

ELECTORAL REFORM

A SOCIAL POLICY PAPER
BY **ELSA MALTA**

elsa

The European Law Students' Association

MALTA

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Foreword

ELSA, the European Law Students' Association, aside from being a human rights organisation also seeks to be at the fore front of all legal discussions especially when it comes to controversial topics with contrasting opinions. In fact, ELSA' main purpose is "to contribute to legal education, to foster mutual understanding and to promote social responsibility of law students and young lawyers.

ELSA Malta strives to promote this vision of ELSA in all its projects. This is done through initiatives like the publishing of a number of research and policy papers. These papers are done with the aim to promote the vision of ELSA but also in order to be an active part of the discussion on certain pressing legal and, in this case, constitutional matters. In light of the recent general election, one such issue that ELSA Malta feels is of utmost importance currently, is that of Electoral Reform in Malta. The Policy paper has been inspired by the latest amendments to the electoral process including the newly introduced gender quota, as will be seen in the policy paper. The idea behind this policy paper is to explore how the new electoral reform will work, and this is to be done so by going through the history of past developments in the electoral process through comparison and analysis with the latest development.

A project such as this would not have been possible without the many hours of work and commitment, of the highly dedicated group of people to whom I would like to express my personal gratitude. First and foremost, I would like to especially thank Ms. Elisa Micallef Peplow, ELSA Malta's current Director for Social Policy, for taking on such bold project from its inception to its publication with unending dedication. I would also like to thank the writers for the invaluable assistance in the research and writing of such a policy paper. I would also like to extend my gratitude to Dr. Tonio Borg for taking the time to carefully review the research, giving feedback and guidance accordingly. Lastly, I would like to thank Ms Katrina Cini and Ms Amy Saliba, ELSA Malta's Vice President for Marketing and Director for Public Relations respectively for the design of the paper.

On behalf of ELSA Malta, I hope that you, dear reader, may take substance out of our Policy paper, not only to expand your knowledge on the given topic but to also take the time to reflect about what has been written on the matter and lastly to follow us and support the aim which we hold dear – to always be proactive!

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History of Our Electoral System

Introduction

Malta is made up of a hybrid electoral system which is made up of the PRSTV and the corrective mechanism. These two systems read the results in a different and distinct manner. According to Dr Bencini in his book *Malta's Hybrid Electoral System: A constitutional review* a corrective mechanism can only be 'switched on' after the final PRSTV results from 13 districts become official with all 65 Members of Parliament declared elected. Our Parliamentary democracy from 1921-2022 is based on a majority in Parliament, not a majority in the country. The President is obliged by the Constitution to choose/appoint as PM the leader of the party with a majority in Parliament.

In considering the corrective mechanisms that have resulted from various constitutional amendments, it is essential to take into account the entire electoral history of Malta, since each amendment is cumulative, and therefore the amendments in effect today have taken over the previous ones. For this reason, one must look at the Maltese electoral system as a whole, and therefore the corrective mechanisms we have can be described as "the result of reactions by the political parties to anomalous results of general elections since 1981."¹

- 1987 election

In 1981, the electoral results were perverse, because the Nationalist party that obtained the majority of first-count votes nationwide (more than fifty percent) did not obtain the majority of seats in Parliament and ended up with less seats than the Labour party (who had less than fifty percent of the first count votes). It is for this reason that Constitutional amendments were implemented in 1987 to resolve the situation.²

As noted by Dr. Tonio Borg, "this corrective mechanism was the first change to the actual nature of the proportional representation system called STV."³ Under the STV system, the voter is able to cast his first count vote and the rest of his votes to candidates from different parties, however the opposite may also happen. In this case, a party that would have obtained the majority of first count votes would lose the absolute or relative majority at first count, because of the fact that voters would keep changing their preferences in other counts or having some first-count votes not being transferable due to voters not voting for all the candidates.⁴

The amendments which were made through Act IV of 1987 provided that the party that obtained a majority of first-count votes in the country, but who elected less than fifty percent of the seats in Parliament would have one member more than the total number of MPs elected from the other party. These additional seats would be allocated from the sixth unelected candidate, with the non-elected candidates who received the most votes at the last count being chosen, regardless of which electoral

¹ Tonio Borg, *A Commentary on the Constitution of Malta* (2nd edn, Kite Group 2019) 312.

² Colette Bugeja, 'The Historico-Legal Development of the Electoral System in Malta, 1921-2000' (L.L.D. thesis, University of Malta 2002)

³ Tonio Borg, *A Commentary on the Constitution of Malta* (2nd edn, Kite Group 2019) 312.

⁴ *Ibid.* 312-313.

division they contested on.⁵ Therefore, with this corrective mechanism, if a party gains the majority of first-count votes and then loses this majority at the final count due to cross-voting, the corrective mechanism would still play in its favour.

In this corrective mechanism, as is the case with the other amendments, emphasis is put on the first count, and whatever transfers are made in subsequent counts will not change the fact that the party who obtained the absolute majority of first count votes will be the party who forms a Government.⁶

However, since the main aim regarding this first corrective mechanism was to ensure that the party who obtained over fifty percent of first-count votes also had a majority of one seat in Parliament, this still did not address the issue of proportionality between the votes received and the seats in Parliament as was required by the Constitution. Therefore, it was deemed that this system did not offer any aid regarding proportionality for two main reasons;

- Firstly, one party may obtain up to fifty-five percent of the total votes but would still have less seats than the other party. In this case, the party who obtained this fifty-five percent would only get a majority of one seat in Parliament, rather than the three or more that it would have deserved had there been proportionality.
- Secondly, if neither party obtained fifty percent of the first-count votes, there was no guarantee of proportionality between the votes gained and the seats in Parliament and therefore, a party who obtained the relative majority of first-count votes would not obtain the relative majority in seats.⁷

- **1992 Election**

In 1992, the House of Representatives was only the product of the PRSTV with no additions necessary to correct the result, which proves that the official electoral system in Malta remains the PRSTV and that the corrective mechanism may not be required if no correction is required. Therefore, the corrective mechanism was not applied in the electoral result of 1992, as the PN obtained an absolute majority of votes and of seats. It is for this reason that Parliament described this election as being “a clear example of true proportionality between votes and seats gained by both parties where the disproportionality effect was neutralized by the system itself”.⁸ One may also note the increase in the difference in votes for the first time since Independence, from an average of five thousand votes to thirteen thousand and twenty-one votes.⁹

⁵ Colette Bugeja, ‘The Historico-Legal Development of the Electoral System in Malta, 1921-2000’ (L.L.D. thesis, University of Malta 2002)

⁶ Tonio Borg, A Commentary on the Constitution of Malta (2nd edn, Kite Group 2019) 313.

⁷ Colette Bugeja, ‘The Historico-Legal Development of the Electoral System in Malta, 1921-2000’ (L.L.D. thesis, University of Malta 2002)

⁸ Louis Stefan Magrin, ‘The Maltese Electoral Law and the Two-Party System’ (L.L.D. thesis, University of Malta 2018)

⁹ Ibid.

- **1996 Election**

Notwithstanding the fact that the first Constitutional amendment made to Article 52 ensured that the party who obtained the absolute majority of votes would have a majority of one seat in Parliament, it still did not solve the problem of proportionality regarding a situation where neither party would have obtained more than fifty percent of all the valid first-count votes. Therefore, in such a case, a relative majority would not necessarily render a majority of seats in Parliament.

