

The Danger of Party Government

by

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Department of Political Science  
Duke University

Date: March 21, 2017

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Michael C. Munger, Supervisor

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Alexander Kirshner

Thesis submitted in partial fulfillment of  
the requirements for the  
degree of Master of Arts in the  
Department of Political Science in the  
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ABSTRACT

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## **Abstract**

American voters understand that elections have consequences, but they have become so disillusioned by their political system that approximately 40 percent have self-selected out of the two-party circus, choosing instead to identify as independent or unaffiliated which often requires them to forego their primary election voting rights. They understand that the process no longer serves its intended purpose of providing for representative government. Nevertheless, when it comes to elections, Americans get it wrong in just about every way possible. They spend so much time debating which superficial features of the electoral system — voter ID laws, polling place hours and locations, voter registration deadlines, etc. — are destroying the political process that they overlook the real cause of its decay: that political parties exercise control over the rules of the electoral system.

At the end of the day, people want a government that works. It is quite clear that the political system we have now simply does not allow for that. Less obvious are exactly why this is so, and what can be done. The role of this paper, then, is as a sort of citizen's primer to our electoral crisis. I begin by tracing the origins of American political parties and describe how they and their agents in government mold the electoral system to their advantage in getting and maintaining control of government. Next, I discuss the ways in which that system is so deleterious to stable, functioning government and

“national attachment” in the body politic. I then propose an alternative electoral system that would allow for fair and effective representation of more people, helping to rebuild the necessary trust and confidence in our fundamental political institutions. Finally, I reflect on the dangers of continuing to use a system in which political parties—private organizations—abuse state power and the fundamental institution of democracy—the election—to protect and advance their private interests, and how institutional collapse might be avoided.

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## **List of Abbreviations**

LMB – Law-Making Body

PR – Proportional Representation

PR/PL – Proportional Representation by Party List

PR/STV – Proportional Representation by Single Transferrable Vote

STV – Single Transferrable Vote

## Acknowledgements

First, a tip of the hat to organizations like FairVote and Open Primaries that are working toward fairer and more representative electoral institutions. These groups have made great efforts in synthesizing research on electoral systems and advocating for political reform. To the permanent and temporary staff at the Durham County Board of Elections: thank you for the opportunity to experience our electoral system in such a hands-on way and in so many different capacities. Your dedication to protecting the process is borderline heroic, and was a great reminder that people are what ultimately make this whole thing possible. Of course, I also want to acknowledge and thank the library staff and holdings of Duke University Libraries, including the Goodson Law Library; University Libraries of the University of North Carolina at Chapel Hill; the D. H. Hill Library at North Carolina State University; and the James E. Shepard Memorial Library at North Carolina Central University.

I'd like to thank my thesis committee members, Jack Knight and Alexander Kirshner, for providing feedback during this process; and especially Michael Munger, my thesis advisor, for always asking tough questions and making me think even when it was difficult or uncomfortable.

Finally, a thanks to Greg and Peri for their 26-years-and-counting as co-chairs of the Bennett Household Oversight Committee.

# 1. Introduction

Everything you think you know (and more) about elections is wrong. Americans think Congressional and presidential elections matter more than state and local elections. It is difficult to get them to conceive of a voting system in which there is more than one winner; or to realize that there are more than two political parties, and that all parties are actually private organizations as opposed to (formal) parts of government; or to understand how governing majorities are often manufactured — not reflective of the preferences of a majority of voters — due to partisan advantages written into election codes. And that doesn't even come close to running the gamut of voting rules and laws. I could spend hours documenting all our electoral misconceptions, but I won't. At least not here. Suffice it to say that we Americans get it wrong in just about every way possible when it comes to understanding elections.

The stakes of elections are apparent. They are the mechanisms by which governing authority is fairly conferred and peacefully transferred. Therefore, it matters a great deal whom we elect to govern. And whom we elect is determined both by *who gets to vote* and *how their votes are aggregated*. Yet, we often underappreciate or totally overlook these two fundamental questions every electoral system must answer in establishing legitimate government. A fair amount of hell is raised consistently and constantly regarding the first question, a fact which should come as no surprise. After

all, the extent of the electorate—those people who get to vote—has a great effect on what political issues will be discussed and how they will be framed. Political scientist E.E. Schattschneider referred to this as the *scope of conflict*, declaring it the fundamental battle of all politics.<sup>1</sup> Debates over the conspicuous determinants of the scope of conflict—i.e. elector qualifications, voter ID laws, and the like—are important, to be sure, but an equally decisive, and less-frequently examined, component is the method of vote aggregation—the voting system itself.<sup>2</sup>

Americans have been so long and aggressively institutionalized by their electoral system (an overarching term for both the scheme of representation and method of vote aggregation) that they are both unaware of and unable to comprehend alternatives, which in turn leaves them, as bodies politic, ignorant of all the ways in which the current, dominant system—known as single-member district plurality (SMDP)—is detrimental not only to the stable, competent, and fair administration of government; but also to the foundation upon which all governing authority and legitimacy rests: the public’s trust in, and consent to, its political institutions.<sup>3</sup>

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<sup>1</sup> E. E. Schattschneider, *The Semisovereign People: A Realist’s View of Democracy in America* (Hinsdale, IL: Dryden Press, 1975).

<sup>2</sup> Kathleen L. Barber, *A Right to Representation: Proportional Election Systems for the Twenty-First Century* (Columbus, OH: Ohio State University Press, 2001).

<sup>3</sup> Harold F. Gosnell and Richard G. Smolka, *American Parties and Elections* (Columbus, OH: Charles E. Merrill Publishing Company, 1976), 90.

My argument is that our current system is not working because the answers it provides to the fundamental questions of suffrage and aggregation mentioned above do not square with contemporary Americans' understandings of voting rights, representative and effective government, and plain fairness. And the reasons our electoral system provides such anachronistic answers to these questions is because it continues to be controlled by political parties that, although once and potentially useful forces in American political life, have come to seek, almost exclusively, the procurement of power and enjoyment of its benefits rather than the perfection of a Union.

Our electoral system is an anachronism that must be reimagined to recapture the hearts and minds of an extremely diverse population at risk of succumbing to irreversible political disillusionment. This institution is the foundation of our system of government. Unless it works fairly and transparently, we all might as well pack our bags and go back to all the places our ancestors came from.

I intend to provide better answers to the questions of *Who gets to vote?* and *How are votes counted?*—essentially to recommend an alternative electoral system that will steer us back toward a healthy regard for, and necessary trust in, our nation's political institutions. Such a system first and foremost rejects closed primary elections in which only voters affiliated with certain political parties are allowed to vote, opting instead for more inclusive, open primaries. Further, it is built on a proportional system of

representation as opposed to our current winner-take-all rule that misrepresents the support political parties have in the electorate, allows parties and candidates to choose their constituents, forces voters to vote dishonestly for candidates they think can win instead of candidates they support, and leaves huge numbers of citizens without representation in law-making bodies; and employs ranked choice voting that allows voters to more fully express their preferences in an election.

This discussion and proposal is concerned only with legislative offices, specifically state legislatures and assemblies—since these are where much of the real policy work affecting the lives of average citizens is handled, and so we all might be better off if we were to pay greater attention to local and state elections—but the recommendations could be applied to local councils and Congress, too. The idea is that legislators, at any level, are the folks with whom citizens are most likely to have any sort of interaction or correspondence. Judicial officers don't fulfill representative roles, and neither do executives, which are single-seat institutions with too many duties to be consistently available to citizens anyway.

Before I work through my justification of this alternative electoral system, I must provide a detailed explanation of the ways in which our current electoral system is so deleterious to good government and a robust political process that almost literally

anything would be better. And to explain how we came to use such a system, I will begin with a summary explanation of the logic of political parties.

## 2. The Political Party

Before deciding on a new course, it's important to understand where we are, and even more so how we got here. The first order of business, then, is to gain some understanding of an important aspect of electoral systems: political parties.

### 2.1 What is a Political Party?

Literally thousands of books and journal articles have been written about political parties, and they can be grouped into three general approaches to the study of parties.<sup>1</sup> The groups are: parties as “diverse coalitions that aggregate and articulate the interests of the public”<sup>2</sup>; parties as responsible and accountable organizations that “(1) make policy commitments to the electorate, (2) are willing and able to carry them out when in office, (3) develop alternatives to government policies when out of office, and (4) differ sufficiently between themselves to ‘provide the electorate with a proper range of choice between alternative actions’”<sup>3</sup>; and parties as collections of partisan elites—office-holders and office-seekers—focused primarily on electoral competition. My own assessment falls somewhere between the second and third understandings. Parties are uniquely situated and constituted to provide public accountability and responsibility.

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<sup>1</sup> John Herbert Aldrich, *Why Parties?: A Second Look* (Chicago: University of Chicago Press, 2011), 8.

<sup>2</sup> Ibid.

<sup>3</sup> Austin Ranney, *Curing the Mischiefs of Faction: Party Reform in America* (Berkeley: University of California Press, 1975), 43. Ranney was quoting from Nelson W. Polsby and Aaron B. Wildavsky, *Presidential Elections: Strategies of American Electoral Politics* (New York: Scribner, 1971).

The downside is that they appear to be increasingly concerned primarily with the pursuit of power—i.e. winning elections.

Whatever the case may be, the truth of Schattschneider’s assertion that political parties are not, and never have been, organized groups of like-minded voters coming together to support a party’s political candidates is quite clear (despite the beliefs of popular and news media to the contrary).<sup>4</sup> The Democratic Party does not consist of the 65.8 million people who voted for Hillary Clinton in November 2016, nor is the Republican Party an association of the 62.9 million people who voted for now-President Donald Trump in the same election. Political parties should not be defined as “mass associations of partisans”, but rather by their purpose: to get control of the government.<sup>5</sup>

Though the contemporary iterations are exponentially more developed and powerful than their nascent forms, parties are, and always have been, organized efforts to get power. Elections are the periodic events during which individuals and groups, including political parties, are ‘invited’ to try their hand at doing just that. Now, there is nothing wrong per se with political parties trying to get control of the government—i.e. win elections. In fact, the pursuit of power by political parties is vastly preferable to the alternative. Schattschneider says we can have either *party government* or *special interest*

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<sup>4</sup> E. E. Schattschneider, *Party Government* (New York: Rinehart & Company, Inc., 1959), 53.

<sup>5</sup> Schattschneider, *Party Government*, 53-54, 35.

government.<sup>6</sup> Government by special interests will naturally become “narrow, corrupt, and anti-majoritarian” as it restricts the scope of conflict to a small number of individuals squabbling over particularistic questions in which private interests are of primary concern, while party government will “focus on the nation rather than on particular interests.”<sup>7</sup>

Other political scientists and theorists—John Aldrich,<sup>8</sup> V.O. Key,<sup>9</sup> Robert Dahl,<sup>10</sup> Nancy Rosenbloom,<sup>11</sup> Paul Beck,<sup>12</sup> Richard S. Katz,<sup>13</sup> and Gerald Pomper<sup>14</sup> to name only a few—have echoed the argument that parties are centrally important to the life of a democracy. Others further argue that parties have demonstrated their capacity for responsibility and accountability by “providing political symbols, organizing interests and dissent, recruiting candidates, managing conflict, implementing policy, legitimizing decisions, fostering stability, educating and socializing voters”, and more.<sup>15</sup> Adding to

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<sup>6</sup> Schattschneider, *The Semisovereign People*.

<sup>7</sup> Munger, Michael. Statement to the Senate, Committee on Rules and Administration. *Political Parties in America*, Hearing, April 5, 2000.

<sup>8</sup> Aldrich, *Why Parties?*

<sup>9</sup> Vladimir O. Key, *Politics, Parties, & Pressure Groups* (New York: Crowell, 1964).

<sup>10</sup> Robert A. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989).

