

# ELECTIONS, POLITICAL PARTIES, AND MULTIRACIAL, MULTIETHNIC DEMOCRACY: HOW THE UNITED STATES GETS IT WRONG

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*How can self-governance work in a diverse society? Is it possible to have a successful multiracial, multiethnic democracy in which all groups are represented fairly? What kinds of electoral and governing institutions work best in a pluralistic society? In the United States today, these are not just theoretical concerns but fundamental inquiries at the core of an urgent question with an uncertain answer: How does American democracy survive?*

*This Article looks for an answer by placing the United States in a broader context of multiracial, multiethnic democracies around the world. The basic argument is straightforward: The majoritarian politics of single-winner electoral districts and the two-party system it produces is bad for both minority representation and, by extension, for democracy itself. A more inclusive and stable democracy requires a proportional system of voting and more than two parties. This Article thus proceeds in three parts. Part I takes a broader look at the theory of multiracial, multiethnic democracy, with a particular focus on the role of parties and elections in sustaining or undermining multiracial, multiethnic democracy. Part II looks more closely at minority representation in the United States through the lens of the American party and electoral system and its deep inadequacies in supporting multiracial, multiethnic democracy. Part III argues that proportional representation is the logical solution for the United States if it wants to have a chance at being a stable multiracial, multiethnic democracy.*

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## I

THE THEORY AND PRACTICE OF MULTIRACIAL,  
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Diversity is at the core of modern democracy. In a pre-democratic feudal era, in which kings ruled by divine right and priests handed down the word of God from on high, there could be only one perspective and one truth—and thus no diversity.<sup>1</sup> But starting with the modern enlightenment, individual liberty and a new vision of human rights emerged. Under this new liberal enlightenment, modern democracy was born on the premise that all men were created equal and thus entitled to equal rights and equal participation.<sup>2</sup> (Eventually, “men” would expand to all people.)

Thus, the Framers of the United States Constitution believed that human flourishing was only possible under a system of self-government, through a legislature of representatives.<sup>3</sup> The idea was as simple as it was profound. Through regular elections, citizens could elect representatives. These representatives would then consider the interests of their constituencies, deliberate and debate amongst themselves, and find reasonable compromises among the competing interests they represented. The policies that the government produced would be broadly representative and thus broadly legitimate, respecting the liberties and rights of everyone, dominated by no one. After many complex deliberations over institutional design, the

<sup>1</sup> See generally Glenn Burgess, *The Divine Right of Kings Reconsidered*, 107 ENG. HIST. REV. 837 (1992); JOHN NEVILLE FIGGIS, *THE DIVINE RIGHT OF KINGS* (2d ed. 1914).

<sup>2</sup> See ROBERT A. DAHL, *DEMOCRACY AND ITS CRITICS* 24–33 (1989) (describing the increasing emphasis on democratic rather than oligarchic features of government in modern democratic republics). See generally HELENA ROSENBLATT, *THE LOST HISTORY OF LIBERALISM: FROM ANCIENT ROME TO THE TWENTY-FIRST CENTURY* (2018); DAVID STASAVAGE, *THE DECLINE AND RISE OF DEMOCRACY: A GLOBAL HISTORY FROM ANTIQUITY TO TODAY* (2020); DARON ACEMOGLU & JAMES A. ROBINSON, *THE NARROW CORRIDOR: STATES, SOCIETIES, AND THE FATE OF LIBERTY* (2019); DAVID HELD, *MODELS OF DEMOCRACY* (3d ed. 2006); ROBERT A. DAHL, *POLYARCHY: PARTICIPATION AND OPPOSITION* (1971).

<sup>3</sup> See GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION 187–88* (1991) (describing the centrality of popular consent as a justification for the exercise of government authority and the new opportunities that emerged for government action in post-revolutionary America).

American system of government was born.<sup>4</sup> A fundamental yoking of liberal thought and equality was essential to this vision. Democracy could only persist if a broadly representative diversity of perspectives could participate. Broad diversity of viewpoints required the broad participatory liberties guaranteed in the First Amendment.