Following this, Article 52 of the Constitution was amended once more through Act XI of 1996, where an additional proviso was added which provided that if a party obtained the relative majority of votes when only two parties have been elected following an election, this same party would have a right to the majority of seats in Parliament.¹⁰ The second corrective mechanism that was introduced in 1996 was thus a slight variation of the first amendment.

As is stated in Article 52(1)(ii);

*“(ii) at a general election which is contested by more than two political parties and **in which only candidates of two of such parties are elected**, a political party obtains a percentage of all the valid votes cast at such election, as credited to its candidates by the Electoral Commission at the first count of all the votes (hereinafter also referred to in this article as the **"relative majority party"**), which is greater than that obtained by any one other party (hereinafter referred to in this article as the **"minority party"**), and the proportion which the number of the elected candidates credited to the absolute majority party or to the relative majority party (as the case may be) represents in relation to the total number of elected members of the House of Representatives is **less than the proportion which the number of votes credited to such candidates at the first count of all the votes represents in relation to the total of the votes credited at the same first count of all the votes to all the candidates of all the parties electing candidates, the number of the elected candidates of such party shall be increased** (as the case may be) by a number of additional candidates in the circumstances as determined by and in accordance with the provisions of Part IV of the General Elections (Sorting of Ballot Papers, Casual Elections and Co-opting) Regulations in the Thirteenth Schedule to the General Elections Act and the Annex to such Schedule...”¹¹ (emphasis added)*

A feature found in both corrective mechanisms as well as in the third mechanism is that no adjustments made by any corrective mechanism would lead to a person who has been elected to lose his parliamentary seat, but the disadvantaged party would gain additional seats in order to have a majority in Parliament. Due to this, although Parliament is composed of sixty-five members of Parliament, this number is subject to variations depending on the results of the corrective mechanism.¹²

¹⁰ Colette Bugeja, ‘The Historico-Legal Development of the Electoral System in Malta, 1921-2000’ (L.L.D. thesis, University of Malta 2002)

¹¹ Constitution of Malta, Article 52(1)(ii)

¹² Tonio Borg, A Commentary on the Constitution of Malta (2nd edn, Kite Group 2019) 314.

- **2008 Election**

By 2008, the corrective mechanism worked either in a situation where a party obtained the absolute majority of the first preference votes but not the majority of seats in Parliament, or else in a two-party parliament, where one party has more votes than the other. In 2008 the party with the relative majority did not obtain the majority of seats in Parliament, and since there was no other party represented in Parliament, the corrective mechanism was used in order to give the Nationalist Party a majority of one seat. This is where the third amendment came through, where the limitation of the corrective mechanism operating to give a maximum of one seat came missing. In 2007 Parliament introduced an important amendment, where the Electoral Commission in deciding the extra seats must decide what the difference in percentage between the first votes of the first party was in relation to the second party, and hence, the difference in percentage must be reflected in the difference in the seats. So the corrective mechanism was no longer limited to increasing the seats given to the party who obtained the absolute majority by one seat, rather it now had to reflect the difference in percentage in the first preference votes between the two parties.

This amendment brought with it an important change, where not only could the winning party benefit from the additional seats elected, but so could the opposition party, which is the second-most important effect of the third amendment. So from then on, the corrective mechanism could give extra seats not only to the party that wins, but also to the party who loses, as happened in the 2013 and 2017 elections, where it was the losing party who was given extra seats.

- **2013 Election**

In the 2013 elections there was no doubt as to the electoral result, with the Labour party winning a handsome majority of first votes reflected in a large majority of the seats in the House of Representatives, with a corrective mechanism having to be applied to give the Nationalist party a few extra seats to make the gap in seats proportional. The 2013 election saw for the first time since Independence, a large difference in votes between the two main parties, with the PL having a lead of thirty-five thousand votes in their favour. As was the case in the 2008 elections, the districts favoured the PL, and therefore 4 extra seats were awarded to the PN in order to correct any disproportionality between the first preference votes and the seats in Parliament.¹³

This election result was followed by several court cases involving irregularities related to the counting process in the Eighth and Thirteenth Districts. Two PN candidates were not elected in the PRSTV stage, but they were elected in the second stage through the corrective mechanism. However, they rightly claimed that they should have been elected as of right and should not have been brought back through the corrective mechanism because they had enough votes to be elected. They requested a special constitutional procedure before the Constitutional Court as the electoral court, demanding that the Electoral Commission merely correct an error in the counting of the PRSTV. These two members claimed that a number of votes that belonged to them were instead counted incorrectly, resulting in the PL gaining two additional seats, which put the PN at a disadvantage.

¹³ Louis Stefan Magrin, 'The Maltese Electoral Law and the Two-Party System' (L.L.D. thesis, University of Malta 2018)

In these cases, the question was whether the candidates had a juridical interest. Here, the Constitutional Court raised the issue that although both candidates were elected through the corrective mechanism and not through the PRSTV, both candidates were still elected and thus no longer had a legal interest. However, the candidates argued that they should be elected in their own right and not as part of the secondary process, that is, the corrective mechanism. Subsequently, the PN said that it made a difference to them because the fact that the PN candidates were not declared elected disrupted the operation of the corrective mechanism. This is because the calculation that is done to see how many additional seats a party gets, that is, which party is underrepresented, depends on the sixty-five candidates who were elected in the last count. Thus, it was in the interest of the PN that two additional members were named so that a correct calculation could be made for the additional seats. This error in the counting of votes affected the operation of the corrective mechanism, as they claimed that this violated the principle of proportional representation. The Court then ruled that there had been a violation of Article 3 of Protocol No. 1 to the European Convention for the protection of Human Rights and Fundamental Freedoms and concluded that the PN should have elected at least twenty-seven members instead of twenty-six and that it should have been entitled to four additional seats, bringing the total number of seats to thirty-one.¹⁴

- **2017 Election**

An important amendment was made by Parliament in 2017, according to which the Electoral Commission must take into account the percentage difference between the two parties in the difference of seats. Thus with this change, the corrective mechanism was no longer limited to increasing the seats by a majority of one in favour of the winning party, but also had to take into account the percentage difference in first preference votes between the parties. This added a proportional element to the corrective mechanism, allowing the opposition party to benefit from the change as well, not just the majority party. In 2013 and 2017, the two parties had a result in which the Nationalist Party lost both elections quite drastically, and as the opposition party, the Nationalist Party received additional seats rather than the Labour Party. In 2013, the PN was in opposition, but it benefitted from this corrective mechanism as the number of MPs in the Nationalist Party was increased to correctly reflect the difference in votes to the difference in seats in Parliament. Thus, the PRSTV had already given the Labour Party a large majority, but the corrective mechanism was used to reduce the difference in seats won by the Labour Party to reflect the percentage difference in the first count between the two parties.

In addition to the large difference of thirty-five thousand votes between the Labour Party and the coalition of PN and PD, a third party made it into Parliament for the first time in half a century, PD won two seats although, the candidates of the coalition PN-PD formed a single party under the PN banner in the elections. The PL objected to the Commission's decision to award two seats to the PN under the corrective mechanism as the Constitution stipulates that the corrective mechanism may only be applied if there is one minority party. This was due to the fact that one of the members elected under the PN was listed as the leader of the PD and not as a member of the PN, so it was actually a distinguished party.

