individuals for proportional representation seats, and should apply such standards and rules

68) On this point, it should be noted that legislative efforts have been made to reduce the minimum number of seats at National Assembly required to form a negotiation group. The current law sets the requirement at 20 or more members (National Assembly Act, Article 33). For an example of such effort, albeit aborted, see Bill Number 174043 introduced to the 17th National Assembly in March of 2006 that intended to reduce the number to 5.

transparently.

Also, under the current election system, a concurrent nomination for electoral district election and proportional representation may be a desirable alternative for the purpose of securing qualified candidates who are also expected to exercise the responsibilities as representatives sincerely on the party platform and policies. However, this alternative should be given a further thought as it might exacerbate bureaucratization of party leadership and caucus⁶⁹⁾ in the political parties in South Korea. In addition, laws applicable to discarding or changing political party membership by proportional representatives subsequent to securing the position as such should be prepared to cope with potentially significant outcome in light of the purpose of the system.

South Korea has a unicameral legislature both at the national and the local government levels, while power and authority in overall legislative and parliamentary affairs is highly concentrated on the standing committees within the legislature. This seriously undermines the deliberative function of the legislature under South Korean Constitution's indirect, representative and deliberative democracy. Efforts to better represent interests, opinions and perspectives of minorities in the representative body and the overall political process are crucial for the legitimacy of South Korea's representative and deliberative democracy itself.

Certain institutional efforts in this direction are ongoing, such as lowering the number of representatives consenting to the introduction to a bill required for the submission of a bill to National Assembly, mandating public hearing during the standing committee process as part of legislative process for the purpose of inviting various perspectives including minority's on the subject matter at low cost, supplementing rules and procedures relevant to legislative petition. At the local council level, minority groups may now petition the chief executive of the local government unit by securing a certain number of signatures of fellow residents, mandating the chief executive to submit the petition as a bill to the local council in its regular ordinance-making process.⁷⁰⁾

69) Professor Nak-in Sung has raised the same concern in this regard. See Sung, *supra* note 66, at 178-179.

70) LOCAL AUTONOMY ACT, art. 15.

Ultimately, throughout public election, policymaking and lawmaking process and particularly at the earliest point thereof, inclusive communication that may solicit and sustain participation of constituents including minorities should operate proactively. Guaranty of the freedom of expression and the active and responsible media may also contribute in this direction.

Legislatures are not the only governmental bodies, in which arguments for group representation can and should be applied. Appointed committees and commissions are also among the other deliberative and decisionmaking bodies that should be candidates for inclusive representation, even when constituents do not directly vote on their composition. In recent years, more attention has been devoted to the representation of diverse groups in bodies and procedures such as these in South Korea. A more democratic representative government would have various layers and sites of elected, appointed and volunteer bodies that discuss options for policies and laws, make policy decisions and laws, or review the effectiveness of policies and laws.

In such bodies it is possible and desirable to give specific representation to particular social group perspectives which might not otherwise be present. Furthermore, the processes of authorization and accountability that constitute the representative function should not be confined to official government bodies. Civil society is also an important forum for the expression and consolidation of social perspectives. Organization and activation in the public spheres of civil society are among the best methods of maintaining connections between representatives and constituents, and of insisting that representatives be accountable. Autonomous and plural activities of civic associations offer individuals and social groups maximum opportunity in their own diversity to be represented in public life, thereby deepening democracy.

KEY WORDS: Proportional Representation, Representative Democracy, Deliberative Democracy, Representation of Minority, Gender Quota

Manuscript received: Apr. 16, 2010; review completed: May 17, 2010; accepted: May 31, 2010.