But as the Framers became elected politicians attempting to pass policies, the safeguards to liberty quickly became obstacles to law-making. And diversity had its limits. At some point, majorities needed to form. And parties soon became the institutional vehicles for those majorities.<sup>5</sup> But how stable should those majorities be? In one view, those majorities should be relatively stable and long-lasting enough to develop a clear governing record, on the promise that it makes for clearer accountability.<sup>6</sup> This is commonly called the “majoritarian” (or more aptly “simple majoritarian”) view. In another view, stable majorities come at a high cost to representation and compromise because they dichotomize a complex polity into simple winners and losers. This “proportional” (or “complex majoritarian”) view argues that more diverse representation is the most essential property of modern democracy because it is crucial for as many groups as possible to share a role in governing.<sup>7</sup> And further, the alleged promise of clear majoritarian accountability is muddled by partisan loyalties and too-short time frames.<sup>8</sup>

This Article takes the position that the proportional view is healthier, especially given a racially and ethnically diverse society. This was Madison’s view of self-governance, and it represented a crucial insight at the time: Self-governance was possible and sustainable if and only if there were no permanent majorities and no permanent minorities. As Madison wrote, “[i]f a majority be united by a common

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<sup>4</sup> See JACK N. RAKOVE, *ORIGINAL MEANINGS: POLITICS AND IDEAS IN THE MAKING OF THE CONSTITUTION* (Vintage Books 1st ed. 1997) (describing the origins of the Constitution); CLINTON ROSSITER, *1787: THE GRAND CONVENTION: THE YEAR THAT MADE A NATION* (1966) (same).

<sup>5</sup> See John H. Aldrich & Ruth W. Grant, *The Antifederalists, the First Congress, and the First Parties*, 55 J. POL. 295, 320 (1993) (“Legislative party organizations commonly seek to hold together potentially shifting majorities . . . .”). See generally JOHN H. ALDRICH, *WHY PARTIES?: THE ORIGIN AND TRANSFORMATION OF POLITICAL PARTIES IN AMERICA* (1995).

<sup>6</sup> See generally G. BINGHAM POWELL, JR., *ELECTIONS AS INSTRUMENTS OF DEMOCRACY: MAJORITARIAN AND PROPORTIONAL VISIONS* (2000) (discussing majoritarianism).

<sup>7</sup> See generally *id.* (discussing proportionalism).

<sup>8</sup> For a discussion of these debates, see *id.*; Steffen Ganghof, *Four Visions of Democracy: Powell’s Elections as Instruments of Democracy and Beyond*, 13 POL. STUD. REV. 69 (2015) (scrutinizing Powell’s arguments on majoritarianism and proportionalism); Lee Drutman, *Democracy on Life Support*, AM. PURPOSE (Feb. 26, 2021), <https://www.americanpurpose.com/articles/democracy-on-life-support>.

interest, the rights of the minority will be insecure.”<sup>9</sup> Instead, the Framers envisioned fluid and changing coalitions. Enemies on some issues would be allies on others. There would be no permanent winners and no permanent losers. In the words of Lani Guinier, “[t]he answer was to disaggregate the majority to ensure checks and balances or fluid, rotating interests.”<sup>10</sup> Madison adopted this insight from his early advocacy of religious liberty, where he was extremely taken with Voltaire’s observation that “if one religion only were allowed in England, the government would possibly be arbitrary; if there were but two, the people would cut each other’s throats; but, as there are such a multitude, they all live happy and in peace.”<sup>11</sup> Madison applied this insight to politics. The key to preventing political tyranny was the same: enough diversity so no group could think itself anywhere close to a majority capable of dominating everyone else. As a result, no one group would need fear domination from any *other* group. One faction could oppress; two factions would fight for the power to oppress the other. But in a big nation, every faction would be a minority. None would have any illusions of domination. Madison recognized the diversity of interests across the thirteen colonies. Factions, he famously wrote, were “sown in the nature of man.”<sup>12</sup> Citizens of the then-confederacy had competing religious beliefs, competing financial interests, and competing values. If any one faction came to control a majority, it would inevitably use that power to oppress the opposing minority. And if any one group felt completely left out of power, that group would lose faith in the legitimacy of the political system and resort to violence (as many of the Framers themselves had done when they felt left out of the British government). Thus, self-government depended on avoiding permanent binary divisions. This is why the Framers so feared political parties, and particularly the idea that there would be just two of them.<sup>13</sup>

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<sup>9</sup> THE FEDERALIST NO. 51, at 265 (James Madison) (Ian Shapiro ed., 2009).

