



## Which democratic system better allows the checks and balances that guarantee democratic rule but equally protects minority rights?

**Dr. Yaron Katz**

Holon Institute of Technology, Israel

\* Corresponding Author: **Dr. Yaron Katz**

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### Abstract

Democratic governance involves a delicate balancing act between majority rule and the protection of minority rights, a challenge that is further nuanced by the majoritarian and consensus definitions of democracy. Understanding the dynamics within these two frameworks is crucial for navigating the complexities of democratic systems. While majoritarian systems provide efficiency in decision-making, consensus democracies prioritize inclusivity and protection of minority rights. The effectiveness of democratic governance lies in navigating this intricate landscape, adapting to societal needs, and upholding the principles of representation, participation, and protection of individual liberties. The study contends that achieving this balance demands continuous oversight, legal safeguards, and a dedication to cultivating an environment that is inclusive and respectful in both political and social dimensions. Common to every democracy is that governments derive their power from winning elections, although the debate is on the separation of powers – should decisions be made by politician who gained a majority of the votes or should politicians be restrained by judiciaries that protect the rights of minorities and the rule of law? This debate brings up another important dilemma which stands at the heart of this research: which democratic system better allows the checks and balances that guarantee democratic rule but equally protects minority rights?

**Keywords:** Court, democracy, government, checks and balances, majority rule

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### Introduction

The research argues that striking the delicate balance between majority rule and minority rights is an ongoing challenge in democratic societies. It requires constant vigilance, legal protections, and a commitment to fostering an inclusive and respectful political and social environment. In democratic nations, two primary electoral systems prevail: majoritarian representation system and proportional representation system based on consensus (Lewin, 1998) <sup>[17]</sup>. These two contrasting definitions reflect different visions of how democracy should function. Majoritarian democracy giving precedence to the preferences of the majority, while consensus democracy places importance on inclusivity and cooperation among various segments of the population.

The research delves into the differences between majoritarian and consensus political systems. While majoritarianism concentrates power and may lead to sharp divisions, consensus democracy disperses power, encouraging broader representation and collaborative decision-making. These distinctions have implications for the structure and functioning of governments. The dichotomy between majoritarian and consensus definitions of democracy adds another layer to the discussion. The question of whether decisions should be dominated by the majority or restrained by judiciaries protecting minority rights prompts a critical examination of the checks and balances essential for democratic governance.

The two different concepts reflect the conflict between majority rule and minority rights. The majoritarian system follows the winner-takes-all principle, where the candidate with the highest share of votes wins and represents the district, state or country majoritarian democracy.

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The downside of this system is that it can create sharp divisions between those who hold power and those who do not - and in practical terms, does not allow the opposition much influence over government policy. In contrast, the consensus principles promote the idea that democracy should represent as many citizens as possible and that a simple majority should not govern in an unfettered fashion. The downside of the proportional representation system is that it is based on consensus and involves citizens voting for political parties rather than individual candidates. Since seats in the legislative body are allocated in proportion to the share of votes each party receives, coalition among parties with different and at times contrasted policies can create difficulties to engage a healthy political environment.

The research maintains that successfully navigating this challenge of reflecting the tension between the will of the majority and the protection of fundamental rights for individuals and groups that may be in the minority requires, a commitment to the principles of democracy. These principles include the rule of law and the protection of individual rights. They also require fostering an environment where diverse voices are heard and the rights of all citizens are respected. In that concept, globalization has increased interactions between diverse cultures and communities, leading to a more interconnected and interdependent world. Democracies must adapt to the growing diversity within their societies, recognizing and respecting the rights of minorities as an integral part of the democratic fabric. Democracies must also incorporate legal safeguards, such as constitutional protections and a system of checks and balances, to prevent the abuse of power by the majority. These safeguards aim to ensure that even popular decisions respect the fundamental rights of all citizens.