¹⁴ Louis Stefan Magrin, 'The Maltese Electoral Law and the Two-Party System' (L.L.D. thesis, University of Malta 2018)

The case went to the Constitutional Court, which concluded that the Commission was correct to give two additional seats to the PN to ensure proportionality, and that the candidacy of Dr. Farrugia, which was at issue above, was legally a member of the PN.¹⁵

- **Article 52A**

The introduction of act XX of 2021 and the addition of Article 52A to the Constitution expanded the reasoning of Article 52. In doing so the legislature introduced a new concept in which it not only corrected the two fundamentals of the corrective mechanism, namely the majority rule and proportionality between the two elected parties, but added a third basis according to which the House of Representatives may at no time have a gender representation that is less than forty percent of the total number of members. This amendment is fully consistent with the two principles contained in the corrective mechanisms mentioned above. Therefore, the underrepresented gender will be represented with at least forty percent in the House of Representatives, without disturbing the party that received the majority of votes receiving the majority of seats, and without disturbing the gap between the two parties established by the previous corrective mechanisms, with the maximum number of seats that can be added being twelve.

Considerations

There are a number of considerations in relation to the three corrective mechanisms to keep in mind.

1. The first question is whether, in electing the sixty-five (65) Members of Parliament, there is a particular party that obtained the absolute majority of first preference votes at the first count in Malta. If the answer to this query is in the affirmative, then another question needs to be answered, that is whether that party that obtained the absolute majority of first preference votes at the first count in Malta also obtained the absolute majority of seats in Parliament. This question is required so as to ensure the majority rule in the House of Representatives. If the answer is in the negative, then a corrective mechanism needs to be applied so as to ensure that the party that obtained the absolute majority of first preference votes at the first count in Malta, can also have the absolute majority of seats in Parliament.
2. Moreover, it needs also to be ascertained that any seats added need to respect the proportion of the gap of the votes between the two parties elected. This is according to the third amendment introduced in 2007.
3. The third question that one needs to answer is whether the gap in seats in Parliament is proportional to the difference in the gap in the first preference votes, between the two parties elected. To ascertain this, a calculation is done according to what is listed in the thirteenth schedule of the General Elections Act¹⁶. The calculation involves establishing which of the two parties obtained the highest number of first preference votes, nationwide, and then this number is divided by the average. Here one might realise that a number of parliamentary seats may need to be added to either party to ensure proportionality. In the last two elections (2013 and 2016) this correction was required in favour of the minority party.

¹⁵ Ibid.

¹⁶ Chapter 354 of the Laws of Malta, General Elections Act Schedule XIII

The Current Electoral System and the Way Voting Works

The General Elections Act¹⁷ is authorised by the Constitution to determine the number of districts and the number of Members of Parliament that are to be elected in the general elections.

In a general election, the first step is the election of sixty-five (65) Members of Parliament from the thirteen (13) electoral districts, via the proportional representation through the single transferable vote system (PRSTV). This system is entrenched in article 56(1) of the Constitution that states that:

*“The members of the House of Representatives shall be elected upon the principle of proportional representation by means of the single transferable vote....”*¹⁸. The Constitution, in article 52, also establishes that Members of Parliament should always be at an odd number.

In the PRSTV system, the voters express their preference by putting consecutive numbers, starting with the number one (1) near their preferred candidate. A voter can vote for as many candidates as he/she wants and even vote for candidates from different political parties. The system is deemed to be proportionate because the representation corresponds in size to the number of votes received by the electorate. This proportionate system ensures a correspondence between the votes a party gets, via the individuals representing it in each district, as related to all other votes expressed in that district.

Once voting ends, the votes will be counted, and five (5) members are elected from each of the thirteen (13) electoral districts. This election of five members from each electoral district is a feature of the single transferable vote system. Other features include the fact that voters cast their votes for individual candidates in preferential order, not for a list of party candidates; and those voters are free to distribute their preferences among candidates of different parties or independent candidates.

The five members to be elected need to reach the electoral quota. Each electoral district has a quota, and this quota system is established by Article 61(5) of the Constitution which states that:

*“For the purposes of any review carried out under this article, “electoral quota” means the number obtained by dividing the total electorate of Malta (as ascertained from the electoral register in force at the time when the Commission carries out that review) by the total number of members to be returned to the House of Representatives at the general election following the next dissolution of Parliament.”*¹⁹

The quota is determined by taking the number of valid votes and dividing by the number of seats plus one. The formula used is $\text{votes}/(\text{seats} + 1) + 1$. Therefore, if a candidate gets one-sixth of the votes, that candidate is elected, because the number of votes is divided by six (6) to get the quota. This quota system is established by virtue of regulation 8 of the thirteenth schedule of the General Elections Act that states as follows: *“The Commission shall then divide the total number of valid papers in each division by a number exceeding by one the number of vacancies to be filled. The result increased by one, disregarding any fractional remainder, shall be the number of votes sufficient to secure the return of a candidate. This number is herein called the “quota”.*²⁰

¹⁷ Chapter 354 of the Laws of Malta, General Elections Act

¹⁸ Constitution of Malta, Article 56(1)

¹⁹ Constitution of Malta, Article 61(5)

²⁰ General Elections Act (Cap 354 of the Laws of Malta), regulation 8, Schedule XIII

Once the quota is established, the Electoral Commission will go on to proceed and count the number one (1) preference on all valid ballots. Any candidate who received enough valid first preference votes to meet the quota will be declared elected. There are instances where some popular candidates receive more first preference votes than what was required in the quota. In such a case, all votes that the candidate received more than the required quota are declared surplus votes. However, these votes are not disregarded because in the PRSTV system, every single valid vote, and every single valid preference is taken into account and these votes are transferred to that candidate on the ballot that received the voter's next ranked choice. Once this takes place, a second count is done to determine whether any other candidate has achieved the quota, this count round. Multiple additional counts will usually be necessary to determine the various candidates elected, in succession. If, in any one of the subsequent counts, no candidate meets the quota, the process of elimination kicks in, and the candidate with the least votes is eliminated and his/her votes are transferred onto the candidates that are still in the running. The votes will be transferred to the next-ranked choice on the ballot paper but if there are no further choices on such ballot paper, then the journey of that particular vote ends there because it is deemed to be a non-transferable vote. This process goes on until five candidates are elected from each electoral district and all available parliamentary seats have been filled.

This system might leave a remainder from quotas and therefore, there might be at least one unelected member in each district. This sixth unelected member will be relevant if a corrective mechanism takes place as candidates to fill any additional seats will be selected from those sixth unelected candidates, according to who got the most votes. The number of added seats has to be even because the final number of members of the House of Representatives has to be odd, as established by the Constitution.

Once this phase is concluded and all 65 members are elected, we move onto the second stage and shift the focus from a candidate-based election (PRSTV) to a party representation in the House of Representatives. It is now that there could be a need for a corrective mechanism which, as has been explained, have evolved throughout the years.