<sup>10</sup> LANI GUINIER, THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY 4 (1994).

<sup>11</sup> RALPH KETCHAM, JAMES MADISON: A BIOGRAPHY 166 (1990).

<sup>12</sup> THE FEDERALIST NO. 10, at 48 (James Madison).

<sup>13</sup> Madison warned against the dangerous ways in which “different leaders ambitiously contending for pre-eminence and power . . . have, in turn, divided mankind into parties [and] inflamed them with mutual animosity . . .” *Id.* Crisis happens, he wrote, when the state is “violently heated and distracted by the rage of party.” THE FEDERALIST NO. 50, at 262 (James Madison). George Washington’s farewell address warned of “[t]he alternate domination of one faction [party] over another, sharpened by the spirit of revenge, natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities.” President George Washington, Farewell Address (Sept. 19, 1796). John Adams, Washington’s successor, worried that “a Division of the Republick [sic] into two great Parties . . . is to be dreaded as the greatest political Evil.” *From John Adams to*

### A. *The Essential Inevitability of Partisan Conflict*

Democratic theory has since evolved. A foundational principle of modern democratic theory is that democracy involves elections between competing parties.<sup>14</sup> In order for elections to be meaningful, however, elections have to be about *something*. That is, parties have to offer voters meaningful choices between policies. Otherwise, elections become meaningless, and the accountability mechanism that makes elections such important instruments of democracy is undermined—if elections are about *nothing*, how do voters send clear signals? This discussion of democratic theory may initially seem a little far afield from the practicalities of minority representation and multi-racial, multiethnic democracy. But a little theory here will go a long way. Once we understand the foundational core of modern mass democracy as electoral conflict between competing parties, much follows. The key questions become how best to structure and manage that conflict and how best to elevate diverse representation in ways that make that conflict manageable.

Partisan divides are not only necessary for democracy to function; they are inevitable. Parties and candidates want to win elections. They do so by telling voters either that they have a better plan for governing, that other parties are somehow deficient, or both. No party ever campaigned on the slogan: “It doesn’t matter who you vote for, we all will enact the same policies and represent you equally well.”

Parties campaign on *issues*. Sometimes issues are primarily economic (e.g., lowering taxes, spending more on various social services, or improving the quality of healthcare). Other times, issues are more identity based (e.g., limiting immigration or instituting a national language). More often, campaigns address some mix of economic and

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*Jonathan Jackson*, 2 October 1780, NAT’L ARCHIVES: FOUNDERS ONLINE, <https://founders.archives.gov/documents/Adams/06-10-02-0113> (last visited June 20, 2021). See generally NANCY L. ROSENBLUM, *ON THE SIDE OF THE ANGELS: AN APPRECIATION OF PARTIES AND PARTISANSHIP* (2008); RICHARD HOFSTADTER, *THE IDEA OF A PARTY SYSTEM: THE RISE OF LEGITIMATE OPPOSITION IN THE UNITED STATES, 1780–1840* (1970).

<sup>14</sup> POWELL, JR., *supra* note 6, at 4 (“There is a widespread consensus that the presence of competitive elections, more than any other feature, identifies a contemporary nation-state as a democratic political system.”). See generally *ASSESSING THE QUALITY OF DEMOCRACY* (Larry Diamond & Leonardo Morlino eds., 2005) (explaining that democratic political systems “must have regular, free, and fair electoral competition between different political parties”); Michael Coppedge, John Gerring, David Altman, Michael Bernhard, Steven Fish, Allen Hicken, Matthew Kroenig, Staffan I. Lindberg, Kelly McMann, Pamela Paxton, Holli A. Semetko, Svend-Erik Skaaning, Jeffrey Staton & Jan Teorell, *Conceptualizing and Measuring Democracy: A New Approach*, 9 PERSPS. ON POL. 247 (2011); Gerardo L. Munck & Jay Verkuilen, *Conceptualizing and Measuring Democracy: Evaluating Alternative Indices*, 35 COMPAR. POL. STUD. 5 (2002).