<sup>11</sup> Nancy L. Rosenblum, *On the Side of the Angels: An Appreciation of Parties and Partisanship* (Princeton: Princeton University Press, 2008).

<sup>12</sup> Paul Allen Beck, *Party Politics in America* (New York: Longman, 1997).

<sup>13</sup> Richard S. Katz, *A Theory of Parties and Electoral Systems* (Baltimore: Johns Hopkins University Press, 1980).

<sup>14</sup> Gerald M. Pomper, *Passions and Interests: Political Party Concepts of American Democracy* (Lawrence: University Press of Kansas, 1992); Gerald M. Pomper, *Voters, Elections, and Parties: The Practice of Democratic Theory* (New Brunswick, NJ: Transaction Books, 1988).

<sup>15</sup> Paraphrase from David A. Schultz, *Election Law and Democratic Theory* (Burlington, VT: Ashgate, 2014), 200. Schultz refers to Wattenberg, *The Decline of American Political Parties*. See also: Rosenblum, *On the Side of the Angels*.

these, Schattschneider also says that “parties are the special form of political organization adapted to the mobilization of majorities.” Indeed, citizens are really only formidable to government when they are organized.<sup>16</sup> No, the mere existence and operation of political parties are not of concern here, but that doesn’t make them knights in shining armor, either.

A key point of this paper is to make clear that political parties and elections are much more entwined than may be initially apparent to average citizens—so much so, in fact, that is almost impossible to think of contemporary democracy generally, and the American brand in particular, save in terms of political parties. Though this may be preferable to the theoretical alternative of special interest government, party government yields causes for concern all its own. With that in mind, let’s turn now to the logic that drives the formation of political parties.

## ***2.2 How Political Parties Develop***

Schattschneider tells us that, although the purpose of political parties is to work for the peaceable acquisition of power “within the framework of the regime,” their “distinguishing method...is a maneuver with numbers carried out in connection with voting in some numerous body having the power to govern.”<sup>17</sup> He continues with a considerable

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<sup>16</sup> Schattschneider, *Party Government*, 28.

<sup>17</sup> *Ibid.*, 37–38. Original emphasis.

explanation of how small alliances conspire to withhold crucial support or alter the outcome of a vote by various strategies. There simply is not time for such a detailed examination of the finer points of party evolution here.<sup>18</sup> John Hoadley’s four stages of party development—factionalism, polarization, expansion, and institutionalization—provides a both a compact and substantial overview of the important points in the life of the (political) party.<sup>19</sup>

The first step, of course, is the selection of representatives or delegates to some law-making body (hereafter, LMB). When it comes to voting on legislation, some of these members will choose to coordinate ahead of time for certain matters, or maybe even as a general rule. They do this because their alliance or conspiracy—whichever you prefer—gives them an enormous advantage in terms of voting power over other members who have not formed such a confederacy with their colleagues. This is essentially what a *caucus* (as in, the Republican Caucus or Democratic Caucus in a state legislature or Congress) is.<sup>20</sup>

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<sup>18</sup> But it’s quite interesting to read through, and I recommend it if you are at all curious. Here’s the call number for the next time you find yourself in a library: JK2265 .S35. See also: Carles Boix, “The Emergence of Parties and Party Systems,” in *The Oxford Handbook of Comparative Politics*, ed. Carles Boix and Susan C. Stokes (Oxford: Oxford University Press, 2009), 499–521.

<sup>19</sup> John F. Hoadley, *Origins of American Political Parties, 1789-1803* (Lexington: University Press of Kentucky, 1986), 17.

<sup>20</sup> Fun fact: The U.S. House Committee on House Administration currently recognizes 116 different caucuses, coalitions, task forces, study groups, and working groups—collectively known as CMOs (Congressional Member Organizations)—for the 115<sup>th</sup> Congress. A full list may be accessed here: <https://cha.house.gov/sites/republicans.cha.house.gov/files/documents/115CMOList%282.3.17%29.pdf>

Of course, “it is inevitable that the conspiracy will be discovered sooner or later.”<sup>21</sup> Unorganized opposition will realize its disadvantage and respond by forming a counter-organization. This is the beginning of *factionalism*—a pivotal moment in the establishment of a party system. The original caucus has been dispossessed of the “weapons of secrecy and surprise” and is instead “confronted by a hostile concentration of voting strength...”<sup>22</sup> In response, both the caucus and counter-organization seek to enlarge their memberships to strengthen their voting power and likelihood of achieving a governing majority.<sup>23</sup> Organization intensifies and factions becomes more consistent in their membership. Those who have not yet chosen sides align themselves until every member of the LMB “belongs to one camp or the other and is recognized as such by both parties.”<sup>24</sup> The factions or parties in the LMB have now moved to a state of *polarization*.

After the battle lines have been drawn in the LMB, the next logical step is the one most relevant to the purpose of this paper, and that step is to “go behind the current membership of these bodies and make an effort to influence the election of the next Parliament or the next Congress...”<sup>25</sup> How is this achieved? Schattschneider describes a *party’s expansion*:

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<sup>21</sup> Schattschneider, *Party Government*, 44.

<sup>22</sup> *Ibid.*

<sup>23</sup> Boix, “The Emergence of Parties and Party Systems,” 502.

<sup>24</sup> Schattschneider, *Party Government*, 45.

<sup>25</sup> *Ibid.*, 47.

“Once party organization becomes active in the electorate, a vast field for extension and intensification of effort is opened up, the extension of the franchise to new social classes, for example. The natural history of parties is a story of continuous expansion and intensification of competition from the caucus in [Congress] to a small electorate in the country to a larger and larger electorate.”<sup>26</sup>

The LMB has limited membership. When it comes to the electorate, however, the limit does not exist. So, the parties “invade the country” (à la post-1793 Th. Jefferson) and drive those voters in the electorate into these camps for the next election. The first party to do so gains a substantial advantage over political opponents, and any party that does not respond similarly will be put out of business.

And that’s really all there is to it. Members of an LMB organize to achieve certain outcomes. Once this advantage is recognized, opponents form a counter-organization. Those who haven’t yet chosen a side eventually must make their allegiances known. Various groups compromise and coordinate to consolidate and strengthen opposition until two broad factions eventually establish their dominance. Once every member has assigned himself to a caucus, these new parties move to enlist the electorate in their pursuit of power.

This is where things begin to get sticky. So far, I have given a basic account of how parties develop and for what purpose. What I have not yet explained is the

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<sup>26</sup> Ibid. Additionally, I have substituted “[Congress]” for “Parliament”—in the original text—for continuity and familiarity.

mechanism by which they pursue their main goal—control of the government. The mechanism is, of course, what we know as an *election*—again, the fundamental political institution of representative government. Though it is tempting to consider this institution as a fount of democratic legitimacy and governing authority, it is more useful here to assess it as a tool American political parties use to seize and maintain power.

But I should be clear that the fact that political parties seek to control the government is not what has landed them under the microscope. As I said, political parties are not bad in and of themselves. Rather, it is the divergence of understandings and expectations held by the electorate and a political party regarding elections that really causes the trouble. Political parties become dangerous when they have the means to control the rules of the game—when they not only seek state power, but also determine the which body of people will be able to vote to give them that power. The parties that do this subvert the common good for their own private interest, which is unfortunate, but we must realize that there are massive incentives to do engage in this selfish, irresponsible behavior.

Parties in the LMB are the so-called *original participants* in the conflict that is politics. If the scope of the conflict expands outside their control—most likely through the preemption of a competing party—they are “apt to lose control of the conflict

altogether."<sup>27</sup> What happens then is a sort of 'race to the bottom', because neither party wants to risk moving second, which would cause them to lose potential electoral advantage(s). By driving voters in an ever-changing, highly-strategic way toward certain outcomes, parties quickly become entrenched and, over time, institutionalized—accepted virtually without question. They carve out their own little plot of legitimacy and authority, ensuring that, even if they suffer enough electoral defeats to cost them control of the government, they will maintain a monopoly on the opposition, which is a crucial position to occupy if a party hopes to eventually (re-)gain control of governing power. To understand exactly how parties protect their political dominance, let's turn to an examination of the most common electoral system being used in the United States: single-member district plurality.

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<sup>27</sup> Schattschneider, *The Semisovereign People*, 3.

### **3. The Method to the Madness: Closed Primaries and the Single-Member District Plurality Electoral System**

Parties maintain their political dominance by restricting voters' choices in an election to one of the two political parties newly established by the factionalization of our hypothetical LMB. Although this means a party now must receive a majority of votes for electoral victory rather than simple plurality that was sufficient before their designs were discovered, this restriction is also a great advantage because it leaves voters with only two real options. Schattschneider reasons further:

“The party thus is certain to get freely a substantial number of unsolicited votes for the simple reason that indifferent voters are so restricted in their choices that they are half persuaded before they are asked. Here again party tactics are facilitated by the fact that the unorganized many unintentionally give a bonus to the organized few. The secret of the success of the parties is that innocent bystanders and nonparticipants regularly contribute to the advancement of the plans of the party managers.”<sup>1</sup>

This last chunk from Schattschneider admits that parties limit voters to very few options in order to better control the outcome of elections. We know that they are always seeking to build their base of support, so of course any expansion of the electorate will only come to those populations that have been vetted as likely supporters of the party.

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<sup>1</sup> Schattschneider, *Party Government*, 45.

Take, for example, the contemporary fight over voting rights—especially voter ID laws. I find it hard to imagine a political party as a sort of *fidei defensor*, in some vague moral sense, when it comes to the franchise. Although Schattschneider asserted that “[t]he enlargement of the *practicing electorate* has been one of the principal labors of the parties, a truly notable achievement for which the parties have never been properly credited,” at least in contemporary politics, that has not been the case.<sup>2</sup> As Republicans have come to dominate more and more states’ LMBs in the past several years, there has been a surge in voter ID laws, which were designed to make it harder for voters—minorities, mainly—unlikely to support the Republican Party and its candidates, to vote. That does not mean, however, that their main rival—the Democratic Party—is, by default, more praiseworthy regarding its position on voting rights. It’s easy to take the moral high ground when you’re on the ropes—in fact, it’s probably necessary to be salient and fresh in the minds of voters to preserve a monopoly on the opposition—but the fact is that both major parties have excluded different blocs of voters for various reasons in the history of this country. Remember that political parties seek first and foremost to get control of the government. They are organizations of strategy, not morality and beneficence.

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<sup>2</sup> *Ibid.*, 48. Original emphasis.

Consequently, Schattschneider's analysis of political parties, at least as it applies to contemporary circumstances, deserves a second look. His assertions that "modern democracy is a by-product of party competition" and that "modern democracy is unthinkable save in terms of the parties" make sense when considered from the perspective of a 'responsible party theorist', but ought to be red flags for those of us who benefit from knowledge or experience of the 46 years of history since his time.<sup>3</sup> The role of parties may have been beneficial and laudable when he was writing, but it is painfully obvious that, in their contemporary forms, parties are stunting the nation's growth and alienating its citizens from their country and each other due to their endless manipulation of election laws. But the problem doesn't begin with general elections. No—if we want to want to understand just what kind of power political parties have in this country, we need to go to the source by examining political affiliation and party control of primary elections.

### ***3.1 Closed Primaries***

One of the most salient points of contention in our electoral system is the primary election, the mechanism by which political parties nominate their candidates for political office. It used to be that party committees and leaders would determine a

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<sup>3</sup> Ibid., 4.

party's candidates, but a push for reform by Progressives in the early 20<sup>th</sup> century called for the creation of direct primaries in which voters would have a say in selecting party nominees. Loss of influence did not sit well with party leaders who wished, naturally, to maximize their control over their party's nominating process, and, ultimately, the closed primary was born.