It is to be noted that casual elections are required when candidates are elected on two districts. If this is the case, such candidate must resign from one of the districts where he/she has been elected. To replace such candidate, a casual election is held to vote in a replacement. The casual election takes place between the candidates that contested on the district from which the former candidate has resigned. The process involves re-opening the packets of the votes of the candidate that resigned on that district and the candidate who gets one-half of the votes is elected. Casual elections are regulated by Part XV of the General Elections Act²¹ and they also follow the PRSTV procedures. Casual elections also happen when an MP vacates a seat in Parliament.

²¹ General Elections Act (Cap 354 of the Laws of Malta) Part XV

Gender Quota Mechanism

Whilst using the Proportional Representation by Single Transferable Vote since the inception of Malta's electoral journey, it has been amended to enhance the system making it fair to both the minority parties and the majority political party²².

Firstly, what does the gender quota mechanism aim to achieve?

It was created as at the time (2021), the stark reality was that only nine of Malta's 67 members of parliament were women. This statistic put Malta second to lowest, after Hungary, for proportion of women MPs in Europe²³. The National Commission for the Promotion of Equality (NCPE) is the official national body charged with promoting and safeguarding gender equality was supportive of greater gender balance in parliament and across state institutions. Their primary motivation was that the greater female participation in public life will make for better governance and precipitate greater gender equality in society more generally. Various groups, including NCPE, have commented on the lack of wider efforts for a proper cultural shift towards equality.

How does one qualify as the underrepresented gender?

A person of the "under-represented" gender, first and foremost, has to qualify per **Article 54** of the Constitution in order to become a Member of Parliament. The person (from herein after to be referred to as X) can get elected by the more traditional system of the Proportional Representation by Single Transferrable Vote – Corrective Mechanism. This means that X would get the specific quota from the appropriate district. This quota is determined by the number of valid votes cast and divided by the number of members needed in parliament (5) plus one i.e. 6 and then added by one again giving the mathematical equation of:

$$x \text{ amount of votes} / (\text{amount of candidates needed} + 1) + 1 = \text{quota}^{24}$$

This quota varies to the amount of candidates needed to be elected. The counting process proceeds in the manner where initially the first-count votes are counted meaning the first preference by the voters. Once a candidate acquires the quota of votes necessary, they are elected and the surplus votes get distributed on the other candidates that the voters ranked as their next choice. This goes on until the 5 candidates are elected. If X is not elected yet, there is still a chance and that is in the Corrective Mechanism.

²² Austin Bencini, *Malta's Hybrid Electoral System*.

²³ 'Malta's Proposed Gender Top-Up System: Good Intentions, Questionable Means?' (*ConstitutionNet*, 2022) <<https://constitutionnet.org/news/maltas-proposed-gender-top-system-good-intentions-questionable-means>>

²⁴ *ibid*

After the final PRSTV results from the 13 districts becomes official, and all 65 Members of Parliament are declared elected if one political party obtained 50% plus one of the first count votes. In any other scenario, the electoral result would not be adjusted however unjust the allocation of seats in Parliament. Indeed the amendment would only guarantee the minimum possible for the majority party to form a Government. This would only work if a party that attained the absolute majority of votes did not obtain the majority of seats. This amendment was done after the 1981 election. However, after the 1996 election, the second amendment was introduced to the corrective mechanism. The amendment entails that if a party gets a relative majority but does not get majority seats in Parliament then, provided only two parties are represented in Parliament, the first corrective mechanism is triggered. A feature in all corrective mechanisms is that no person who has been elected loses his parliamentary seat but the disadvantaged party gets additional seats to garner a majority in Parliament. The 2007 amendments which is the third corrective mechanism guarantees proportionality in seats depending on the vote difference between the two political parties, provided that only two political parties are represented in Parliament except that in the cases of a party gaining an absolute majority the mechanism applies even if there are more than one party elected into Parliament. The advantage of this system is that it is based on the previous adjustments that triggered off only in the case of a preverse electoral result. Such as what happened in the 2013 and 2017 elections, if a party gets an absolute majority of first preference votes however, the difference in seats is disproportionate to the difference in votes between such party and the Opposition, the Opposition is granted additional seats.

If X is still not elected, since X in this situation is defined as being the “under-represented” sex, the new 2021 amendment to the Constitution, also known as the Gender Balance Act can be defined. **Article 52A of the Constitution** gives the election a national approach. The question is asked “Is the distribution between males and females in parliament, through PRSTV and if used, corrective mechanism, is there a gender which is underrepresented i.e. underrepresented by 40%?” Here it does not make a difference which political party or which district! If X’s gender is being underrepresented by at least 40%, then equal addition to seats amongst the parties (up to a maximum of 12 new seats) are given. Therefore, the House of Representatives will no longer have 65 Members but increases if needed via this Act. How is the number of seats calculated? The mathematical equation according to Amendment 8 of the General Elections Act is this:

$$(A) + x / (B) + x = 0.40$$

where A is the total number of seats attained by the under-represented sex. B is the total number of members elected to the House, x is the additional seats created in terms of article 52A and the 0.40 is the denominator representing the total number of seats including the additional seats.

This mechanism has been criticized as it will make parliament larger but ignoring the underlying political landscape dominated by two political parties whose MPs rarely vote outside party lines. In the absence of a wider parliamentary reform to allow parliament to truly fulfill its duty as a democratic institution, the enhanced representation will not alter the roots of Maltese politics²⁵.

²⁵ *ibid*

Professor Sue Maguire in her 2018 report on barriers to women’s participation in local and national government, established that “equality of opportunity in political life remains an aspiration within the UK, with less than a third of local councillors and MPs being women. This report shines a light on the many barriers to achieving equal representation in politics and the need for structural, cultural and social changes to tackle long-standing and entrenched issues.²⁶” There are various issues as to why the underrepresented gender, in this case women are less represented in parliament, starting from political parties gatekeeping the representation of women to the cultural and working practices that still have significant barriers. Quotas have been tried and tested in a plethora of countries, however, the issue always ends up being that whilst quotas help women get elected and have a seat in parliament, the issues are not being addressed and adjusted. Professor Maguire has suggested that the informal and institutional barriers that are currently in power need to be reexamined and adjusted²⁷.

The NCPE also commented that some of the barriers that are currently present which keep women’s political participation from increasing are the “pervasive gender stereotypes, lack of family-friendly arrangements and a male dominated political sphere.” Furthermore in Malta, the members of parliament serve on a part-time basis, discouraging female participation as parliament convenes in late afternoon after their day jobs and logistically all MPs of the ruling party in government have government positions which latents the ability to make parliament independent and solely the executive arm of government²⁸.

The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) recognises the importance of women’s involvement in political decision-making processes and affirms that states and parties shall ensure that women “...participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government” This is found in article 7(b). Article 4(1) continues by stating that “...special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention..²⁹”

There are various countries that have introduced a similar quota to this one such as *The Former Yugoslav Republic of Macedonia, Kyrgyzstan, Serbia, Belgium, Uzbekistan, Albania, Portugal, Spain, France, Slovenia, Armenia, Romania and Bosnia and Herzegovina*. In most countries, a significant increase in women’s participation in Parliament was noted, with an average of 10.2% increase overall, however it was also noted that certain countries such as *Bosnia and Herzegovina* suffered a decrease after the law was made³⁰.

²⁶ 'New Report On Barriers To Women Entering Parliament And Local Government' (*Bath.ac.uk*, 2022) <<https://www.bath.ac.uk/announcements/new-report-on-barriers-to-women-entering-parliament-and-local-government/>>.