identity-based issues.<sup>15</sup> Different candidates and different parties attempt to strategically shift the terrain of elections in ways that help them win. They fight to define what the election is *about*.<sup>16</sup> What elections are *about*, in turn, has tremendous consequences for how people feel about winning and losing and for bargaining and coalition building after the election. If the election is purely about economic issues, like taxing and spending, some people may pay more in taxes as a consequence, and some people may benefit from more social services as a result. But economic policies that redistribute money do not cut at most people's core sense of identity in the way that ethnic, racial, and religious identities do.<sup>17</sup> Few people identify themselves primarily by the money in their bank account, but many people identify themselves by their race, their ethnicity, their religion, and the relative status of their groups in society,<sup>18</sup> and democratic breakdowns often follow narrow elections fought along racial, ethnic, religious, and cultural lines with mono-ethnic parties supporting ethnically exclusive agendas.<sup>19</sup> The most "pernicious" forms of polarization all involve competing identities fighting zero-sum battles over majority

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<sup>15</sup> See Seymour Martin Lipset & Stein Rokkan, *Introduction to Party Systems and Voter Alignments: Cross-National Perspectives* 1, 35 (Seymour Martin Lipset & Stein Rokkan eds., 1967) (noting that "constellations of ideologies, movements, and organizations" influence parties).

<sup>16</sup> See E.E. SCHATTSCHEIDER, *THE SEMI-SOVEREIGN PEOPLE: A REALIST'S VIEW OF DEMOCRACY IN AMERICA* 58–60 (1960) (describing how parties "organize the electorate" around a few choices and alternatives). See generally WILLIAM H. RIKER, *THE ART OF POLITICAL MANIPULATION* (1986); BYRON E. SHAFER & WILLIAM J. M. CLAGGETT, *THE TWO MAJORITIES: THE ISSUE CONTEXT OF MODERN AMERICAN POLITICS* (1995).

<sup>17</sup> See STANLEY ARONOWITZ, *THE POLITICS OF IDENTITY: CLASS, CULTURE, SOCIAL MOVEMENTS* 212–24 (1992) (noting the significance of these identities, among others, in transforming American politics in the late-twentieth century). See generally Esteban F. Klor & Moses Shayo, *Social Identity and Preferences over Redistribution*, 94 J. PUB. ECON. 269 (2010); Moses Shayo, *Social Identity and Economic Policy*, 12 ANN. REV. ECON. 355 (2020); Moses Shayo, *A Model of Social Identity with an Application to Political Economy: Nation, Class, and Redistribution*, 103 AM. POL. SCI. REV. 147 (2009).

<sup>18</sup> See Leonie Huddy, *From Social to Political Identity: A Critical Examination of Social Identity Theory*, 22 POL. PSYCH. 127, 129–37 (2001) (providing an overview of political and social identity theory and critiquing certain elements). See generally Alan I. Abramowitz & Kyle L. Saunders, *Exploring the Bases of Partisanship in the American Electorate: Social Identity vs. Ideology*, 59 POL. RSCH. Q. 175 (2006) (arguing that party identification correlates more with ideology than with social identities); Michael Kalin & Nicholas Sambanis, *How to Think About Social Identity*, 21 ANN. REV. POL. SCI. 239 (2018) (analyzing group identities' impact on individual rational choice); DONALD R. KINDER & CINDY D. KAM, *US AGAINST THEM: ETHNOCENTRIC FOUNDATIONS OF AMERICAN OPINION* (2010). For a discussion of the complexities that result from multiple group identities, see Sonia Roccas & Marilynn B. Brewer, *Social Identity Complexity*, 6 PERSONALITY & SOC. PSYCH. REV. 88 (2002).

<sup>19</sup> See David Waldner & Ellen Lust, *Unwelcome Change: Coming to Terms with Democratic Backsliding*, 21 ANN. REV. POL. SCI. 93, 104 (2018) (describing a theoretical approach that views "ethnic cleavages as a source of democratic instability"). See generally

control.<sup>20</sup> The Framers might have been wrong that democracy could exist without parties. But they were right that a sense of a permanent majority and a permanent minority would make self-government unsustainable. Democracy requires both the magnanimity of the winners and the consent of losers. The losers must believe that no loss is permanent and that the process is fair enough that they can regroup and build new coalitions to win the next election. The winners must accept that any win is also temporary and restrain from using their majority powers to give themselves any permanent advantages. The continuation of democracy depends on a shared sense of a fair process.<sup>21</sup> In a functioning democracy, political losers dust off their sleeves, reassess their priorities, and contemplate adjustments to better compete in the next election. In a broken democracy, political losers dust off their sleeves, tell themselves lies about how the election was unfair or stolen, convince themselves that they will never be able to win again, and resort to violence. This is how civil wars often start, including the American Civil War<sup>22</sup> and the Spanish Civil War.<sup>23</sup> The

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TED ROBERT GURR, *PEOPLES VERSUS STATES: MINORITIES AT RISK IN THE NEW CENTURY* (2000).