These 'closed' primaries are so-called because they only permit participation by voters who have declared their affiliation with a given political party. Many people do not see a problem with this. *Political parties are private organizations after all, so why shouldn't they make the rules about who gets to choose their candidates for office?* That's a great point, and one that the Supreme Court of the United States made in *California Democratic Party v. Jones* when it upheld the associational rights of political parties. The best rebuttal to this point, made by Justice Scalia, comes from Justice Stevens' dissent in the same case. Justice Stevens accepted the assertion that a "political party, like any other association, may refuse to allow nonmembers to participate in the party's decisions when it is conducting its own affairs," but made the important distinction that "an election, unlike a convention or caucus, is a public affair."<sup>4</sup>

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<sup>4</sup> *California Democratic Party v. Jones*, 530 U.S. 567, 595 (2000). (7-2 decision) (Stevens, J., with whom Ginsburg, J. joins as to Part I, dissenting).

That is the central concern with closed primaries. Not only are they publicly-funded, but they are, most importantly, elections for public office—not for the private affairs or offices of a private organization. And yet, millions of voters around the country are excluded from these important elections because they do not wish to, or simply have not, formally affiliated with a political party. Partisans say that this isn't the case—that independent voters may still vote in general elections. This is true, but it ignores the fact that primary elections are agenda-setting elections that determine the options voters will have in general elections.

There is, however, nothing stopping those who choose not to affiliate with a political party from doing so. So, one might ask, *Why not just join a political party? Isn't that actually better because it inclines people, at least to some degree, to educate themselves about the parties as they decide which one to 'join'?* That may be, but this just isn't the way we think about voting in the United States. The pursuit of the franchise in this country has precipitated some of the most inspiring and violent scenes in American history. Consequently, Americans imagine the franchise as a sacred, fundamental right.<sup>5</sup> In reality, however, the public franchise itself is operated as a commercial franchise in which prices and participation may vary, depending on the particular electoral rules of

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<sup>5</sup> Donald Wayne Rogers and Christine Brendel Scriabine, eds., *Voting and the Spirit of Democracy: Essays on the History of Voting and Voting Rights in America* (Urbana: University of Illinois Press, 1992).

one's municipality or state.<sup>6</sup> That we have accepted this extra requirement imposed by political parties seeking to more easily get and maintain control of government is runs counter to everything that we preach and teach about self-government and voting rights.

Registering with a political party is not always sufficient either. Sometimes, only a single party will offer candidates for a public office, which means the outcome is decided by the primary election, itself often closed to non-party voters. When this is the case, voters who reside in the district but are not members of the political party that has put forth candidates are, frankly, SOL. They are prohibited from participating, since no provisions exist for automatically opening the primary election to all voters in the affected district. Thus, it is almost certain that representation will be determined by a minority of voters in this closed round of voting. Incredibly, only 42.4 percent of state legislative districts in the 2016 general election were contested by candidates from both major parties.<sup>7</sup> The most common rebuttal to this phenomenon is that parties should simply run more candidates to avoid such disenfranchisement. This is not always feasible, and the reason has to do with the incentives mechanics of SMDP systems. I will

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<sup>6</sup> Alec C. Ewald, *The Way We Vote: The Local Dimension of American Suffrage* (Nashville: Vanderbilt University Press, 2009).

<sup>7</sup> See [https://ballotpedia.org/2016\\_state\\_legislative\\_elections\\_analyzed\\_using\\_a\\_Competitiveness\\_Index](https://ballotpedia.org/2016_state_legislative_elections_analyzed_using_a_Competitiveness_Index)

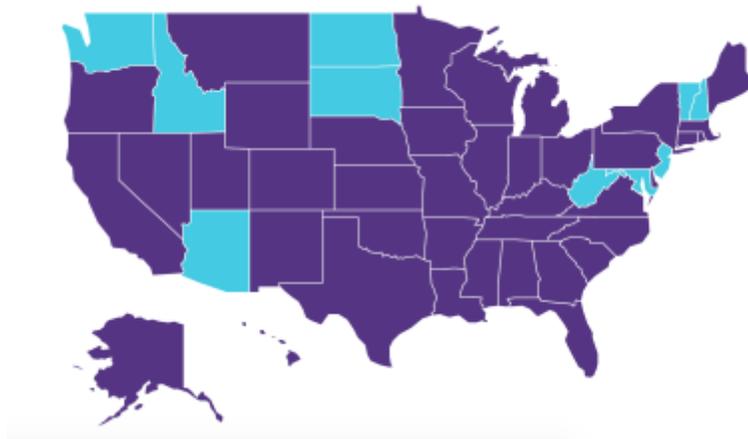
come back to the issue of closed primaries in the next section, but for now let's look at the problems caused by the actual voting system.

### **3.2 SMDP**

Apart from experimentation—mostly at the local level—most legislative elections in the United States use SMDP (also known as *first-past-the-post*), a member of the plurality-majority family of voting systems (see Figure 1).<sup>8</sup> SMD refers to the system of representation—single-member district—while the P refers to the actual decision rule—plurality voting. Whether or not we know it, when we think of voting or democracy, almost all of us are thinking about the SMDP electoral system.

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<sup>8</sup> André Blais, ed., *To Keep or to Change First Past the Post?: The Politics of Electoral Reform* (Oxford: Oxford University Press, 2008), 5; Douglas J. Amy, *Behind the Ballot Box: A Citizen's Guide to Voting Systems* (Westport, CT: Praeger, 2000), 27, 40.



**Figure 1: Electoral Systems by State. Most states today use single-winner districts. Only 10 use multi-winner districts.<sup>9</sup>**

### **3.2.1 How SMDP Works**

This is the simplest and oldest voting system. Candidates' names are listed on the ballot, and voters mark their choice for one. Once the votes have been counted, the candidate with the most votes is declared the winner. That's about all there is to it. Although it is easy enough to understand, its characteristics are subject to substantial, though perhaps subtle and obscure manipulation. Still, it is praised for its alleged simplicity, single-party legislative majorities, tendency to produce stable and efficient government, and resistance to extremism. I offer criticisms of these alleged benefits below.

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<sup>9</sup> This figure was taken from FairVote.org and may be accessed at the following URL: [http://www.fairvote.org/electoral\\_systems#research\\_electoralystemsus](http://www.fairvote.org/electoral_systems#research_electoralystemsus)

**Simplicity** Of course, the actual process of voting is not terribly complicated, but simpler does not always mean better. Emphasizing simplicity as an advantage assumes that voters are either incapable of understanding complexity or averse to it. After all, when you go to the cereal aisle of a grocery store, you don't see any corpses. That's because, despite the dozens and dozens of options to choose from, somehow people manage to choose a cereal without standing there for days, overwhelmed by the sheer numbers of alternatives, until they wither and die. It may be simpler for voters, but this is not out of a necessity to correct some incapacity to choose from among a number of options. Political parties undoubtedly benefit from the restriction of choices this winner-take-all system uses.

#### **Winner-Take-All, Single-Party Legislative Majorities, and Stable Government**

By definition, one candidate may win an election in SMDP, and they can do so with as little as 50 percent + 1 of the votes cast in the election—sometimes even 34 percent in three-way races. This has the unfortunate effect of deterring competition. If a political party knows it is unlikely to win an election, it will not bother allocating resources to that contest. Voters who had registered with this party are effectively abandoned for more promising prospects elsewhere. When this happens, representative government may fail to account for as much as 49.99 percent of a district's voters.

Consequently, considering there are two major parties vying for power, this system will almost always produce a single-party legislative majority. This is allegedly beneficial because it permits the pursuit of a more coherent policy agenda without the need for bargaining and compromise, but this pursuit is inherently neither good nor proper. In fact, it may compound dissatisfaction among voters affiliated with the minority party who do not have effective representation due to this winner-take-all system. Additionally, these majorities are seen as more accountable since voters should know whom to blame if they disapprove of the government's actions. The assumption is that coalitions are subject to sudden and unpredictable collapse and chaos, as though the two major parties in the United States are not themselves coalitions of conservative, moderate, and liberal members from around the country.

Clearly, though, people seem to prefer coalition and compromise. The U.S. government is currently a trifecta of Republican Party control, but that hasn't wiped *bipartisan* from the lexicon of legislators and other officials. Bipartisanship and compromise seems to be both popular and preferred, but they are next to impossible to achieve when the incentives created by party control of the rules of the electoral system are aimed almost exclusively at the procurement of power.

**Resistance to Extremism** SMDP tends to produce two large political parties that must appeal to a large number of voters for electoral victory. Most supporters of this

system point this out as a moderating effect. We know, however, that political parties often select their candidates in closed primaries. When this is the case, like-minded individuals must fight to distinguish themselves from each other for the support of party voters. Candidates spend most of their time trying to outflank their competitors, and the effect is a shift toward the extremes/margins and the normalization of these loci. This is why the Tea Party—a very conservative movement in the Republican Party with little to no formal hierarchy which has allowed individual members and juntas to pursue their own, often conflicting, goals—was able to come to power and continues to be so a powerful caucus in Congress.

### **3.2.2 What Makes SMDP So Bad**

Because political parties control the rules of the game in our electoral systems, and make those that favor their designs, the above advantages turn out to be (figurative) Trojan Horses. But are there any known disadvantages—the characteristics that would be unimpeachably deleterious even absent political parties, but which are, nevertheless, exacerbated by their controlling influence? Yes, and they include: exclusion of minor parties, limited voter choice, gerrymandering, low and inconsistent turnout, poor political integration, strategic voting, spoiler candidates, negative campaigning, wasted votes, gerrymandering, disproportionate representation, and the violation of majority rule.

**Exclusion of Minor Parties** Even when minor parties demonstrate substantial levels of voter support, SMDP rules requiring majorities or pluralities have been refined over time by major political parties to make it extremely unlikely that these other parties will win any seats.<sup>10</sup> This characteristic of SMDP both limits voter choices and produces LMBs that are insufficiently representative of the political positions of smaller parties that are not as institutionalized as the major ones.

**Low and Inconsistent Turnout** While low voter turnout is frequently lamented, it is often done so superficially. Low voter turnout is indicative of frustration with an electoral system that can give 100 percent of the representation to slim majorities of voters leaving nearly half without real recourse to channel their political frustrations.

In elections that use two rounds of voting—called runoffs—held on separate days, there is the very real probability that those who show up for the first election will not show up for the second election, when a candidate is actually chosen. The disparity between the two groups of voters makes it hard to pinpoint to whom legislators are accountable—to the people who made the final selection, or to the voters that allowed him to move beyond the first round?

**Poor Political Integration** While it can be argued that the two major parties are by-and-large quite adept at forming coalitions between various political interests, the

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<sup>10</sup> Boix, “The Emergence of Parties and Party Systems,” 510.

electoral system itself (in collusion with these parties) excludes the voices of political and ethnic/racial minorities. Failure to represent these viewpoints has demonstrably alienated various groups from the political process, which may lead these groups to feel they must resort to demonstrations, protests, boycotts, and even violence in order to be heard.

**Strategic Voting** Minor parties have a hard time winning seats under this electoral system, so their supporters may instead choose to cast their votes for a less preferred major party candidate—the lesser of two evils—in each election. This is just another example of how the two major political parties use electoral rules to protect their overall dominance. When voters are not incentivized to vote sincerely for their most preferred candidates, questions about the legitimacy of governing mandates the two parties receive arise because there is no way to determine the distribution of sincere support for all candidates and parties.

**Spoiler Candidates** SMDP promotes our two-party system to the point where alternative candidates and parties are criticized when they ‘spoil’ the election of a major party candidate who would have won had the minor party candidate not run. This is the primary mechanism behind political scientist Maurice Duverger’s famous assertion—appropriately known as Duverger’s Law—that an electoral system with single-member

districts and plurality voting will favor two parties.<sup>11</sup> Sometimes referred to as ‘Vote the LOTE’ —lesser-of-two-evils— it has given rise to the assumption that minor parties have no chance of winning elections. Consequently, voting sincerely is scorned as though the two major parties and their candidates ought to be showed deference since they are more likely to win. No candidate is ‘owed’ electoral support. If a major party candidate were to lose an election because a minor party candidate received some of “their” supporters, then perhaps the losing major party hadn’t supported a good enough candidate. There are alternative voting systems that would allow for multiple candidates to win and/or voters to rank their preferences so that no one “spoils” anyone else’s election.