### Contrasted Definitions of Democracy

In democratic countries, the two main electoral systems are majoritarian representation and proportional representation systems, and definitions of democracy can be broadly categorized into majoritarian and consensus views (Wolterstorff and Cuneo, 2012) <sup>[32]</sup>. The choice between majoritarian and consensus models reflects a broader debate about issues such as the nature and effectiveness of democratic governance, the status of democracy, the role of the state, and the principles that should guide governance in diverse and pluralistic societies (Barroso, 2019) <sup>[2]</sup>.

Proportional representation systems differ in that every vote cast contributes to the result, unlike majoritarian systems, where only a plurality or simple majority matters (Mainwaring, 2001) <sup>[20]</sup>. The majoritarian principle emphasizes that democracy is majority rule and is based on a concentration of power, while consensus democracy disperses power so that there are multiple poles of decision making and multiple checks and balances, thus limiting the power of the central government while providing for the representation of a broader array of interests (Lijphart, 1985) <sup>[18]</sup>.

Another main difference is that the majoritarian model represents a government that is supported by a relatively narrow parliamentary majority, while the consensus model favors broad coalitions in which all significant political parties and representatives of the major groups in society share executive power. The majoritarian model is usually based on a two-party system with opposite socioeconomic agendas, while the consensus model is based on proportional

representation and includes a large number of parties with a variety of agendas, and power is shared, dispersed, and limited in a variety of ways (Lewin, 1998) <sup>[17]</sup>.

The differences between majority rule and minority rights are subject to the contrasting perceptions of the majoritarian and consensus definitions of democracy. The majoritarian model is based on executive dominance and legislative power of the government, while the consensus model is based on a balanced political structure that divides legislative power among three institutions – the legislative, the executive and the legal system (Geissel and Ank, 2018) <sup>[8]</sup>. The essence of proportional representation systems is that all votes cast contribute to the result - not just a plurality, or a simple majority, as in majoritarian systems. In contrast, majoritarianism is based on the view that legitimate political authority should always express the will of the majority of those subject to this authority.

Based on these policy differences, researches attempted to examine the delicate balance between majority rule and minority rights. Ferrín and Hernández (2021) <sup>[7]</sup> found that people living in democracies characterized by coalition governments favor consensus democracy, while people living in countries dominated by a single-party favor majoritarian democracy. Similarly, people's position about minorities affects these beliefs. Those who vote for small parties favor a consensus democracy, while those who vote for large parties support a majoritarian system.

The majoritarian and consensus definitions of democracy also shape the expectations and perceptions regarding the court's role in democratic governance (Bazon, 2023) <sup>[3]</sup>. Majoritarian systems may prioritize efficient decision-making by the majority, potentially limiting judicial intervention. In contrast, consensus models often see the court as a crucial mechanism for maintaining a balance of powers and safeguarding democratic values, particularly in the protection of minority rights. The perception of the court's role is deeply embedded in the broader democratic framework chosen by a society, although the majoritarian and consensus models shape the role of the court differently. The two conceptualizations represent distinct approaches to governance and decision-making within democratic systems (Lijphart, 1985) <sup>[18]</sup> argues that to permit courts to adjudicate positive duties would allow courts to intrude illegitimately into the democratic process, while that positive duties should be justiciable to the extent that they promote participative democracy. According to her analysis, courts should not dictate choices to policy-makers, but they should require political decision-makers to justify publicly their choices in respect of implementation of human rights.

This view is explained by White (2000) <sup>[31]</sup> in a global context, according to which judicial independence can help to enforce constitutional limits on political power that restrain temporary passions and protect political minorities. Rogers (2001) <sup>[25]</sup> points to the informational benefits that policy makers can derive from judicial review and Vanberg (2008) <sup>[27]</sup> explains that with the balance of power policy makers benefit from powerful courts. Other voices maintain that an independent judiciary creates opportunities to shift blame for unpopular decisions from the executive and legislative branches to the courts (Greene, 2008) <sup>[11]</sup> and that policy-makers respect judicial authority not because doing so provides a positive benefit but because attacking the court or ignoring its decisions is too costly (Staton and Vanberg, 2008) <sup>[28]</sup>.