²⁷ *ibid*

²⁸ *ibid*

³⁰ (*Mfer.gov.mt*, 2022) <https://mfer.gov.mt/en/Documents/Public-Consultations/Gender_Balance_In_Parliament_Reform.pdf>

The way the Gender Corrective Mechanism will act is that the individual candidate reigns supreme rather than the political party. What determines the result is the final count of the counting procedures and in the case of X, the Gender Balance Act. Whilst it has gotten a significant amount of backlash and more efforts need to be done in order to implement change, it will be interesting to see how this will effect the House of Representatives in practice and the future of electoral results in Malta.

Despite being a promising amendment it has provoked certain criticism. Amongst which, whether this was the best way to increase women representation in politics. This gives rise to vaster and more important issues which are echoing in our country at the moment, that is the women's position in contemporary Maltese society. Amongst the debates which it provoked which most of them where perceived by the drafters of such amendment that will arise are the following:

- Fear that positive measures undermine male incumbents based on concerns that measures will present unfair competition and are discriminatory.
- Lack of sensitisation and openness to understand proposals and lack of willingness to positively contribute alternatives.
- Lack of strategic cooperation among multipliers, academics, media players, etc.
- Traditional political polarisation that tends to reinforce divides that may unnecessarily obstruct cooperation.
- “Them vs us” perspectives that may further polarise female and male opinion.
- Populist perspectives that tend to trivialise women's rights and thrive on dumbing-down and fuelling fears at the cost of rational deliberations.³¹

In order for the Gender Quota to be implemented, several comparative studies with other countries which have already implemented a similar mechanism were carried out in order to assess what form of results it will entail. As was discussed, certain states saw a substantial increase in women representation in Parliament which is a positive implication of such mechanism. Alas, the most worrying factor would be that it would disrupt the electoral system and ultimately democracy, however this can only be 100% confirmed if it gets to be utilized in the 2022 election process.

³¹ Gender Balance in Parliament Reform - Consultation Document

A Way Forward – Can we move on from our two-party system?

- Notional introduction - a contextualised reflection

One of the best ways to set in motion such a policy paper, dealing with a subject which *inter alia* has an overarching and direct influence on every Maltese citizen, is to signify the scope and content of the hereunder discussion.

Moreover, a very sound way to do this is to adopt Lara Attard's approach in her thesis "The Constitutional Implications on Small Parties in Malta, dictated by the Electoral Law System". As befits the thesis' abstract, the first point to mention is Article 1 of the Constitution of Malta, and the way in which it identifies Malta as 'a democratic republic'(Constitution of Malta, Article 1).

By way of logical deduction, a democracy necessitates free and organized election, one which ensures people's sovereignty and that their will is enacted in parliament in the most fair and open way possible. The Universal Declaration of Human Rights accentuates the point, "The will of the people shall be the basis of the authority of government: this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote r by equivalent free voting procedures" (UDHR Article 21)

Hence it also follows that the electoral system of our country, currently dictated by Chapter 354 of the laws of Malta, "General Elections Act", be accentuated and enhanced with no sort of reservation. All efforts should be directed towards making sure that the electoral system is as fair and transparent as possible, whilst also providing the most equal possibility to parties and independent members and their attempt at a seat. This is not to mention the role the electoral commission has in it.

The electoral system framework, in its current state, falsely delineates the notional idea that parliament need always, and is a political and legal battle between two parties, with the emphasis on two parties. Austin Bencini in his '*Malta's Hybrid Electoral System: A constitutional review*' claims that "there are very strong rumblings in the Maltese intellectual and legal world to the effect that there is much to be concerned about the future of representative democracy". One can argue that this heavy reliance on two party *de facto*, may be one of these issues. Bencini's book reaffirms that "nor are Malta's two main political parties appearing to lose their grip on the electorate which has consistently turned out in masse to vote".

The 1964 Independence brought about a new legal dimension of Malta, in tandem with innumerable advantages and facets. Nonetheless, ironically, it also meant the death of multi-party systems. This issue is rooted in several litigation issues, political and sociological factors. The hereunder discussion strives to tackle the question *in quanto*, in tandem with the literature available on the subject by the likes of Austin Bencini and others in this same constitutional field. The aim is to make use of sub-questions which follow a logical order and collectively answer the question. Solutions will ultimately be delineated, both those adopted by academics and even prospective new ones.

In his ‘*The Rule of Law a’ la Maltese*’, Kevin Aquilina argues that “Since Malta gained Independence the prevailing two-party system has not done enough to strengthen the rule of law: on the contrary partocracy is one key factor why we are swooping so low in the observance of the rule of law”. (Page 3 of book). This reflection should *prima facie* set alarm bells and trigger an in-depth discussion. Unfortunately, insofar as the existence and prosperity of third political parties is concerned, there remains an intuitive reluctance or utilitarian realisation that voting for a vote for a third party, at least not withstanding *mutatis mutandis* changes, is merely futile

- **How do third parties work?**

One should initially make a distinction between acquiring a seat in parliament and governing, being able to manifestly lead a government via a whole cabinet or a coalition government, hence a holder of the one of the largest institutions of Malta.

Third parties are basically parties other than the two main parties in a domestic political sphere. For example, in the U.S, the main parties are the Democrats and the Republicans, with any other party referred to as a third party. In Malta, such parties do exist with some existing for some time now and others only recently gaining prominence or being established. The obvious example is Malta’s green and progressive party ADPD. Nonetheless, other parties do exist like the much recent Volt, a new political party striving to enter into the domestic with a much progressive and liberal manifesto.

It has been stated that “Electoral reforms being mooted by the two main parties will make it easier for third parties to win a seat in parliament, but almost impossible for them to hold the balance of power and hence be part of a coalition government”. This distinction is an important one and an elaboration on the reasons why will do the discussion justice. A third party does well in terms of a social and political influence on the government, yet the influence is limited to merely media and social pressure via all the legal ways of persuasion. Nonetheless, for a third party to influence the situation of a country in more manifest terms, it necessitates the possibility of having constitutionally created powers and hence the ability to legislate.

The currently pondered solution for example, helps third parties get into parliament, hence have the possibility, all-be-it limited to the private member’s bill. Although the track record of such a bill isn’t necessarily the most prolific, the divorce bill for example did manifest itself in this way. Nonetheless, such a solution, at least as portrayed to the third parties themselves, has in itself limitation.

Ironically, Malta has had several independent members as well. Once again, the situation is very much like when individual members from a third party are either elected in a general election or via a byelection. Currently for example, at least up to the next general election which will occur on the 26th of March, Konrad Mizzi, Marlene Farrugia and Godfrey Farrugia sit as independent members of parliament. Nonetheless, these members were all part of a major party upon the last general election.

Hence, as to the question of what third parties are, these are parties which are not as prominent in a legal system as two other main ones, who aspire to not only make it to parliament by occupying a seat but also having the possibility to manifestly govern. A coalition is one way of doing it.

- **The relationship Malta's electoral system has with third parties**

The system, as it stands, was summarised by Mark Laurence Zammit, a journalist who wrote in the article entitled 'Electoral reform: what could it mean for Maltese democracy?' and claimed that "Even though many people's intention is to vote for a party, in Malta we actually vote for candidates. Our entire system is designed to elect individuals, so much so that the concept of political parties only made it into the constitution in 1987. Therefore, a party assumes victory not because people vote specifically for it, but because its candidates get the largest amount of number one votes".