**Negative Campaigning** Mudslinging is an effective tactic in both primary and general elections, especially when only two candidates are running. It is an easy way to convince voters to turn from their preferred candidate. When they do so, where else will they go but to the only remaining option? And if they decide not to support the other candidate, they simply stay home and don’t vote, which also works to the candidate’s advantage.

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<sup>11</sup> Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State* (Cambridge: Methuen, 1976), 217. See also: Gary W. Cox, *Making Votes Count: Strategic Coordination in the World’s Electoral Systems* (Cambridge: Cambridge University Press, 1997).

**Wasted Votes and Gerrymandering** Wasted votes are those that do not help a candidate win. In SMDP, then, up to 49.99 percent of votes may be wasted.

Consequently, 49.99 percent of voters do not receive representation. A majority that wins by 0.02 percent gets all of the representation. It is often the case that these votes are wasted because voters have been gerrymandered into districts where they are either unnecessarily large majorities or are ineffectively small minorities.

This problem can be caused, and is certainly exacerbated, by a process called gerrymandering. Gerrymandering involves either packing a bunch of similar voters into the same district to give them an overwhelming majority—to the point that extra votes for a candidate are unnecessary for them to win and, therefore, wasted—or splitting these voters up across multiple districts to dilute their impact. It is widely criticized as being a way for politicians to choose their voters, which is something no other country allows. The practice has been around for a long time, and is increasingly becoming a point of extreme frustration and protest. It has led to some ‘interesting’ electoral district shapes and has often been challenged in courts due to its blatant discrimination and unfairness. North Carolina has been so aggressively gerrymandered that special elections were ordered for 2017 to rectify unconstitutional districting.

This is more than just a frustration with some romanticized notion of the messiness of democracy. The designs and tools of political parties, like gerrymandering,

in their pursuit of power pose serious threats to the attenuated trust required for a representative government to function in a vast country. If unconstitutional gerrymanders become more frequent, citizens might start to question the legitimacy of laws passed under these plans. And why shouldn't they? The implication of these opinions is that *Candidate X might not have won if systemic cheating had not been in place.* These specific elections have since been put on hold pending review by the Supreme Court, but this further exposes the destabilizing incentives of gerrymandering specifically, and SMDP in general. *We just had elections. They were not fair, so we are going to have new ones. But wait; we are actually going to hold off on them for awhile.* It's very confusing and undermines a definitive quality of elections as being "decisive."

**Disproportionate Representation** SMDP and other plurality-majority systems tend to misrepresent levels of popular support a party enjoys. The larger major party — that is, the one that exercises greater control over election law — gets more seats than its share of the vote, and the smaller major party gets fewer seats than its share of the vote. Two, by no means exhaustive, examples: During the 1996 Congressional elections, Democrats in Massachusetts won 10/10 seats with only 66 percent of the vote, while Republicans in Oklahoma won 6/6 seats with only 61 percent of all votes cast. This phenomenon is related to the most egregious flaw of SMDP.

**Violation of Majority Rule** It is possible for party representation to become so disproportionate that parties receiving a *minority* of the vote can actually win a *majority* of seats in the LMB. This is what's known as a *manufactured majority*: a legislative majority artificially created by a particular voting system. Although it is true that these manufactured majorities are most likely to occur when more than two parties are competing for a legislative seat, this does not vindicate our two-party system because this likelihood is greatest under SMDP. A study of fourteen countries with plurality-majority voting systems observed manufactured majorities in 43.7 percent of elections between 1945 and 1996, while the same issue occurred in about 9 percent of elections held during the same period by countries with systems of proportional representation. We shouldn't sacrifice more diverse and robust government for some sort of imagined benefit the two-party system gives us when clearly there is a greater likelihood of false legitimacy as well as alternative schema that drastically reduce this effect.

The history of parties, then, has become the most consequential, durable, and cancerous feedback loop; however, if there is anything I remember from high school science courses, it is that perpetual motion machines cannot survive without the input of new energy. This goes for political institutions, as well. Our electoral system is unsustainable in its current form. It is 'bubbling' — being touted as worth more than it

actually is. If it bursts, there will be no chance to 'fall back to the keep.' There is no warranty or protection plan that will protect us from the absolute collapse of our electoral system.

## **4. Why Any of This Matters**

Before charging ahead to solve all the world's problems, let's take a step back and examine how it is that we can find ourselves in such a precarious position. Even if you accept the arguments demonstrating how SMDP is a thoroughly suboptimal electoral scheme and that political parties that control the rules of the game are dangerous, it is still important to understand the causes of this most unhappy marriage between parties and elections. Who or what is to blame?

### ***4.1 Constitutional Conundrum***

Pull out a copy of the Constitution of the United States and you won't find a single mention of political parties. They were neither deeply understood nor much considered because they had not yet become the formidable institutions we know them as today. Parties in the nation's formative years were much looser, fluid coalitions than those we see operating today. Schattschneider said the following about the origin of political parties in the United States:

"The theory of the Constitution...was legalistic and preparty in its assumptions. Great reliance was placed in a system of separation of powers, a legalistic concept of government incompatible with a satisfactory system of party government. No place was made for the parties in the system, party government was not clearly foreseen or well understood, government by parties was thought to be impossible or impracticable and was feared and regarded as something to be avoided.

The Founding Fathers knew intuitively that party competition, if given a chance, would upset their calculations.”<sup>1</sup>

What ended up coming out of the Constitutional Convention at Philadelphia in 1787 was a “constitution with a dual attitude.” On one hand, this document enshrined the fundamental liberties—the freedoms of speech, assembly, association, etc.—whence spring political parties. On the other, the separation of powers central to the structure of this new government was so designed to frustrate political parties.<sup>2</sup> (Madison discusses this difficulty in *Federalist 10*, but ultimately confirms that the object of the Constitution was to protect the common good against such factions).<sup>3</sup> Schattschneider goes on to say that this was a gross miscalculation that would have serious consequences:

“The offspring of this combination of ideas was a constitutional system having conflicting tendencies. The Constitution made the rise of political parties inevitable yet was incompatible with party government...Political parties refused to be content with the role assigned to them. The vigor and enterprise of the parties have therefore made American political history the story of the unhappy marriage of the parties and the Constitution, a remarkable variation of the case of the irresistible force and the immovable object...”<sup>4</sup>

A direct result of this constitutional ambivalence has been the strikingly extralegal character of the American political parties, regarding which Schattschneider says the following:

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<sup>1</sup> Schattschneider, *Party Government*, 6-7.

<sup>2</sup> *Ibid.*, 7.

<sup>3</sup> James Madison, "Federalist 10" in *The Federalist*, eds. George W. Carey and James McClellan (Indianapolis: Liberty Fund, 2001), 42-49.

<sup>4</sup> Schattschneider, *Party Government*, 8.

“It is profoundly characteristic that the fundamental party arrangements are unknown to the law.

The law, it is well recognized, cannot control public authorities perfectly. It is precisely through this breach in the rule of law that the parties make their way to the citadel of government. That is to say, they undertake to control the decisions of public authorities at the points at which the law cannot control them. Furthermore, by political devices which are far more subtle than the devices of the law, they are able to establish refinements of control of which the law is incapable...The parties are able to compel public officers to behave in ways that the law does not contemplate, by methods of which the law is ignorant, without in any way affecting the validity of their official acts.”<sup>3</sup>

This peculiar trait is so concerning because it does not necessarily mean that parties simply lobby elected officials. Given the unbelievable amounts of money being spent on political campaigns today, there is every reason to think that some of this lobbying or bargaining occurs before elections, or even nominations. It is not hard to imagine the discussion or suggestion of expectations in exchange for any political and financial support. In fact, this is generally understood to be a norm — somewhat taboo, but still SOP. The troubling question, then: When is a public official a public official, and when is a public official a party agent?

The Constitution and its effects on basically everything ever are already the subjects of thousands and thousands of books, so I will refrain from raising further issues. The most relevant point is that political parties were not accounted for when the

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<sup>3</sup> Ibid., 11-12.

United States was founded, and so they have since been able to operate in a sort of legal no man's land—neither understood nor even seriously contemplated by law other than on an *ad hoc* basis in judicial opinions about freedom of association. These special circumstances have allowed American political parties to endure to the point of institutionalization, becoming and remaining the disproportionately and dangerously influential organizations they are today.

## **4.2 Independent Voters<sup>6</sup>**

Allow me to return to the issues I raised in the previous section regarding closed primaries. I simulated a bit of back-and-forth between proponents and opponents of these types of elections, and most of the points being made were somewhat lower-level concerns. They are important points, to be sure, but distract us from more pressing concerns. Let's take another defense of closed primaries and run with it in a more productive direction. *Well, if independent voters are so dissatisfied with the primary system, they should organize their own primary.* This criticism leads me to what is perhaps the most important point of this analysis: Politically unaffiliated—so-called 'independent'—voters

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<sup>6</sup> For further reading, see, for example: Mickey Edwards, *The Parties versus the People: How to Turn Republicans and Democrats into Americans* (New Haven: Yale University Press, 2012); Jacqueline Salit, *Independents Rising: Outsider Movements, Third Parties, and the Struggle for Post-Partisan America* (New York: Palgrave Macmillan, 2012).

do not all fall in the middle of the political spectrum. They all do not hold similar beliefs or positions.

The conventional wisdom is that independent or unaffiliated voters either fall in the middle of the political spectrum and are a unique political phenomenon, or can all be described as ‘leaners’ toward one major party or the other.<sup>7</sup> Some even dismiss it as merely “fashionable.”<sup>8</sup> In either case, the narrative attempts to shoehorn political independents into the left-right spectrum of ideological analysis while missing or ignoring the actual grievances and interests of the politically unaffiliated. It is, however, more complicated than left vs. right.

Those who honestly observe trends and listen to these voters quickly realize that they share a common concern, but not one that may be located at some point along the left-right spectrum. Rather, independents are concerned with the political process itself. Their political positions are best represented not by a horizontal line, but by a triangle. At the narrow top of this triangle are political elites running the show, and at its base are the disenfranchised and those excluded from the political process. This is evidenced by the fact that between 39 and 42 percent of Americans do not ‘belong’ to the two major

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<sup>7</sup> Alan Abramowitz, *Politico Magazine*, January 8, 2014; Ariel Edwards-Levy, “America’s Record Number of Independents Aren’t As Independent As You Might Think,” *The Huffington Post*, January 8, 2014; Pew Research Center, “Beyond Distrust: How Americans View Their Government,” November 23, 2015; Amy Walter, “The Myth of the Independent Voter,” *Cook Political Report*, January 15, 2014.

<sup>8</sup> Harry Enten, “Americans Aren’t Becoming More Politically Independent, They Just Like Saying They Are,” *FiveThirtyEight*, June 7, 2015.

U.S. parties.<sup>9</sup> That is, they neither formally affiliate with the political parties when registering to vote, nor do they consider themselves partisan supporters or leaners. This is important because it is a strong indicator that politics has become so distasteful and overly partisan that these people are refusing to affiliate with either of the major political parties, instead self-selecting *out* of the electoral process altogether.

Yet the temptation and convention is to continue to insist that independent voters are really closet partisans, and those who are partial to this bias point to the tendencies of certain blocs of independents to vote for major party candidates. Well of course the data reflects that because as we learned in section covering the logic and tactics of parties, there is literally *nowhere else for voters to go*. Political parties limit voter choice prior to elections and then use the results to claim that voters *want* a two-party system or certain party to be in power. It may be the case that voters prefer a two-party system, but such a desire or preference cannot be demonstrated by the fact that such a system is the only possibility under our current electoral system.