The research claims that the idea that policymakers respect judicial authority because attacking the court or ignoring its decisions reflects a strategic perspective on the relationship between different branches of government. This perspective involves considerations of the costs and benefits associated with actions taken by policymakers in response to judicial decisions. The research further argues that policymakers should recognize that while there may be short-term political benefits to challenge court decisions, the long-term costs - both in terms of public perception and institutional stability - outweigh those benefits. Consequently, it can be concluded that respecting judicial authority is seen as essential for the functioning of a democratic system based on the rule of law and the separation of powers.

### Majoritarian Conception of Democracy

The majoritarian conception of democracy emphasizes the rule of the majority. In this perspective, decision-making is predominantly driven by the preferences and choices of the majority of citizens. It prioritizes the notion that the will of the majority should prevail in political processes and policy outcomes. Key features include majority rule, competitive elections, and a focus on the rights of the majority.

In a democratic setup, decisions are typically made based on the preferences of the majority of the people. Competitive elections provide a mechanism for citizens to choose their representatives, ensuring that leaders are accountable to the electorate. The model often includes a centralized government with one-party majority cabinets, leading to executive dominance over the legislature. Legislative power is concentrated in the hands of the majority, allowing for swift amendments and decisions through simple majorities. However, the concentration of legislative power in the hands of the majority raises several concerns and potential problems within a democratic system. While majoritarian systems provide for quick decision-making, the checks and balances may be limited, potentially leading to a disregard for minority rights. Accordingly, the research argues that while democracy emphasizes majority rule, it is also crucial to uphold the rights of the majority to prevent the oppression or neglect of minority groups. This balance is fundamental in sustaining a democratic society where the voices of all citizens are considered and protected.

Consequently, without such balance, the nature of majoritarian politics can create sharp divisions, and the opposition may have limited influence over government policies. Lorenz, Rauhut, and Kittel (2015) <sup>[19]</sup> argue that the majority rule makes people too focused to reach a majority so that valuable minority opinions are disregarded or not even voiced. Majority-driven legislative power can also contribute to policy polarization, where extreme positions are favored, and moderate or compromise solutions are neglected. A concentration of legislative power may weaken the system of checks and balances, particularly if the legislative branch is not effectively checked by other branches of government, such as the judiciary (Rahat and Hazan, 2011) <sup>[24]</sup>.

A distinctive element in majoritarian democracies is the presence of centralized government structures characterized by one-party majority cabinets, executive dominance over the legislature and disproportional electoral systems. The party that secures the majority of seats in the legislative body forms the government. Accordingly, majoritarian democracies often exhibit a strong executive branch with considerable influence and authority over the legislative branch – which

may limit external checks on legislative decisions. As a result, majoritarian democracies face criticisms for excluding minority voices, policy polarization, and challenges in adequately representing diverse interests (Kerr and Wahman, 2019) <sup>[13]</sup>.

The underpinning philosophy of majoritarianism posits that legitimate political authority should consistently reflect the will of the majority subject to that authority. Majoritarian democracy is marked by centralized government structures with one-party majority cabinets, and a pluralist interest group system characterized by free-for-all competition among groups. Majoritarian systems concentrate power, granting legislative power to the legislature, amending laws and policies by simple majorities, and vesting legislatures with the final say on the constitutionality of their own legislation (Lee, 2015) <sup>[15]</sup>.

The research claims that attacking the court or ignoring its decisions refers to actions or behaviors aimed at undermining the authority, credibility, or legitimacy of a judicial institution and disregarding its legally binding decisions. This can occur in various contexts and may involve individuals, political entities, or even governments challenging the role of the court and refusing to abide by its rulings. Addressing attacks on the court and non-compliance with its decisions requires a commitment to upholding the rule of law, protecting judicial independence, and ensuring the judiciary's role as a check on government power. Strengthening public awareness of the importance of an independent judiciary and fostering a culture that respects legal processes are crucial components of maintaining a robust democratic system.