For any sort of political party to be able to govern, an absolute majority is not the only requisite, since there also needs a majority in parliament and for this reason, the road to Castille is not as easy as getting the largest number of votes. Our current system also permits third parties to make it to parliament if they get enough votes.

- **A what if situation?**

There is a difference between what can theoretically happen and what does happens - "But what if none of the parties secure an absolute majority of votes and seats and a third party gets elected to parliament?"

This situation does get into play the notion that was aforementioned and how third parties can possibly govern. "In that case, the parties between them will have to enter negotiations to form a parliamentary majority.

The scenario is then perfectly delineated by Laurence Zammit in saying that "In such a scenario, any two parties may join forces, and if combined, they secure more than half of parliamentary seats, they may form a coalition government. They may do so, irrespective of their popular vote. So let us say PL, PN and ADPD all make it to parliament. Labour gets the most votes and most seats, but none of the parties secure an absolute majority of seats. If PN and ADPD join forces and form a parliamentary majority, then they may very well head to Castille. In this case, even though Labour got the most votes and perhaps even the most seats, it will not form a government".

Nonetheless, so far, no third party has managed to be elected to parliament since independence. This reflection nonetheless serves for many to reflect on how strong both parties have been in the domestic sphere. It also derives the conclusion that Malta's relationship with third parties is far from a consistent and substantial one. The possibilities are there, as there needs to be, yet in reality this has seized to manifest itself.

The history of the bi-polar system Malta is found *inter alia* in Dr Austin Bencini's book *Malta's Hybrid Electoral System: A constitutional review* as the academic claims that it is evident that the PN-MILP duopoly, was consecrated at the 1955 election". Dr. Bencini goes on to point out that "The perceived failure of PRSTV in providing the Maltese political landscape with multi-party democracy was deemed to extend from British rule and to independent Malta. In fact the latter period moved decisively from the bipolar model to a strict bi-part one".

Different elections, time and time again have proved this right, and have indicated that third parties have it somewhat harder to break the nexus between the two parties and government. Hence, as to the question on the relationship between Malta's electoral system and third parties, there can be several conclusions. They all centre however around third parties not being prominent. In the 1955 election,

“the electorate had already set in motion a voting pattern with organised preference sharing among the candidates of the two parties as early as the 1951 election”(book) The reason will be exfoliated hereunder.

- **Why has Malta never elected a third party?**

Malta’s political history does not occupy an occurrence of a third party in parliament, at least post-1964 Independence. As to the reasons why, the issue is quite a complex one. It is quite an ironic issue since those in favour if it claims stability whilst on the other hand, others embrace the words of Mark Laurence Zammit, third parties claim that “the Maltese system is rigged against them, making it almost impossible for them to make it to parliament”

The article claims that “This is because for any party to set foot in parliament, it needs to secure 16.6 per cent of number one votes in any of the 13 districts. With our current number of registered voters, that would mean each party needs to get around 4,000 votes in one district. It continues that “The problem is this: For PN and PL, getting 4,000 votes in any given district is easy, but for small parties it is currently impossible. To put this into perspective, in 2017, AD only secured 2,564 votes nationwide”

Nonetheless, in aim to be objective, one must also give regard to what academics have said about the issue. There seems to subsequently be a discrepancy in opinion about the matter.

Dr.Austin Bencini in his book argues that “the claim by minority parties revolves on the perception that PRSTV as practised in Malta would have given rise to a ‘natural’ electoral barrier or threshold of around 16 % of the district vote which needs to be reached for any third part to be represented in Parliament”.

The academic goes on to mention Alternattiva Demokrattika, now APDP. He claims that. “It has unsuccessfully been presenting candidates at general elections since 1992. Its performance is consistently below 2% of the national poll at the first count. The party does enjoy a 'presence' in the national political debate which far outstrips its electoral strength. Its status of Malta's third party' is well established, albeit as an 'extra-parliamentary' political force resembling more the role of a political pressure group occupying the ideological space of green politics' in Malta”.

Despite its influence, and as was said before, “Alternattiva has yet to win a majority of seats in a local council since the introduction of local government in 1992. Its best performance to date has been in the 2004 European Parliament elections, when it obtained 9.6% of the first count votes, with its sole candidate finishing as runner up after the five elected candidates. The indictment of the most resilient third party' nonetheless is of a serious nature in that it attacks the electoral system's very raison d'être, namely that of being a system which encourages multi-party representation in the country's legislatures”

The reason as to why third parties are just not as prominent can also directed towards the constitutional amendments which have been postulated across the years, particularly the 1974 and 1984 amendments Dr, Austin Bencini in his thesis claims that “After the 1974 amendments, the re-definition of the ground norm (constitution) brought with it the re-definition of the State itself. The new political motor driving the constitution became the duopoly within parliament manifesting itself directly in the wording of the constitution itself, giving rise to what in this study is termed as ‘the lifting of the statal veil”

He continues in saying that “The 1964 constitution, as amended in 1974, failed to provide the necessary guarantees to safeguard the political balance between the two parties, the solution undertaken would be to have both parties together breaking through, legally and constitutionally, the statal veil allowing the duopoly itself to guarantee the new balance of power and replacing the ‘objective’ non-partisan functions of the state. Dr.Bencini goes on to claim that “Through the 1974 amendments, the two parties themselves legally guaranteed, through the supremacy of the constitution, the said balance in the case where the ‘independent and non partisan’ institutions of the State failed to do so”.

It ought to be mentioned that the 1974 amendments were not the only contributors. Dr.Bencini’s thesis claims that “the first instance when the duopoly asserted its new found supremacy was through the next major exercise in constitutional amendment of 1987”

The electoral reform , as explained by the same academic in his thesis, also accentuated the two-party dominion. Furthermore, Dr.Bencini’s book, ‘Malta’s Hybrid Electoral System: A constitutional review’ also directs an element of blame on the electoral district set up. Bencini’s thesis claims *inter alia* that “The District marginal quotas took the clear physiognomy of a bipolar STV electoral system. Of the 24 seats selected with the quota only one was outside the PN-MLP bipolarity”.

It is therefore clear, as to the question posed, that different factors have contributed to the status quo.

- **Third Parties in other countries:**

Third parties are much more prominent in other countries. This is clear to say, and Italy can be taken as a case study.

Marco Valbruzzi’s paper ‘ Not a normal country: Italy and its party systems claims that “From 1945 to 1947’ is testament to the way in which even such a short period of history is reflective of the multi-party system in Italy. The claim “Italy was governed by oversized coalition cabinets’ encompassing the political parties that had contributed to the fall of the Fascist regime”, already testament to the approach Italy was to take insofar as third parties is concerned. This persisted in Italy and took a new dimension with the fall of the Berlin wall. The article claims that “ In sum, the fall of the Berlin Wall presented a window of opportunity for all those outside or under the control of the system”, enabling new and other parties to join in the act. The article continues in saying that “This combination of political, judicial, and economic factors created a condition that can correctly be described as ”collective anxiety”, in which new parties, led by more or less charismatic political entrepreneurs, found new pathways to electoral success”.³²

To further exemplify the way in which Italian politics has functioned, in sharp contrast to the Maltese way, “In 1993, for the first time in Italian history the premiership was held by a ”non-party personality” without any previous party affiliation: Carlo Azeglio Ciampi (former governor of the Bank of Italy)”. Ironically, by 1993, the Maltese status quo had been long established. The claim that “the legislative election of 1994 was a turning point in Italy’s political history. Mass parties disappeared, new personal

³² Ciro D'amore, 'The Politics Of Italy: Governance In A Normal Country' (2012) 17 South European Society and Politics.

parties entered the scene..” is further testament to the claim. Italy’s electoral system hence reaffirms how third parties in other countries have a more prominent say in the domestic status quo.