Political parties and partisans want to have their cake and eat it, too. They want the appearance of democracy and choice, but without risking electoral defeat. So, they tightly control the parameters of an election in order to maximize electoral victory. The

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<sup>9</sup> Frank Newport, “Americans Less Interested in Two Major Political Parties,” *Gallup*, January 12, 2015; Jeffrey Jones, “Independent Political ID in US Lowest in Six Years,” *Gallup*, January 6, 2017.

only way to know for sure what voters want is to increase the range of their choices both by incentivizing more candidates and parties, and allowing for a more complete expression of their preferences by ranking those options. Considering party tactics and willful dissociation of nearly half of American voters from the political parties, it is not a stretch to say that, in this electoral system, voters cast their ballots under duress.

### **4.3 Stability, Trust, Attachment**

Schattschneider tells us: “There is evidence...that the movements of voters in and out of the reservoir of nonvoters have had more influence on the outcome of election contests than the movements of voters from one party to the other.”<sup>10</sup> Again, partisans might make the argument that the requirements for being able to vote in primary elections—that is, affiliation or registration with a political party—is not prohibitive, so the complaint of the unaffiliated is unwarranted. But just as parties care very deeply about with which voters or candidates they may be required to associate, so too does it matter to people with whom they are associated. In an aggressively and inappropriately partisan society, there are costs to being associated with parties.<sup>11</sup> Partisan and ideological labels mean something or we would not have them.

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<sup>10</sup> Schattschneider, *Party Government*, 49.

<sup>11</sup> Newport, “Americans Less Interested in Two Major Political Parties”. See also Chapter 4, “Everybody Hates Partisans”, in Samara Klar and Yanna Krupnikov, *Independent Politics: How American Disdain for Parties Leads to Political Inaction* (Cambridge: Cambridge University Press, 2016).

For the unaffiliated, any system of elections — any scheme of government — that establishes voting only at the pleasure of the parties is mind-bogglingly inconsistent with our aggressively professed democratic values and a very real threat to American society and government. Not only should voters not have to associate with private organizations in order to exercise the fundamental right to vote, but now it has become prohibitively costly to do so, and it is only going to get worse because what these structures and incentives create is a cycle of degeneration. The political process does not seem to be working, so voters stop showing up. The process becomes more oppressively partisan and more people opt out due to costs of association and low returns on perceived efficacy of one's vote. Incentives for LMBs to pursue electoral reform decrease as those voters interested in such reform occupy a smaller and smaller share of the electorate.

Another way to think about all this is in terms of Schattschneider's explanation of the tension between the *privatization and socialization of conflict*.<sup>12</sup> Those who defend the associational rights of parties are in favor of the privatization of conflict. As with parties, there is nothing wrong with this per se. The problem arises, however, when private organizations raid the one institution people consider to be public and appropriate for the socialization of conflict — the election — and 'raise the Jolly Roger,' there will be,

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<sup>12</sup> Schattschneider, *The Semisovereign People*.

understandably and naturally, a substantial decrease in stability, trust, and attachment among the body politic because there is no widely-endorsed secondary system to which there might be recourse.

This disillusionment and tension is not something that should be downplayed or ignored. Because it occupies such a pivotal locus in the society, it's not a mere nuisance we can dismissively roll our eyes at, confident that the United States will continue to exist (and enjoy its position of preeminence) because there is no reason to suppose that this should be the case.<sup>13</sup> As is the case with nearly all human social interactions, the success of government is basically magic. The only reason any of this works is because people trust those to whom they are attached through common social institutions, symbols, and beliefs.<sup>14</sup> When these are undermined, there is a real possibility that the whole thing could fall apart.<sup>15</sup>

Clearly, then, the challenge is to find a better way that simultaneously respects the beneficial qualities of parties while expanding the electorate to include independent/unaffiliated voters; provide voters with more choices and greater depth of expression of preferences; and restoring trust in, and attachment to, our fundamental

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<sup>13</sup> Ibid., 114.

<sup>14</sup> For examinations of the benefits to be gained from the development of popular attachment to the institutions of government, and the dangers of failing to do so, see Hamilton, Jay, and Madison, *The Federalist*, especially nos. 17, 41, and 46.

<sup>15</sup> For anyone wondering, this would be bad.

political institutions by establishing an electoral system that ensures fairer and more complete representation for the country's diverse populations.

An alternative electoral system doesn't have to be perfect; it just has to be better than the current arrangement—and the bar here is pretty low. That said, that does not mean we should randomly select some alternative vote aggregation scheme and system of representation and see what happens. What must first be gained is an understanding of what it is about the regnant structure that is so degenerate, which is what the previous section demonstrated. Now to examine a fairer, more representative electoral system that would mitigate the deleterious effects of the current framework.

## 5. An Alternative Electoral System and Its Benefits

As stated before, there are two major questions that all electoral systems answer: the suffrage question and the aggregation question. Obviously, different answers to these two questions will produce different outcomes for the same election. My appraisal of the purpose and methods of American political parties was hardly forgiving, but the issue is entirely too urgent to be handled delicately. We have to be frank. The two-party system — which has become emblematic of our system of government — with its quasi-public organizations that claim the rights and privileges of private associations even as they seek to, and do, control government at all levels is not sustainable in its current form. It excludes voters, unfairly entrenches private political parties, and deludes citizens into thinking they have real choices. Light is now being shed on this process on an unprecedented scale and rate.

About 40 percent of American do not identify with a political party. The term *leaners*, for those voters who tend to vote for one party over another, is an attempt to shoehorn voters into the dominant Democrat vs. Republican, blue vs. red, left vs. right explanation of the political spectrum. But even voters who lean or identify as partisans

may only do so because this manipulative narrative simply leaves feeling like there have no other alternatives.<sup>1</sup>

For generations, Americans have been institutionalized to think that a two-party system is natural and democratic. However, as explained before, the major political parties of this country owe their longevity to a state-subsidized electoral system that permits them to exclude voters they do not think they can consistently control. That is just what political parties do. It would likely be impossible to change their purpose directly by an appeal to moral abstractions, but there are ways to frustrate or restrict their designs that would help to limit their cancerous influence while maintaining their capacity for effective political organization.

This is achieved, of course, by demonstrating the benefits of alternative answers to the two questions every electoral system must answer. Whereas a two-party duopoly—with its attendant political dysfunction in the United States—is favored by an electoral system like SMDP, other schemes of representation can be combined with other decision rules to create more representative, balanced, responsible, and functional government.

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<sup>1</sup> Alberto Simpser, *Why Governments and Parties Manipulate Elections: Theory, Practice, and Implications* (Cambridge: Cambridge University Press, 2013), 239.

There is not nearly enough space to go through a sampling of the most common alternative voting and electoral systems, so I will simply argue for what I think would be most appropriate given our nation's history and the increasing disillusionment with its political process. That is, jurisdictions that continue to elect their LMBs using SMDP ought to opt, and soon, for a proportional system of representation that both uses a more expressive and fair decision rule and includes politically unaffiliated voters.

### ***5.1 Open Primaries***

Although my chosen alternative electoral system eliminates the need for primary elections, I want to make the point that, whatever we do, the political process ought to be opened up to include all citizens regardless of political affiliation. The survival of the political system can afford compromise or delay there.

Unlike their closed cousins, described previously, open primaries aim to expand electorates and protect them from the purely partisan designs of political parties. Voters are not required to be affiliated or registered with a political party in order to vote for the candidates who will either move on to the general election or be elected in the primary (depending on the number of candidates and particular primary rules). Because every voter who wants to participate may do so, rising dissatisfaction and disillusionment with both the political process and government will be curtailed.

Open primaries are an opportunity for voters to vote honestly instead of strategically. Voters feel good about voting for their preferred candidate rather than for a weak opponent of that candidate, which would contribute first to a rise in personal trust in the political process and then its corollary of increased political stability in society. It is not uncommon for unaffiliated voters to wait to see who runs for a given office, then register with the party of their preferred candidate—or the party of their preferred candidate’s weakest opponent if they want to vote strategically—for the election, before immediately reregistering to vote as an independent voter. Open primaries eliminate the need for this wildly inefficient, unnecessary, and inappropriate bureaucratic dance. Critics argue that this is a trite complaint since the costs—time, energy, and money—associated with such a process is negligible for each, but who is anyone to determine the ‘threshold of bearability’ for anyone else?

Concerns of financial or temporal expenses aside, the major point being overlooked or dismissed is that a voter’s political affiliation determines whether they will be allowed to vote. Opening primaries to all voters, not just those affiliated with recognized political parties would establish a new level of political equality that would finally square with our expectations of our political process and restore critical trust in the same. The next portion of this section promotes an electoral reform that would establish yet another layer of political equality, paving the way for fairer representation

and dramatically reducing the levels of destructive partisanship in our legislative assemblies.

## **5.2 Proportional Representation and the Single Transferrable Vote**

Systems of proportional representation (hereafter, PR) are actually the most common type of electoral system.<sup>2</sup> Their basic principle is that the share of seats won in LMBs should correspond to the share of votes won for those seats, thus linking the preferences of voters to policy-making. It does not dispute the right to majority rule, but it does protect the right to representation that belongs to everyone.<sup>3</sup>

PR generally comes in one of two main forms: party list (PR/PL) and the single-transferrable vote (PR/STV). PR/PL is the most common form in use today, but, as its name suggests, it requires a political system based on—and favoring—political parties, which system is the last thing we need to be encouraging at the moment. In PR/STV, however, “it is not the parties alone but all interested persons, including independents, that deserve representation.”<sup>4</sup>

This is a novel idea despite the staggering diversity of beliefs, ethnicities, and cultures that co-exist in the United States. A winner-take-all political system in which

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<sup>2</sup> Arend Lijphart et al., *Electoral Systems and Party Systems: A Study of Twenty-Seven Democracies, 1945-1990* (Oxford: Oxford University Press, 1994), 21.

<sup>3</sup> Barber, *A Right to Representation*, 62.

<sup>4</sup> *Ibid.*, 73.

nearly half of voters go unrepresented is a recipe for frequent and violent social and economic disruption. Indeed, this has already been recognized and avoided elsewhere:

“The agitation for a change to proportional representation voting first occurred in Belgium and Switzerland. Both of these countries had deep ethnic and religious divisions among their populations, and their citizens were interested in ensuring fair political representation for these various communities—something that plurality-majority systems could not guarantee.”<sup>5</sup>

For this reason, countries like the United States that have such high levels of diversity ought to adopt PR as a fundamental political reform that would both help to stabilize and legitimize government as well as restore confidence in public institutions.

### **5.2.1 How PR/STV Works**

Now that I have offered the PR/STV variant of this electoral system, I ought to explain exactly how it works. First, all PR systems use larger, multi-member districts. Imagine a LMB with 50 seats. Under SMDP, that would mean one seat per district. Under PR, the LMB may still have 50 seats, but they may be divided evenly among five districts, or ten districts, or any number of districts as the LMB sees fit. PR/STV requires a much more in depth explanation because it is an actionable version of PR that employs an unfamiliar, though not incomprehensible, decision rule called the single-transferrable vote.

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<sup>5</sup> Amy, *Behind the Ballot Box*, 66.

An explanation of the voting process in PR/STV begins with the basic ballot design (Figure 2). All candidates for a given office are listed on the ballot together. Rather than punching a hole or filling in an oval next to a single candidate's name, voters have the option to rank each candidate in order of preference by filling in numbered boxes—much like those used for standardized tests—opposite each candidate. Voters may rank as few or as many candidates as they wish, though a complete ordering is desirable to avoid exhausting—running out of rankings to transfer—a voter's ballot during the vote transfer process.