<sup>20</sup> Jennifer McCoy & Murat Somer, *Toward a Theory of Pernicious Polarization and How It Harms Democracies: Comparative Evidence and Possible Remedies*, 681 ANNALS AM. ACAD. POL. & SOC. SCI. 234, 235–36, 261 (2019) (describing conditions for this particular kind of polarization and the unique harms that accompany it). See generally Alan Abramowitz & Jennifer McCoy, *United States: Racial Resentment, Negative Partisanship, and Polarization in Trump's America*, 681 ANNALS AM. ACAD. POL. & SOC. SCI. 137 (2019) (analyzing the role of increased polarization, and Donald Trump's appeal to it, in the 2016 presidential election); Murat Somer, Jennifer L. McCoy & Russell E. Luke, *Pernicious Polarization, Autocratization and Opposition Strategies*, 28 DEMOCRATIZATION 929 (2021); Jennifer McCoy, Tahmina Rahman & Murat Somer, *Polarization and the Global Crisis of Democracy: Common Patterns, Dynamics, and Pernicious Consequences for Democratic Politics*, 62 AM. BEHAV. SCIENTIST 16 (2018) (arguing that severe polarization typically leads to one of four outcomes for democracy, of which three are bad and one is potentially positive); LILLIANA MASON, *UNCIVIL AGREEMENT: HOW POLITICS BECAME OUR IDENTITY* (2018).

<sup>21</sup> “Democracy,” writes the democratic theorist Adam Przeworski, “is a system in which parties lose elections.” ADAM PRZEWORSKI, *DEMOCRACY AND THE MARKET: POLITICAL AND ECONOMIC REFORMS IN EASTERN EUROPE AND LATIN AMERICA* 10 (1991); see also Richard Nadeau & André Blais, *Accepting the Election Outcome: The Effect of Participation on Losers' Consent*, 23 BRIT. J. POL. SCI. 553, 553 (1993) (noting that “losers' reactions are absolutely crucial” for the continuing stability of political regimes). See generally CHRISTOPHER J. ANDERSON, ANDRÉ BLAIS, SHAUN BOWLER, TODD DONOVAN & OLA LISTHAUG, *LOSERS' CONSENT: ELECTIONS AND DEMOCRATIC LEGITIMACY* (2005).

<sup>22</sup> See NATHAN P. KALMOE, *WITH BALLOTS AND BULLETS: PARTISANSHIP AND VIOLENCE IN THE AMERICAN CIVIL WAR* 24 (2020) (describing how Southern secessionists “chose to subvert federal authority by claiming secession” instead of accepting the result of the 1860 presidential election).

<sup>23</sup> See Manuel Álvarez Tardío, *The Impact of Political Violence During the Spanish General Election of 1936*, 48 J. CONTEMP. HIST. 463, 464 (2013) (describing the prominence



calculus that losers make depends on both the perceived unfairness of the electoral system and the perceived stakes of being out of power. When both are high, democracy becomes very fragile. This depends on both the rules of elections and the nature of partisan conflict.

### *B. Two Views of Democracy: Majoritarian vs. Proportional*

Let us start with the rules of elections. Broadly, scholars distinguish between majoritarian and proportional electoral systems.<sup>24</sup> The simplest distinction is that majoritarian systems are designed to give one party a governing majority, which means that the election becomes about which party gets to form a government—or, sometimes even more importantly, which party must be kept *out of power*.<sup>25</sup> Typically, majoritarian systems trend toward two parties, limiting voter choices.<sup>26</sup> The purest majoritarianism concentrates power in parliament, preventing any separation of powers. This is the model of the British Westminster system.<sup>27</sup> Proportional systems, on the other hand, are about maximizing representation and generating more parties in order to give voters more choices. The trade-off is that elections do not deliver clear majorities for one party. Instead, parties must form governing coalitions after the election. Sometimes parties signal those coalitions to voters before the election, sometimes not.