In examining this delicate balance between majority rule and minority rights, researchers such as Ferrín and Hernández (2021) <sup>[7]</sup> found that individuals in democracies marked by coalition governments tend to favor consensus democracy, while those in countries dominated by a single party lean towards majoritarian democracy. Similarly, individuals' stances on minorities influence their preferences, with supporters of small parties tending to favor consensus democracy and those aligned with larger parties supporting a majoritarian system argues that allowing courts to adjudicate positive duties could illegitimately intrude into the democratic process. Instead, she contends that positive duties should be justiciable to the extent that they promote participative democracy, with courts requiring political decision-makers to publicly justify their choices regarding the implementation of human rights. White (2000) <sup>[31]</sup> extends this view globally, asserting that judicial independence can help enforce constitutional limits on political power, restraining temporary passions and protecting political minorities. Rogers (2001) <sup>[25]</sup> highlights the informational benefits for policymakers derived from judicial review, and Vanberg (2008) <sup>[27]</sup> explains that a balance of power allows policymakers to benefit from powerful courts. Others posit that an independent judiciary provides opportunities to shift blame for unpopular decisions from the executive and legislative branches to the courts (Greene, 2008) <sup>[11]</sup>, and policymakers respect judicial authority not necessarily for positive benefits but because attacking the court or ignoring its decisions is deemed too costly (Staton and Vanberg, 2008) <sup>[28]</sup>.

### Liberal Meaning of Democracy

In contrast to the majoritarian model, the consensus model of democracy adopts a more inclusive approach. This

perspective seeks to accommodate the interests of diverse groups and emphasizes the importance of reaching broad agreements and compromises. It recognizes the need for cooperation and collaboration among different segments of society, aiming to build consensus rather than simply relying on majority rule. Features of consensus democracy include power-sharing mechanisms, protection of minority rights, and a focus on deliberative decision-making (Vanberg, 2015) [29].

Consensus is the foundation of the liberal society, based on the consent of all citizens. The liberal meaning of democracy is government which represents the people and operates on behalf of the public through political representatives that are elected in free and equal elections. According to the German Institute of Development and Sustainability (2013), liberal democracy is a universal value, based on four individually necessary and collectively sufficient elements: free and fair elections, the freedom of assembly, association, the press and the protection of fundamental rights are institutional principles that characterize democratic systems today. But liberal democracy faces multiple external challenges and voters around the world are electing leaders with authoritarian tendencies.

Currently, only 34 liberal democracies exist, down to the same number as in 1995, according to V-Dem Institute (2022) [30], as the share of the world population living in liberal democracies also fell in the last decade, to 13% from 18%. At the heart of that idea is a commitment to equal right of citizens to full political voice – this voice to be exercised within an explicit or implicit constitution that imposes limits and guarantees on government, and within a legal order that protects citizens against impairment of their right to full political voice by their fellow citizens. The resulting position is the equal political voice interpretation of liberal democracy (Wolterstorff and Cuneo, 2012) [32]. Vanberg (2015) [29] explains this situation in a global context, since although in many democracies` courts significantly shape the political landscape, with no direct powers of enforcement, judges must rely on the willingness of executives and legislators to comply with their decisions and to respect judicial authority. Consensus forms the bedrock of a liberal society, predicated on the collective consent of all citizens. In the liberal understanding of democracy, government is envisioned to represent the people and function on behalf of the public through elected political representatives chosen in free and equitable elections (Leiter, 2020) [16]. Consensus democracy disperses and shares power, aiming for a broader representation of interests and a balance between majority and minority concerns. Instead of executive dominance, consensus systems promote a balanced relationship between the executive and legislative branches. These systems typically have constitutional safeguards, requiring extraordinary majorities for constitutional changes and subjecting laws to judicial review for constitutionality. Consensus democracy promotes the idea that decisions should be made with the involvement of as many citizens as possible, ensuring a more inclusive approach to governance. Broad multi-party coalitions are common in consensus democracies, fostering collaboration and compromise among different political factions (McGann and Latner, 2006) [21].