Since multiple candidates are to be elected, the counting process cannot be a simple repetition of vote transfer processes until a single candidate emerges with a majority of all votes as in SMDP. In PR systems, the first step in the PR/STV counting process is to establish a minimum threshold of election. This is a very technical term for something we already understand almost intuitively.

		Rank Candidates In Order of Choice					
		1st Choice	2nd Choice	3rd Choice	4th Choice	5th Choice	
<p><b>For MAYOR</b></p> <ul style="list-style-type: none"> <li>Rank candidates in order of choice.</li> <li>Fill in the ① next to your 1st choice. Fill in the ② next to your 2nd choice, and so on.</li> <li>Do not fill in more than 1 oval per candidate. Do not fill in more than 1 oval per column.</li> <li>Ranking a 2nd, 3rd, etc. choice candidate will not hurt your 1st choice candidate.</li> <li>To vote for a person who is not listed, write-in their name in the space provided, then fill the oval.</li> </ul>	Danielle Alvarez	(Housewarming Party)	①	②	③	④	⑤
	Tony Samuels	(Block Party)	①	②	③	④	⑤
	Jennifer Lee	(Dinner Party)	①	②	③	④	⑤
	Sean Johnson	(Graduation Party)	①	②	③	④	⑤
		Write-in	①	②	③	④	⑤

**Figure 2: Sample STV Ballot<sup>6</sup>**

In elections held under SMDP, this threshold is what makes 50 percent + 1 a win. Should a candidate receive that many votes, we recognize that it is impossible for any other candidate to receive more votes, and so we declare this candidate elected. The exact same concept applies to STV as a decision rule, though it is not immediately discernible—purely for its novelty to most voters and citizens—and so it merits further explanation.

Imagine that a certain voting district has 10,000 voters who will elect three members to their LMB. As explained above, an election held under SMDP makes the minimum number of votes required to be elected 5,001. With only 5,000 votes, it is conceivable that there could be a tie, but if a candidate receives only one more vote, then

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<sup>6</sup> This sample ballot was taken from FairVote.org and may be accessed at the following URL: [http://www.fairvote.org/rcv\\_ballot\\_design](http://www.fairvote.org/rcv_ballot_design)

it is mathematically impossible for any other candidate(s) to receive both more votes or a majority of votes.

So, we can say that the formula for establishing the minimum threshold of election (T) is generally:  $T = V/(N + 1) + 1$ , where V is the total number of valid votes, and N is the number of seats to be filled by the election. For our hypothetical SMDP election, that looks something like this:

$$\begin{aligned} \text{threshold} &= \frac{(\# \text{ of votes})}{(1 + \# \text{ of seats})} + 1 \\ &= \frac{10000}{2} + 1 \\ &= 5001 \end{aligned}$$

In SMDP, there is only one seat being contested, so we divide by two. This is why pretty much *only* anything over 50 percent is a win in our minds. In the political sphere, we are given almost exclusively binary choices—Republican or Democrat, yes or no—so anything that grabs more than half of the required support is very clear majority. It's no wonder, then, that it may be hard for us to see how anyone can be elected without winning more than 50 percent—or even a plurality—of votes, but that is exactly what PR does.

By making more seats available, PR lowers that decisive winter-take-all threshold, provide actual and fair representation of more citizens. SMDP allows for the possibility that 49.99 percent of citizens of a given district will not have a member of the

LMB who represents them. PR/STV provides voters with more choices, more complete expression of those choices, more effective votes, and fairer representation than SMDP.

I include the above explanation to avoid confusion or suspicion of this alternative voting system. It can be hard to convince oneself that fairness and legitimacy can be found in vote shares representing less than a majority, but remember that multiple candidates will be elected, so our common understanding of majority-rule does not apply here. This system is interested in protecting the expression of political will of individual voters by providing them with more choices and fairer representation than it is in affording partisan legislators to curate narratives regarding political support and mandates to govern.

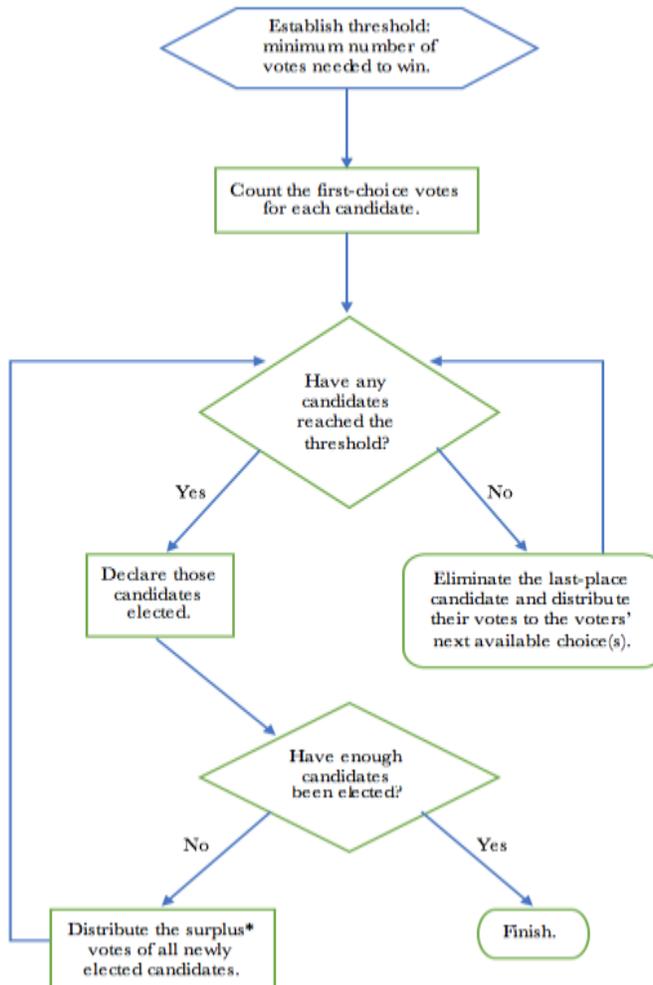
With that goal in mind, let's now establish the threshold for an election held in a PR system. A PR/STV election with 10,000 voters and three seats has the following threshold formula:

$$\begin{aligned} \text{threshold} &= \frac{(\# \text{ of votes})}{(1 + \# \text{ of seats})} + 1 \\ &= \frac{10000}{1 + 3} + 1 \\ &= \frac{10000}{4} + 1 \\ &= 2501 \end{aligned}$$

The logic has not changed between the SMDP and PR/STV examples, but can still be hard to track. Let's say that four candidates in this election each received 2,500 votes.

In that case, there would be a four-way tie. It would be impossible to determine which of the four should be elected to fill the three available seats. If one candidate receives 2,501 votes, however, it is impossible for the other three candidates to tie with each other. One of the remaining three candidates will have the least votes of all four candidates at the end of the counting and transfer processes. The takeaway is that a candidate must reach 2,501 votes to be certain that the three other candidates cannot each have more votes than they do.

Now that the threshold has been established, the next step is to tally all first-place votes to determine whether any candidates have reached the 2,501-vote threshold. If not, the candidate with the fewest first-place votes has all of their votes transferred to voters' next available highest-ranked choices, and election officials again determine whether a candidate has met the threshold. If a candidate has reached the threshold, then their surplus votes are transferred to their next available highest-ranked choices. This process (Figure 3) continues until all seats have been filled.



**Figure 3: STV Counting Procedure**

That sounds simple enough, but it is worth taking the time again to turn to an example to get a real grasp of this vote transfer process. Using the example ballot data in Table 1, I will walk through a hypothetical election’s vote transfer process, sticking with the initial parameters of 10,000 votes and 3 open seats.

**Table 1: STV Election – Simple Surplus Vote Transfer**

	1st Count	2nd Count	3rd Count	4th Count	5th Count
Candidates	Number of Votes	Transfer of Votes with Results	Transfer of Votes with Results	Transfer of Votes with Results	Transfer of Votes with Final Results
Susan Reeves <i>Republican Party</i>	1850	1850	+250 2100	+607 2707	<b>2707*</b>
Tasha Simon <i>Independent/No Party</i>	1050	+74 1124	1124	---	---
Kathleen Santos <i>Democratic Party</i>	2000	+300 2300	2300	+451 2751	<b>2751*</b>
David Hughes <i>Independent/No Party</i>	2875	2501	2501	2501	<b>2501*</b>
Mike Romero <i>Republican Party</i>	1900	1900	+75 1975	+18 1993	<b>1993</b>
Jared Neil <i>Democratic Party</i>	325	325	---	---	---
					<b>Total: 9952^</b>

The 1st Count is, of course, the initial distribution of votes by first-place rankings. In this case, Hughes received 2,875 votes — well over the threshold (which is, of course, dependent on the number of votes and number of seats available in an election) of 2,501 established prior to the transfer process. What I left out in my initial explanation is that one of two things can happen at this point, and I will walk through both now.

Most iterations of this system would simply subtract the threshold number from the number of received votes (2,875-2,501), and transfer those surplus votes to their second-place candidates. Table 1 demonstrates this method between the 1<sup>st</sup> and 2<sup>nd</sup>

counts. This method, however, makes a critical mistake. The second-place rankings of Hughes' 374 surplus votes may not be representative of the second-place rankings of all of Hughes' 2,875 1<sup>st</sup> Count votes. These 374 votes are surplus votes only because they happened to be counted after the minimum threshold was reached. Any of those 2,875 votes could have been a surplus vote had it been counted later. It is important that an election's outcome not be decided by the order in which votes are cast—even if that order is by chance.

The alternative method instead divides a candidate's surplus votes by the total number of their votes to get a fraction that will be used to weight the transfer. The point is to fairly transfer and represent all of the ballots on which Hughes was selected as the first-place candidate—not just those ballots that were by chance counted after the minimum threshold had been reached. In this case, we get that weighted proportion by dividing 374 into 10,000. This comes out to about 13/100. The second-place rankings for all ballots on which Hughes was marked as the first choice are totaled and multiplied by this fraction. In this example, let's say Reeves got 315 second-place votes, Simon received 560, and Santos received 2000. Multiplying each of these by our weighted transfer fraction, that comes out to 40.95 votes for Reeves, 72.8 for Simon, and 260 for Santos. Partial votes are rounded to the nearest whole number, giving Reeves and Simon 41 and 73 votes, respectively. This alternative process is demonstrated in Table 2.

**Table 2: STV Election – Weighted/Proportional Vote Transfer**

	1st Count	2nd Count	3rd Count	4th Count	5th Count
Candidates	Number of Votes	Transfer of Votes with Results	Transfer of Votes with Results	Transfer of Votes with Results	Final Results with Single Transferable Vote
Susan Reeves <i>Republican Party</i>	1850	+40.95 (41) 1891	+250 2141	607 2748	<b>2748*</b>
Tasha Simon <i>Independent/No Party</i>	1050	+72.8 (73) 1123	1123	---	---
Kathleen Santos <i>Democratic Party</i>	2000	+260 2260	2260	+450 2710	<b>2710*</b>
David Hughes <i>Independent/No Party</i>	2875	2501	2501	2501	<b>2501*</b>
Mike Romero <i>Republican Party</i>	1900	1900	+75 1975	+18 1993	<b>1993</b>
Jared Neil <i>Democratic Party</i>	325	325	---	---	---
					<b>Total: 9952</b>

This the only time a weighted transfer would occur in this example election. Just like the first table without weighted transfer, each successive round eliminates the candidate with the least support and transfers all ballots to each voter’s next available highest-ranked candidate, but let’s continue using the second table. Again, the point of a weighted transfer is to represent the rankings of voters as fairly and completely as possible.