Proportional voting systems require multimember districts; majoritarian systems typically require single-member districts.<sup>28</sup> Here, the important point is the consequences of voter systems for electoral legitimacy and system support. The simple takeaway is that Madison was right: majoritarian systems breed distrust from losers. Compared to proportional systems, majoritarian systems make winners happier

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of election-related violence in civil wars and democratic collapses). *See generally* ANTONY BEEVOR, *THE BATTLE FOR SPAIN: THE SPANISH CIVIL WAR 1936–1939* (2006).

<sup>24</sup> *See* POWELL, JR., *supra* note 6, at 4 (identifying elections by whether they are majoritarian or proportional).

<sup>25</sup> *See* G. BINGHAM POWELL, JR., *IDEOLOGICAL REPRESENTATION: ACHIEVED AND ASTRAY: ELECTIONS, INSTITUTIONS, AND THE BREAKDOWN OF IDEOLOGICAL CONGRUENCE IN PARLIAMENTARY DEMOCRACIES 18–20* (2019) (describing how majoritarian elections result in majority control).

<sup>26</sup> *Id.* at 20 (describing how election law theory “predicts that single-member district plurality election rules will (under specific conditions) produce two-party systems”).

<sup>27</sup> *See* Ganghof, *supra* note 8, at 69 (describing the Westminster system as a model of the majoritarian electoral system).

<sup>28</sup> *See* MATTHEW S. SHUGART & REIN TAAGEPERA, *VOTES FROM SEATS: LOGICAL MODELS OF ELECTORAL SYSTEMS* 33, 35, 40 (2017) (describing the differences between simple proportional and plurality electoral systems). *See generally* REIN TAAGEPERA & MATTHEW SOBERG SHUGART, *SEATS AND VOTES: THE EFFECTS AND DETERMINANTS OF ELECTORAL SYSTEMS* (1989).



but generate losers who are much angrier.<sup>29</sup> In majoritarian democracies, losers demonstrate much lower levels of support for democracy, and as a result, majoritarian democracies have less overall support for democracy.<sup>30</sup> Low levels of citizen support for democracy, in turn, create opportunities for authoritarian takeover.<sup>31</sup> The United States is not a fully majoritarian democracy: The separation of powers system creates higher thresholds for majority rule. This high threshold typically demands some compromise and negotiation across parties in order to govern. But the United States has the strongest two-party system among advanced democracies, which can certainly make elections feel very majoritarian and thus very all-or-nothing.<sup>32</sup> Majoritarian systems generate much greater hatred for the out-party, since they create lesser-of-two-evils electoral campaigns in which both parties have powerful incentives to demonize the other side as radical and extreme.<sup>33</sup> This creates a very dangerous condition for democracy and, in particular, for a diverse, multiracial, multiethnic democracy.

### C. *The Challenge of Successful Multiracial, Multiethnic Democracy and the Role of Elections and Parties*

Multiracial, multiethnic democracy is difficult to maintain. Generally, there is a negative relationship between the quality of democ-

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<sup>29</sup> See Christopher J. Anderson & Christine A. Guillory, *Political Institutions and Satisfaction with Democracy: A Cross-National Analysis of Consensus and Majoritarian Systems*, 91 AM. POL. SCI. REV. 66, 68 (1997) (describing how proportional systems lessen the negative effects of losing elections).

<sup>30</sup> See Arthur H. Miller & Ola Listhaug, *Political Parties and Confidence in Government: A Comparison of Norway, Sweden and the United States*, 20 BRIT. J. POL. SCI. 357, 357 (1990) (discussing the relationship between political discontent and satisfaction with parties and regimes more generally); Christopher J. Anderson, *Parties, Party Systems, and Satisfaction with Democratic Performance in the New Europe*, 46 POL. STUD. 572, 585 (1998) (discussing the positive relationship between proportional systems and satisfaction with democratic government); Pippa Norris, *Is Western Democracy Backsliding? Diagnosing the Risks* (Harvard Kennedy Sch. Faculty Rsch. Working Paper Series, Working Paper No. RWP17-012, 2017) (noting that countries with proportional representation mitigate the problems of zero-sum politics).