The foundational principles at the heart of the liberal consensus encompass a commitment to democracy as a political value. These include the endorsement of democratic political processes and preserving rights for all citizens that

must be universally respected. It also includes reverence for the rights essential to the proper functioning of democratic procedures and a system of distribution based on merit, supported by genuine equality of opportunity in the economic realm. Consensus systems typically feature decentralized government structures, constitutions amendable only through extraordinary majorities, and laws subject to judicial review of their constitutionality by supreme or constitutional courts (Leiter, 2020) [16]. Characterized by power-sharing, dispersion, and limitation rather than concentration, consensus democracy involves executive power-sharing within broad multi-party coalitions, a balance of power between the executive and legislative branches, multi-party systems with proportional representation, and an interest group system focused on compromise and concertation. As explained by Somek and Paar (2023), pluralism constitutes a defining characteristic of human rights, and the way countries calibrate their relationship to international and supranational authority is shaped by conditional deference. They argue that this framework leads to divergent opinions that resonate across the public sphere, and this becomes definitively clear within a context of interactions where participants intend to discuss the same matters but consistently realize that they have conflicting objectives.

As can be seen, the principles that constitute the core of liberal consensus include support for democracy as a political value and the need to support democratic political procedures. This concept includes a range of rights for all citizens that are necessary for the proper functioning of democratic processes. Consensus systems typically have decentralized government, constitutions that can be changed only by extraordinary majorities and laws that are subject to a judicial review of their constitutionality by supreme or constitutional courts. As explained by Vanberg (2008) [28], consensus democracy is characterized by sharing, dispersing, and limiting power instead of concentrating power, executive power-sharing in broad multi-party coalitions, executive-legislative balance of power, multi-party systems with proportional representation and interest group system aimed at compromise and concertation.

### **Balancing majority rule and minority rights**

In democratic governance, the delicate balance between majority rule and minority rights is a foundational principle that defines the character and effectiveness of a political system. Striking this balance is essential to ensure that democratic ideals of representation, equality, and protection of individual liberties are upheld. Majority rule is a fundamental concept in democracies where decisions are made by the will of the majority, typically through elected representatives. It ensures efficient decision-making, enabling prompt policy implementation and legislative action. However, unchecked majority rule can lead to the marginalization and neglect of minority interests, potentially resulting in the tyranny of the majority.

The concept of the "tyranny of the majority" highlights a potential challenge within democratic systems where the majority, wielding its numerical strength, might oppress or neglect the rights and interests of minority individuals or groups (Abbas, 2023) [1]. The concept of the tyranny of the majority is a commonly debated issue in political theory within democratic frameworks. It emerges when prevailing majorities are entrenched and enduring, lacking any constraints on their capacity to overpower and subjugate the

minority (Sauermaun, 2020) <sup>[26]</sup>. The term refers to situations where the majority, exercising its political power, imposes its will on the minority in a way that disregards the rights or well-being of the minority. This situation creates a democratic dilemma. While democracy thrives on the principle of majority rule, the potential for the tyranny of the majority poses a dilemma. It challenges the democratic commitment to equality, representation, and protection of individual liberties. As explained by Guinier (1994), democratic decision-making processes often lead to the division of societies into those who emerge victorious and those who face defeat. Majority tyranny becomes evident when dominant majorities are unalterable, and there exist no safeguards to prevent the unchecked dominance of the majority over the minority.

Consequently, the tyranny of the majority can be characterized as the continual exploitation of the minority by the majority in democratic decisions over an extended period. Baume & Novak (2020) <sup>[4]</sup> explain that addressing the tyranny of the majority is essential for maintaining the integrity of democratic principles, and compromise is unavoidable when it comes to circumventing the tyranny of the majority and taking into account the plurality of preferences. By incorporating constitutional safeguards, checks and balances, and fostering an inclusive democratic culture, societies can strive to ensure that the rights and voices of minorities are protected, creating a more just and equitable democratic framework. Maintaining the integrity of democratic principles involves safeguarding the fundamental values that underpin democratic governance.