- **Multi Party systems – a success or failure? (An analysis of EU countries which exhibit such a system)**

Multi party systems are spoken highly about, encompassing several advantages which contribute to the overall legal and political system of a state. By way of exemplification, Manfred J. Holler in the prologue of ‘An Introduction into The Logic of Multiparty Systems’ claims that “The thread linking the various contributions” delineated in the book “can be identified with the notions of stability and efficiency of multiparty systems”. The two adjectives *prima facie* accentuate the approach which is often taken with such a system.

As Holler’s book claims, “aside from the political sphere, multiparty systems (and their analysis) are of relevance to practically everybody in our societies”. Hence, even if our system remains a bi-party system at large, even if the solutions proposed and the mechanisms do not suffice, an analysis of multiparty systems should persist. This is rooted in several obvious and logical reasons.

Multi-party systems have advantages like allowing pluralism to flourish more than any other system. Pluralism emphasizes on the need for difference to be in place, both commending and encouraging it.

A scholarly website “Bscolarly”, on the matter, argues that “Multi party system demands a high degree of political maturity, a culture of tolerance and understanding a high standard of political discipline. It is indeed advantageous and that is why countries like: Germany, Italy, France, Sweden, Switzerland, Nigeria, India and Zimbabwe practices it till today”. It is therefore clear that such a system does have its advantages.

On the downside of multiparty system is the notion of security and stability. A government needs to be stable for a state to have a sound running. The state requires that the executive and the members of parliament which are ready to work with one another. In relation to third parties, should these form part of a coalition government, the issue of instability can be a downfall. Political agendas and different manifestos can cause a divide between the executive, leading to a ‘bumpy’ executive road. Obviously, should third parties be elected on their own, the situation is different.

Hence, in relation to the question posed, one may argue that both a multi-party system has both advantages and disadvantages. What is however deducible is that our system has become so polarised that academics have emphasized the need to change, effectively into a multi-party system

- **What policy-based solutions have been pondered?**

In light of aforementioned points, an electoral system reform is hence needed. Political scientists and academics have delved into the ways and means by which this can manifest itself. Nonetheless, to answer this question, it is only logical to start with the solution proposed or else pondered by the current members of parliament and ultimately the executive. This seems to most likely proposal to manifest itself sometime after the upcoming election on the 26th of March.

The already pertained to Times of Malta article *'Electoral reform: what could it mean for Maltese democracy?'* points out that “Social Solidarity Minister Michael Falzon and Nationalist MP Hermann Schiavone...told *Times of Malta* plans are in hand to possibly introduce a national threshold, which would enable a third party to be represented in parliament if it wins five per cent of the overall vote, around 17,000 votes nationwide”.

“Therefore, one pondered solution is a national threshold –“ a concept all parties seem to be agreeing on. Both PL and PN suggest it should be set at five per cent. This would mean any party may set foot in parliament given that it secures at least five per cent of votes nationwide. Germany also has a five-per-cent national threshold, but other countries have an even lower percentage. In Israel’s case, it is just one per cent. With the current number of registered voters in Malta, five per cent means approximately 17,000 votes”

A point worth mentioning is that although the main parties are in favour of change, “they are insisting that if a third-party joins parliament and none of the three parties get an absolute majority of votes and seats, the party with the most votes will still be entitled to a top-up until it gets an absolute majority of seats and is therefore able to govern by itself”

The article continues to elaborate on how “This system of seat rewards is famously known as *premio maggioranza*. This implies that a nationwide threshold may enable a third party to be in parliament but not to form a coalition government, because even though they may occupy more seats if they join forces with another party, they may never govern because the system will reward a majority of seats to the party with the most votes

An overarching solution which has been proposed is one pertained to as “A second republic”. One may also look at individuals’ opinions.

- **Franco Debono’s solution:**

Ex-Member of Parliament Franco Debono also claimed that “We have too many politicians in this country and this is enabling a rampant culture of clientelism and nepotism. “I believe the solution is to have a smaller parliament of full-time MPs. Debono goes on to logistically devise a solution claiming that “The country should ideally be split in seven districts and seven candidates are elected from each district, bringing the total number of MPs to 49.”

- **Cassola’s solution:**

Arnold Cassola, an independent candidate for the next election spoke about a solution, one which would keep the current system in place but add a second part, which is a national quota. “So we would leave the first part of the system regarding individuals as is, but we would then also look at all the votes and have a national quota by which other parties getting, I would say needing 3% of the vote, get into Parliament.” The Independent candidate argues that “For small parties to get a candidate elected on a district is extremely difficult, but is it also fair that we ignore the percentage of the population who vote for that third party? This is a question which we should also delve into and examine”

- **Solutions pondered**

• **A Quota mechanism:**

Recently, a bill was passed in parliament enabling the least represented gender to be aided in acquiring a seat in parliament.. This what is pertained to as a gender quota, and despite its controversial manner it will lead to more women in parliament, something which has been long overdue in Maltese parliament. Once again, the argument is merely a utilitarian one rather than a Kantian or Socratic one. Nonetheless, once again, notwithstanding the notional differences which play a part in whether one should ever accept such a mechanism, or so if a mechanism is the way forward, it remains a possible solution to situations where there is a discrepancy. Insofar as third parties is concerned, such a quota can help in electing members from that party into parliament. This would prima facie seem to be untoward what has been said, specifically the need to govern yet it could be start.

- **Other policy-based solutions?**

There are some solutions which come to mind which may have a positive and real effect on the situation we find ourselves in. Some solutions may seem as merely minor, yet the author believes that a cultural in as much as a legal change is required. Legal solution's insofar as mechanisms is concerned will delineate an effect yet emphasizing a shift in culture is more sustainable. This requires litigation measures and the hereunder proposal are exemplification of such.

Prima facie, education is one of the mechanisms by which this can be done. By way of example, there needs to be a more comprehensive literacy syllabus across primary and secondary schools. The education act can be means to this end. Chapter 327 can include, by means of legal notices, the particular topics of politics. The stigma that has surrounded political parties needs to be stopped. It is only natural for upcoming adults to question political notions. The more such questions remain unanswered from official sources and credible answers be presented, the more people turn to unofficial and most probably bias answers. This, in the opinion of many youths, is the root of partisan politics which consolidates the two-party system

Secondly, notwithstanding the political arguments which may surround the issue, the finances of the two main political parties is an issue which must be addressed. Along with the issue of donations which has led to much controversy, private income to the two main parties leaves the others at a disadvantage. There are obvious reasons to this status quo. More donations then lead to more advertisement and effectively political party propaganda. More money also brings about more requests for interviews, where the main ideas are disseminated. Social media also plays into this. The more money a political party has, the more infrastructure it can quire. This encompasses both virtual and physical infrastructure. Hence, a possibility could be that the state should finance the parties. There should be an allocated fund from the consolidated fund. Such amendments would require constitutional ones. Nonetheless, it can lead to positive advantageous outcomes. It also aids in facilitating more transparency from the parties which are effectively running our country.