After the first transfer or ballots, no remaining candidate has reached the threshold. Consequently, the candidate with the least support—Neil—is eliminated and

has their votes transferred. Reeves picks up 250 votes while Romero gets the other 75. After this second transfer, again there is no candidate who has reached the threshold. Simon has the least support now, so her votes are transferred to the next available highest-ranked candidates. Reeves takes 607. Santos acquires 451. Romero receives 18.

For those checking my math, this transfer does not account for each of Simon's 1124 first-place votes. In this example election, I've distributed the votes in such a way that the final vote tabulation adds up to 9,952 votes — 48 shy of the 10,000 ballots cast — to demonstrate the possibility that not all voters will fully rank the candidates, or that perhaps that each of a voter's successive choices has been otherwise exhausted. It may be that 48 voters ranked Simon first and only, neglecting to list other candidates. Or perhaps they all listed Neil as their second-place candidate followed either by no one or an already-elected candidate. Or it may have been some combination. In any case, these ballots were exhausted and could not continue through to successive rounds of counting and transfer, which is why it is important to stress to all voters that should fill out their rankings as completely as possible to have their say in each round of counting. After this transfer, however, two of the remaining three candidates exceeded the threshold and were elected to the remaining two seats.

## 5.2.2 How PR/STV Can Help

There are a number of features and effects of PR/STV that can be seen as either advantageous or disadvantageous depending on one's perspective. Since I believe the public's primary interests of fair representation in government and free participation in the electoral process are paramount, I have divided these characteristics accordingly.

### General Advantages

**Not Winner-Take-All** Unlike SMDP, in which one candidate (party) gets all of the representation, PR allows candidates from multiple parties to represent the same district, increasing the number of voters in a district who get effective representation. As much as "80%-90% of voters win representation" in PR systems "compared to the 40%-60%" characteristic of SMDP.<sup>7</sup>

**Proportional Allocation of Seats and Fair Representation** This is the defining feature of PR systems. Because more than one seat is being filled, already the likelihood for a more proportional distribution of seats among political parties or organizations is higher. The degree of this proportionality can change depending on the exact type of PR system being used and how many seats are to be filled, but the point is that any form of PR will yield better outcomes than the manufactured majorities and disproportional representation so characteristic of SMDP.

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<sup>7</sup> Amy, *Behind the Ballot Box*, 67-68.

New York City’s experiment with PR eighty years ago is a startling example of the efficacy of a PR system in providing for fairer representation. Between 1937 and 1947, the City used a form of PR to elect its city council. At the first election, “the Democrats won 47% of the vote and 50% of the seats—a typically proportional result. However, in 1949, after PR was abandoned and single-member district plurality elections reinstated, the Democrats won 52.6% of the vote and received 96% (24 out of 25) of the city council seats.”<sup>8</sup>

**Low Threshold of Election** In SMDP, a candidate must win either a plurality or a majority of votes to be elected. Practically, this could be from 34 percent to 51 percent of the vote share. PR, however, does not require minor parties or independent candidates do to meet this prohibitively high threshold. Because multiple members will be elected, it is possible for candidates to win a seat with a substantially smaller share of votes than under winner-take-all systems. Again, this varies a bit depending on the specific “strain” used, but in general PR is friendlier to minor parties and independent candidates.

**Fewer Wasted Votes** A winner-take-all election for a single district could waste up to 49.99 percent of that district’s voters’ votes. That is, nearly half of the district cast ballots that did not help elect anyone, and nearly half of the district does not have real

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<sup>8</sup> Ibid., 70.

representation. As an example, in the 1994 elections for the U.S. House of Representatives, “only about 59% of those who cast votes actually helped elect someone to that body. That same year, in elections for Germany’s national parliament, over 80% of the voters cast effective votes. In the 1999 PR election in New Zealand, over 93% of the voters won representation.”<sup>9</sup> The United States is allegedly the greatest democracy in history, yet an abysmal proportion of its citizens do not have representation in their legislatures and assemblies. The right to vote is important, but it means next to nothing when there is not an attendant right to representation.

**Sincere Voting and Elimination of Spoilers** Because minor parties are more likely to win seats due to a significantly lower threshold of election, and more seats are available to win, voters inclined to support minor party candidates can do so without worrying whether this support might help to elect a less-preferred candidate, spoiling the election for their second-choice candidate as would be the case in SMDP. The oft-repeated “lesser of two evils” narrative is done away with completely, leaving voters to support the candidates they truly prefer.

**Possibility for a Multiparty System** Critics of PR claim that it would both force a multiparty system the American public, which may not desire such a system, and create new political rifts. It is impossible to know, however, whether Americans would

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<sup>9</sup> Ibid.

prefer, or even merely tolerate, a multi-party system when they have had virtually no experience with one. Besides, PR does not guarantee a multiparty system; it only provides the conditions for one to form. It may be the case that voters really do fall into one of two camps, in which case PR would merely reflect a two-party system more fairly. As an example, a form of choice voting in the politically homogenous city of Cincinnati yielded a two-party system, but the same voting system, when used in the wildly more diverse New York City, produced a multiparty system of four or five political parties.<sup>10</sup>

As voters become more familiar with the dynamics of PR, including a non-binary decision rule, horizontal stratification along the political spectrum may become more pronounced, but there is no guarantee. PR merely creates more opportunities for voters and political parties without favoring a particular subset of each.

**Better Representation of Racial Minorities** SMDP is based on geographic representation, which makes it hard for minorities to win representation unless they are concentrated either by choice or by force. This smacks of segregation and the increasingly unpopular, unfair, and destructive practice of political gerrymandering, neither of which should be acceptable trade-offs. PR maintains geographic representation, but allows minority voters to maintain agency in creating voluntary

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<sup>10</sup> Ibid., 71.

coalitions in support of candidates and parties instead of being herded or disbanded by political operatives, legislators, and parties seeking to protect their personal incumbency or governing majority.

**Increased Voter Choice** More seats to be filled means voters are not forced to choose 'yes' or 'no', or between two suboptimal candidates. Voters may not only vote for more candidates, but depending on the exact decision rule in use, may even rank them. Minor party candidates come to be seen as viable alternatives to established parties, and even different wings of the same political party may win representation.

**More Competitive Districts** More seats to fill automatically increases likelihood of fairer representation. Parties that historically have been in the minority in certain areas may now find it worthwhile to run candidates since they have a chance to win a seat even though they may be certain that the dominant party may win the other seat, or a majority of the other available seats. Just this past year, 2016, 41 percent of state legislative races went unchallenged by one of the two major American parties."<sup>11</sup>

This reveals that the parties know who their base is and where they are. Why waste money on a race you know is unwinnable? Is it to change hearts and minds? No. Parties do not exist to persuade; they exist to mobilize. It is in their interest to restrict

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<sup>11</sup> Winger, Richard, ed. "November 2016 Ballot Access News Print Edition," *ballot-access.org*, November 1, 2016.

minor parties' access to the ballot and ensure their status as *at least* the second major party rather than to open up the electoral system to greater competition and the possibility of winning representation — i.e. power--in areas where they have historically come in second. This sort of long term planning and investment is not something political parties are capable of doing. Any resources spent on development of the base are resources not spent organizing to get control of government in the coming election, after which the party in power may rewrite the electoral rules yet again.

More competitive districts are actually better for all political parties because of the increased opportunity to gain large(r) amounts of representation in LMBs. The only problem is that no party wants to be the first to move toward a system because such a tack would expose their flank during the battle for control of the next Congress or other legislative session.

**More Representative Legislatures** Having read through the previously-listed traits of PR systems, it should be obvious that legislatures elected by PR are more representative than those constituted by SMDP. More parties, major and minor, gain representation, and at levels that more accurately represent their levels of support in the electorate.

**Greater Access to Representatives** In SMDP, voters may be uncomfortable approaching an elected official if they belong to a different political party. Indeed, they

may even find it impossible despite their efforts to do so. PR gives voters in any district access to multiple representatives, at least one of whom is likely to be sympathetic to their concerns.<sup>12</sup>

**Curbs Gerrymandering** The use of multimember districts means districts will be larger, reducing the effects of their boundaries and, consequently, the incentive to gerrymander. There is agreement, however, that a system using of smaller, three or four seat districts is prone to some gerrymandering. This can be solved either by creating districts with a minimum of five seats, relying on redistricting commissions independent of the LMB, or both.<sup>13</sup>

**Honesty, Specificity, Consistency, and Decreased Negativity in Campaigns**

Lower vote thresholds and the lack of party control over election participation mean candidates can more honestly and fully represent themselves to voters, discussing difficult and urgent matters without worrying about alienating a number of voters that is prohibitively high to guarantee their election.

Candidates will also have to be more specific in conveying information to voters. Two-party systems like ours allow candidates to be vague about their positions and dodge questions, presenting only enough information to distinguish themselves from

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<sup>12</sup> Amy, *Behind the Ballot Box*, 75.

<sup>13</sup> *Ibid.*, 76.

the other major party's candidates. What happens, then, is a competition of relativity in which nothing substantial is said, and from which false dichotomies spring as the only remotely policy-oriented information on which voters can base decisions. In a multiparty system, candidates would no longer be able to say simply that they support lowering taxes. They would also need to explain which ones, by how much, and for how long.

Similarly, candidates will be incentivized to move away from negativity. A two-party system protects this sort of mud-slinging because a successful attack ad against a candidate will disillusion some of their voters to the point where they simply don't vote, or perhaps even support the opposition candidate instead. When there are more parties, it becomes harder for each one to know where negative advertisements will direct voters. Will they stay home as before? Or, now that there are more options, will they give their vote to yet another candidate. The risk and uncertainty for parties would be too great, and the proliferation of negative campaigning would be checked.

**Greater Likelihood of Majority Rule** We see nominal majorities in LMB all the time, but rarely do we reflect on whether these majorities accurately reflect popular support. Manufactured majorities—when parties receive a disproportionately high share of seats in LMBs relative to their share of votes—are produced in about 43.7 percent of the elections of countries using a plurality-majority system like SMDP. By contrast, this

only occurs in about 9 percent of elections using a PR system.<sup>14</sup> If efforts—including independent redistricting and larger multimember districts—to limit the effects of gerrymandering are made in tandem, the result will be a far greater likelihood of having majorities with legitimate and fair claims to governing authority and policy direction.

**Increased Voter Turnout, Political Satisfaction, Stability (among voters and moderation in assembly)** Because the likelihood that each voter will be able to contribute to the election of a candidate who best represents their views is substantially higher in PR than in SMDP, voters may be more likely to vote in elections. Effective participation will likely yield greater political satisfaction among electorates, and more stable government.

**Elimination of Primaries** This is perhaps the most profound advantage. Elections under PR/STV would be held at one time, unlike the current primary system that involves runoff and general elections months after the initial first round. Holding one decisive election eliminates the need for voters to declare a political affiliation when they register, eliminates the unnecessary administrative costs of holding multiple elections, and virtually ensures parity/consistency of the electorate in each round of counting and transfer since all ballots are cast in one election. SMDP with primaries, runoffs, and general elections means each stage will have a different group of voters cast

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<sup>14</sup> Ibid., 36.

a ballot. Which electorate, then, is really making the decision? To which group of voters are legislators accountable? When considered in this light, SMDP opens the door for questions regarding the accuracy of the majority's share of seats and their claim to legitimate governing authority.

### **(Alleged) General Disadvantages**

Of course, PR is no exception to the rule that no electoral system is perfect. It would be impossible for everyone to be happy with the rules of an electoral system because there is simply too much at stake. So, the following are generally considered by critics of PR as disadvantages of this system.