Protection of human rights is achieved by recognizing and protecting the universal human rights of all citizens. Establishing legal frameworks that safeguard individual liberties and freedoms, preventing discrimination and arbitrary infringements requires that elections are free, fair, and transparent. It must also guarantee equal access to political participation, and prevent electoral fraud and manipulation (Busquets, 2019) <sup>[5]</sup>. Additionally, preserving the integrity of democratic principles is crucial for maintaining a healthy and functional democratic system. It enquires ongoing commitment from citizens, institutions, and leaders, with ongoing commitment, vigilance, and a collective effort from citizens, institutions, and leaders. It involves creating a democratic culture that values transparency, inclusivity, and the protection of individual rights, ultimately ensuring that democratic governance remains a robust and effective system (Lechterman, 2023) <sup>[14]</sup>.

Creating a culture of accountability is essential for fostering transparency, trust, and effective governance within an organization, community, or society at large. By actively upholding these principles, a democratic society can ensure the continued effectiveness and legitimacy of its governance system. According to Paulus (2023) <sup>[23]</sup>, democracy is not the government of the minority by the majority, but self-government of the people in a pluralist society, and constitutional adjudication is needed to uphold the possibility of democratic change and to protect individual rights also against the majority. Overeem (2023) <sup>[22]</sup> argues that the fundamental tenets of democratic politics encompass both majority rule and the necessity for compromise. He explains that democracy holds limited significance without the majoritarian principle, and in pluralistic societies marked by profound moral and political disparities, the imperative for

compromise becomes essential.

The delicate balance between majority rule and minority rights is a central aspect of democratic governance. It involves navigating the tension between the will of the majority, which is a fundamental principle of democracy, and the protection of the rights and interests of individuals or groups that may constitute a minority. Engler, Gessler, Abou-Chadi and Leeman (2022) <sup>[6]</sup> examined how parties politicize different democratic principles, and found that the targets of criticism vary according to their ideological origins. This brings to the conclusion that preserving the integrity of democratic principles involves safeguarding the foundational values and processes that define a democratic system. This is explained in the basic principles of democracy, which are built on principles such as the rule of law, protection of individual rights, free and fair elections, and the separation of powers.

## Conclusion

The study of democracy has been significantly influenced by consensus versus majoritarian democracy typology. Majoritarian systems, with winner-takes-all principles, contrast with consensus democracies, emphasizing power-sharing, balance, and representation of diverse interests through proportional systems. The choice between these models influences the delicate balance between majority rule and minority rights, a critical issue in democratic governance. In contrast, liberal democracy, characterized by principles free and fair elections, fundamental rights protection, and freedom of assembly, faces challenges globally. While it is considered a universal value, the number of liberal democracies has not significantly increased, and voters in various parts of the world have elected leaders with authoritarian tendencies. The equal political voice interpretation of liberal democracy underscores the commitment to equal rights within a constitutional framework.

Examining the core of liberal consensus reveals support for democratic values, rights for citizens, and merit-based distribution. Consensus democracies decentralize power, limit executive dominance, and promote a balanced relationship between the executive and legislative branches. In contrast, majoritarian democracies concentrate power, favor one-party majority cabinets, and rely on disproportional electoral systems. In contrast, the majoritarian principle underscores the notion that democracy operates on the basis of majority rule, characterized by a concentration of power. This model envisions a government that garners support from a relatively narrow parliamentary majority, often within the framework of a two-party system featuring opposing socioeconomic agendas.

Accordingly, the delicate balance of the two major democratic models require between majority rule and minority right through constitutional safeguards, judicial review, checks and balances, and public engagement. The research suggests that the pursuit of this equilibrium is an ongoing challenge in democratic societies.

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