Another solution which can be done is in tandem with what the European Union has done so often, workshops. This may seem like a contradiction since this would effectively mean a political party in government promoting other parties. Nonetheless, the greater good and a sense of political maturity would see how this makes sense. One must admit that the likeliness of this happening is very low. Nonetheless, academia has always been means to explore the hypothetical. Furthermore, the state remains one for everyone, with several institutions that belong to all. For example, the UK Parliament website disseminates information on different political parties, listing all the different parties represented in parliament, and providing information. “Below are the links to the websites of the political parties whose representatives were successful in elections to the House of Commons at the 2019 General Elections. Something along these lines may help, also possibly including those which run for the election.

Hence, the approach taken here is more of a fundamental one. It may not solely and uniquely formulate results, but it will likely shift the ideology, and with the young generation seeming to be open to new ideas, or at least the majority of such, such an approach may reap benefits. Nonetheless, other solutions can also be more specific. By way of example, the threshold which has been so greatly spoken of can be implemented and change the dimension of the electoral system.

In tandem with what Dr. Austin Bencini argues in his thesis “After the 1974 amendments, the re-definition of the grund norm (constitution) brought with it the re-definition of the State itself. The new political motor driving the constitution became the duopoly within parliament manifesting itself directly in the wording of the constitution itself, giving rise to what in this study is termed as ‘the lifting of the statal veil’”. Hence, the opinion of the writer is that we have a scenario which *de facto* imposes limitations, legal ones just as much as political ones. Hence, solutions are needed to ensure a more representative democratic state and one which encompasses a fair game to political parties.

This paper could not have been published at a more opportune time. It is our responsibility as law students to educate the citizens of Malta, in a neutral manner, about our Electoral System. This step is of utmost importance so the electorate could appreciate the power of their vote and the workings of democracy.

Conclusion

As was discussed throughout this paper, our electoral system is of a hybrid nature. It is also cumulative as since 1987 it has been amended several times, always building on strong foundations. The last two elections have shown a statistical result which was different in nature than the others. The labour party has obtained a “landslide” victory and Dr Austin Bencini commented that: “*winning an overall majority of nine seats after the application of the corrective mechanism in favour of the Opposition Nationalist Party which represented a first for the workings of the corrective mechanism*”.³³

It was further discussed that the current electoral system forms part of the Proportional system, in particular the Single Transferable Vote [STV]. One shall note that from the European Union, only Malta and Ireland have stuck to this particular system. It particularly intertwines the principle of proportional representation with the possibility of cross voting. The whole counting process is listed in one of the schedules of chapter 354, the General Elections Act.

It is to be mentioned that Malta’s electoral system is being pushed towards being digitalized as other countries have already adopted such method in order to speed up the counting process and minimize human error. In fact, as of November 2018, the counting hall in Naxxar was renovated to host a fully functioning electronic system from Idox, a Scottish software company. One shall note that these were already partly put in action in May 2019, during the European Union Elections and the Local council elections. Such a system would remove the possibility of issues such as the one seen in the ‘*Claudette Buttigieg vs Electoral Commission*’ (13th March 2013) case. In this case there were a number of lost and wrongfully assigned first-count votes which would have led to the accession of the appellant to the House of Representatives. The Electoral Commission had admitted to the error but argued that it was inevitable, even though this would not be the case if an electronic voting system were to be introduced

In a nutshell, our electoral system is unique due to being mainly a two-party system and due to the inclusion of corrective mechanisms.

The latest amendment to the Constitution was the gender quota mechanism. In a nutshell, as was already discussed, this mechanism is a Gender quota hence it was introduced as an aid for the “*underrepresented sex*”. In addition, the European Institute for Gender Equality’s 2020 Gender Equality Index together with the 2020 Global Gender Gap report, have shown that the constitution of the Maltese Parliament which was female was a mere 13.4%. Therefore, at this point in history it this category are women. This mechanism will not conflict with the current electoral system, based on the PRSTV and corrective mechanism, which ensure the majority rule in Malta. The objective is so the percentage of MPs making the ‘under-represented’ sex in the House of Representatives will be closest possible to 40%.

Contemporary political structures are aware that they must reflect existing realities in order to preserve their legitimacy and relevance. This awareness is promising as there is growing support for affirmative action to secure greater room for those women who are ready to serve and assume responsibilities within

the House of Representatives. In face such recommendations adhere to the established principle enshrined in article 14 of the Maltese Constitution:

“The State shall promote the equal right of men and women to enjoy all economic, social, cultural, civil and political rights and for this purpose shall take appropriate measures to eliminate all forms of discrimination between the sexes by any person, organisation or enterprise; the State shall in particular aim at ensuring that women workers enjoy equal rights and the same wages for the same work as men.”

The fulcrum of this policy paper is ‘A way forward – Can we move on from our two-party system?’ From all the research which each writer meticulously found, there was always a source referring to this issue; most commonly would arise from criticism made by one of the other third parties or independent candidates, apart from the two major ones.

According to the Social Solidarity Minister Michael Falzon and Nationalist MP Hermann Schiavone, who are two electoral experts, they held that the objective is to possibly introduce a national threshold, which would enable a third party to be represented in parliament if it wins a minimum of five per cent of the overall vote, that is around 17,000 votes nationwide. Both PL and PN accepted that third parties join them in parliament by means of this nationwide threshold. However, their only restriction is that if a third-party joins parliament and none of the three parties get an absolute majority of votes and seats, the party with the most votes will still be entitled to a top-up until it gets an absolute majority of seats and is therefore able to govern by itself. Despite that third parties might find it somewhat unfair; this is a pivotal notion to be kept in parliament as otherwise it will affect the health of the parliament and will not enable the government to work in a stable manner. Such instance had occurred in Italy.

As a way a forward, when compared with other countries around the world, the aforementioned electoral reform which both parties have been working on would be a healthy kickstart to a new political era in our country. Some critiques are also of the view that parliament should be minimized, as other European Countries have been opting to do. However, this would increase the workload on each member and may decrease the efficiency and expediency of implementing the manifesto.

Improvements to the system:

- Divide Malta into fixed districts in order to avoid making changes to the electoral division boundaries and complicating campaigning for the contesting candidates.
- The ‘Robson Rotation’ method would be fairer for the candidates. The candidates’ names order would be changed from putting them in an alphabetical order according to their surname. Candidates who are usually at the bottom of the ballot paper would acquire a more advantageous place and hence increase the chance to garner more votes. [one shall note that this method is not according to the true spirit of democracy as the electorate should go to vote well-informed about what each candidate from their district has to offer and vote on that basis. However, this caters for the part of the electorate which vote in a non-logical manner]
- Dr. Bencini also suggests that in order to preserve the majority-minority ration whilst still satisfying the requirement of composition of the House (that of an odd number of MPs), the election of a third-party candidate must be accompanied with the runner-up of the majority party before the awarding of extra seats. This would allow for a proportional majorities greater than a single seat between the minority and the majority.

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