**Unstable Coalitions, Legislative Gridlock, and Minor Party Obstruction** PR systems tend to produce multiparty LMBs. As more parties are elected, it becomes more likely that no single party will have a majority of seats. Instead, governing will have to be accomplished by coalitions of parties. Critics argue that these coalitions are fragile and unstable, although studies have found "no widespread or systemic evidence of persistent instability" in countries using PR. In fact, membership in the coalition wielding power is a substantial incentive to the maintenance of the coalition. Of course there would be some shifting of individual coalition members, but we see this on occasion in Congress when conservative Democrats or moderate Republicans break ranks. And as for making concessions to small parties, this is more of an intention of PR

than a drawback. Fair representation allows more viewpoints to be expressed, but there is no reason to think that minor parties will become “the tail that wags the dog.”<sup>15</sup>

**Expensive Campaigns** As explained by the advantages of a PR system, candidates would run in larger districts, but they would not need to reach all or even most voters. Parties and candidates already main voter databases that track likely supporters and likely voters. Their goal is already not to persuade, but to mobilize. Campaigns would get more expensive, but only for those parties that previously were not mounting real campaigns because their chance of winning an SMDP election was so slim.

#### **Poor Geographic Representation & Weak Constituency-Representative Ties**

This criticism assumes that geographic representation is a relevant aspect of a system of representation. Regardless, PR permits voters to group themselves into voluntary constituencies in support of candidates. They may do this by geography or occupation or industry (etc.) depending on which feature is most important to them. And as stated before, constituents are more likely to find an ear sympathetic to their concerns when they have more representatives to choose from.

**Less Resistance to Extremism** “Electoral PR discourages discontented ethnic groups from engaging in extreme forms of resistance to the status quo. . . Not only do

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<sup>15</sup> Ibid., 79–82.

plurality electoral systems generate increases in highly intense forms of conflict, but they seem to do nothing to stem low-level conflict.” At the same time, PR does not encourage low-level conflict, so it has a “greater ameliorative effect than expected.”<sup>16</sup>

**Increased Intraparty Competition** Critics argue that PR/STV would create or exacerbate tensions between candidates of the same party who ought to be working toward the same political goal, but this behavior is already observable in closed primaries, where it is arguably worse because rival candidates are constantly trying to outflank each other for the support of the party base. The criticism comes not from voters—who prefer the freedom to choose among, and rank, several party candidates—but from party officers who stand to lose their influence and control.<sup>17</sup>

**Administrative Expense and Count Complexity** The only complex part of PR/STV is the counting and ballot transfer process, both of which are the responsibility of election officials, not voters. Even so, it is not difficult to understand the concept of maximizing the effectiveness of all votes. If a voter’s first choice cannot win or has already been elected, then their vote is transferred to their second choice.

With regards to expense, voting system hardware and software around the country has become very old and unreliable, with many operating systems no longer

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<sup>16</sup> Cohen, Frank S., “Proportional versus Majoritarian Ethnic Conflict Management in Democracies,” *Comparative Political Studies* 30, no. 5 (October 1997): 626.

<sup>17</sup> Amy, *Behind the Ballot Box*, 103.

being supported by their manufacturers. New equipment it needed to maintain SMDP anyway, so now would be the most cost-effective time to switch over to PR/STV.

**Overwhelming Number of Choices** While it is likely that there will be more choices for voters to choose from, candidates could perhaps still list their party of preference beside their name. The heuristic of party labels would not suddenly become meaningless in an open, single-round PR/STV election. (Recall the parable of the cereal aisle in section 3). Liberal Democrats would not require a whole lot of information about Republican candidates to know they won't rank them highly, if at all. Parties could continue to play a role in this new electoral system. If they wish to endorse candidates, that is perfectly fine. They just have to do it on their own dime and their own time rather than in a closed primary election. These endorsements would still be meaningful and could be given to one or more candidates—ill-advised under SMDP because it would create the appearance of disunity and disorganization—or even to none, which is just as powerful a message.

**Violation of Monotonicity** This describes a bit of a complicated paradox in which receiving more votes can hurt a candidate because it changes the order in which other candidates are eliminated. This is an indisputable possibility in PR/STV, but the circumstances in which it would occur are extremely rare. A statistical study of

hypothetical PR/STV elections in the U.K. found that a non-monotonic outcome would occur less than once a century.<sup>18</sup>

In general, it must be remembered that criticisms of a hypothetical alternative and its effects that are based on the realities of the system as it stands are not as powerful as they seem. Such critiques ignore the glaringly obvious—so obvious as to be forgotten—that *if things were different, they would be different*. Although my reasoning is just that—reasoning—more than first-hand experience with an alternative such as the one I propose, much has been learned from the implementation of such an electoral system (the most common one, in fact) by other democracies around the globe.

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<sup>18</sup> Allard, Crispin, “Lack of Monotonicity—Revisited,” *Representation* 33, no. 2 (1995): 49.

## 6. Discussion and Conclusion

American democracy is at a real, palpable, non-rhetorical crossroads. The 2016 election cycle was rife with unprecedented violations of norms, ethics, and laws—a social catastrophe by any standard. The Democratic Party appears to have favored one of its candidates during the primaries, exposing the duplicitous nature of political parties that want to make elections seem democratic while at the same time control their outcome. Everyone discovered that the Republican Party had lost the trust and respect necessary to successfully and responsibly resist a destructive free agent from obtaining power, instead absorbing it into their fold in the shameless pursuit of that power. Voting rules varied wildly across states and territories, sometimes excluding millions of unaffiliated voters from the political process. Once more, the democratic norm of majority rule was violated by an Electoral College count that did not match the popular vote. Accusations of widespread voter fraud, though baseless, continue to be repeated. Substantial allegations of Russian interference and hacking have been ignored. And yet, there have been no real proposals to address any of this.

Trust in America's fundamental political institution—the election—has been hemorrhaging for years and we do not yet appear to be in a position to provide substantial relief and restore this requisite trust for two reasons: (1) because we do not

have any generally-accepted comprehensive theory of election law or representation to look to for counsel, and (2) the costs of institutional change are prohibitively high.<sup>1</sup>

The former, outlined in Section 4.1, is arguably one of the greatest failures of our Constitution. Its framers enshrined in the Bill of Rights the freedoms that give birth to political parties, choosing to frustrate the rise of parties to preeminence and utter domination of the political process by the institutional checks of the separation of powers. At the same time, this founding charter expressly authorizes the creation of electoral systems, but gives almost no guidance for what their goals and structures should be. The Founders failed to anticipate the use of electoral systems as the instruments of parties in their attempts to get control of the government—a singular oversight that has permitted the incessant and flagrant usurpations of authority and power.

The roughly 40 percent of Americans who do not identify with one or the other major political parties understand this. They understand that the rules of the game determine the outcome of the game. They understand that parties make those rules. And they understand that parties are concerned first and foremost with the pursuit of power. So, of course they can see that, when parties can determine the rules of an electoral system—who gets to vote and how votes are counted—in what is supposed to be the

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<sup>1</sup> See especially Jack Knight, *Institutions and Social Conflict* (Cambridge: Cambridge University Press, 1992).

most democratic country in the world, the entire political system becomes unsustainable and pernicious, inviting discontent, discord, and disunion. So why do we keep going along with this?

Americans continue to allow parties to abscond with elections because we (still) have not developed a big-picture theory of elections that asks serious questions about what American democracy means or what it means to have representative government. Our understandings of these fundamental issues are most-often shaped by courts and political parties and pocket Constitutions used as props during political speeches. But the law does not comprehend political parties as they truly are—private clubs concerned with the maximization and consolidation of their hold on the power of the government. Yet, we rely on ad hoc judicial opinions delivered by those who have been trained in the law, not in theorizing about democracy to map our electoral institutions onto its fundamental principles. At least, that's part of the reason. The real answer, however, is transactions costs.

There is an often-repeated story that Douglass North, after winning the 1993 Nobel Memorial Prize in Economic Sciences, when touring countries in Latin America and central Europe, was frequently asked, "What do we need to achieve development?"

His answer: “That’s simple. All you need is a different history.”<sup>2</sup> We need not be dismayed by North’s fatalistic, though humorous, response, but it does speak to a great truth about institutional emergence and development.

“Institutions are the humanely devised constraints that structure political, economic, and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights).”<sup>3</sup> They are *how* anything and everything happens in the world, and their structures are determined by the particular circumstances and histories that gave rise to their conception. Consequently, altering their original purposes or directions is a herculean effort, especially when the distribution of power among relevant actors is lopsided to favor those who benefit from the status quo. This is especially true for electoral institutions since they are the processes by which power and authority are obtained.<sup>4</sup> But change need not only be effected by force. It may occur more naturally because of a “change in resource-holding power external to the specific social institution.”<sup>5</sup> The layperson’s equivalent of this argument may be found in recommendations that smaller parties should focus on local campaigns. The assumption

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<sup>2</sup> Munger, Michael C., “Douglas C. North: The Answer is ‘Transactions Costs,’” *The Independent Review* 21, no. 1 (Summer 2016): 143-46.

<sup>3</sup> North, Douglass C., “Institutions,” *Journal of Economic Perspectives* 5, no. 1 (Winter 1991): 97.

<sup>4</sup> Cox, *Making Votes Count*, 18. See also: Lijphart et al., *Electoral Systems and Party Systems*, 1994.

<sup>5</sup> Knight, *Institutions and Social Conflict*, 146.

is that it is more likely for them to make gains either from trade (benefits derived from endorsements or other support of major-party candidates) or from 'conflict' (winning elections), but the whole point of this has paper has been to explain that such an exogenous shift in resource-holding or bargaining power would be extremely difficult to achieve because the market for electoral competition is tightly regulated by the very organizations that seek to, and do, dominate it.<sup>6</sup>

From an institutional perspective, here simply exist no good reasons for those who currently benefit from the current distribution of power to alter it. The transactions costs of doing so are too high because there are no alternative payoffs to be had to mitigate the loss in rents political parties will suffer under a new arrangement. The fact that each major party has a major rival presents yet another problem in the form of a prisoner's dilemma. It may be that everyone is better off as individuals and groups under an alternative distribution of power in which more parties exist and compete more seriously and often for control of government, but no one is going to be the first to agree to that lest the other party defect and obtain a new advantage.

Ideally, these circumstances would catalyze some sort of recognition of the necessity of a 'come to Jesus' moment in which we start hammering out a theory of elections, representation, and suffrage that "asks about what the fundamental values of

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<sup>6</sup> Boix, "The Emergence of Parties and Party Systems," 511.

an American democracy are and then seeks to match specific institutions and their performance to achieve and maximize these values.”<sup>7</sup> Frankly, we need to do this because the control political parties have historically exercised over our electoral institutions has diminished American capacity for creativity, making us slow to conceive of new, effective, and actionable solutions to both recurring and novel challenges. And if we don’t, stability, trust, and attachment will continue to be eroded and our institutions will decay further.

Are American political parties really so entrenched that they and their operatives in government sincerely believe the rising frustration with their methods and behavior will simply blow over? Certainly. Why? Because, though the grand experiment of the Constitution was to divorce the economic power from the political power, giving the demos a locus around and from which to counterbalance the highly concentrated and unequal economic power,<sup>8</sup> its blindness to parties has allowed for the re-marriage of these loci of power. This is why Schattschneider’s assertion that “democracy is unthinkable save in terms of the parties” has become so troubling.

It may be that Douglass North’s prescription is correct. Maybe we do need a different history if we want to change our fundamental political institutions. But we

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<sup>7</sup> Schultz, *Election Law and Democratic Theory*, 270.

<sup>8</sup> Schattschneider, *The Semisovereign People*, 118.

must also remember that facing and overcoming institutional problems *is* the history of this country. Our political institutions continually test the genius and shortcomings of a radical experiment in democratic government. Schattschneider said that there is no reason to expect that the United States will keep on going, but I do not think there is a reason to expect that it won't. The stipulation is that we must put in a special effort to ensure that our fundamental political institution—the election—survives through sacrifice. If we do not work toward an electoral system that has a maximally inclusive input and a maximally representative outcome, we will suffer the consequences of its foreseeable and avoidable collapse from the mistrust bred by an uncommon strain of self-interest.

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