<sup>31</sup> See SEYMOUR MARTIN LIPSET, *POLITICAL MAN: THE SOCIAL BASES OF POLITICS* 129–30 (1960) (describing the resulting threat to a democratic society when its citizens start to adopt anti-democratic arguments); ANDERSON ET AL., *supra* note 21, at 28–29 (noting that electoral losses and the negative attitudes they create may cause some citizens to reject the foundations of the political system entirely).

<sup>32</sup> See generally LEE DRUTMAN, *BREAKING THE TWO-PARTY DOOM LOOP: THE CASE FOR MULTIPARTY DEMOCRACY IN AMERICA* (2020).

<sup>33</sup> See NOAM GIDRON, JAMES ADAMS & WILL HORNE, *AMERICAN AFFECTIVE POLARIZATION IN COMPARATIVE PERSPECTIVE* 6, 10, 45, 55, 62 (2020) (noting the phenomenon of greater dislike of political opponents in majoritarian systems, including in the United States). See generally Levi Boxell, Matthew Gentzkow & Jesse M. Shapiro, *Cross-Country Trends in Affective Polarization* (Nat'l Bureau of Econ. Rsch., Working Paper No. 26669, 2020).

racy and a country's ethnic and racial diversity.<sup>34</sup> The obvious danger in a multiracial, multiethnic democracy is that politicians will politicize identity issues, because appealing to ethnic and racial identities is a powerful mobilizing force. As the political scientist Benjamin Reilly has explained: "In societies divided along ethnic lines, for example, it is often easier for campaigning parties to attract voter support by appealing to ethnic allegiances rather than issues of class or ideology."<sup>35</sup> In turn, "[t]his means that aspiring politicians have a strong incentive to mobilize followers along ethnic lines, and unscrupulous leaders who 'play the ethnic card' can be rewarded with electoral success."<sup>36</sup> And when "rival parties respond in kind, a process of 'out-bidding' can take hold, pushing the locus of political competition towards the extremes."<sup>37</sup> The problems arise when elections become zero-sum contests over the identity of the nation and/or the relative social status of different groups; the stakes of elections become too high to abide by respect for the rules. Violence becomes the obvious alternative.<sup>38</sup> Following logically from the above discussion about the dangers of majoritarianism and the dangers of partisan conflict over national identity, the greatest dangers arise in multiracial, multiethnic democracies when partisan conflict collapses into two competing parties fighting for narrow majority control, with the primary issue of par-

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<sup>34</sup> See Michael T. Hannan & Glenn R. Carroll, *Dynamics of Formal Political Structure: An Event-History Analysis*, 46 AM. SOCIO. REV. 19, 31 (1981) (discussing "the widespread belief that ethnic diversity destabilizes politics"); Edward N. Muller & Mitchell A. Seligson, *Civic Culture and Democracy: The Question of Causal Relationships*, 88 AM. POL. SCI. REV. 635, 636, 641, 647 (1994) (explaining the theory that "subcultural pluralism" may negatively affect democratic stability). See generally Bernard Grofman & Robert Stockwell, *Institutional Design in Plural Societies: Mitigating Ethnic Conflict and Fostering Stable Democracy* (U.C. Irvine Ctr. for the Study of Democracy, 2001); JACK SNYDER, FROM VOTING TO VIOLENCE: DEMOCRATIZATION AND NATIONALIST CONFLICT (2000). For an alternative perspective, see M. Steven Fish & Robin S. Brooks, *Does Diversity Hurt Democracy?*, 15 J. DEMOCRACY 154, 155 (2004) ("Yet closer inspection reveals surprisingly scanty evidence that diversity countervails open politics.").

<sup>35</sup> Benjamin Reilly, *Political Engineering and Party Politics in Conflict-Prone Societies*, 13 DEMOCRATIZATION 811, 812 (2006).

<sup>36</sup> *Id.* at 812.

<sup>37</sup> *Id.*; see also ALVIN RABUSHKA & KENNETH A. SHEPSLE, *POLITICS IN PLURAL SOCIETIES: A THEORY OF DEMOCRATIC INSTABILITY* 150-53 (2009) (discussing political concept of outbidding).

<sup>38</sup> See G. Bingham Powell, Jr., *Party Systems and Political System Performance: Voting Participation, Government Stability and Mass Violence in Contemporary Democracies*, 75 AM. POL. SCI. REV. 861, 871 (1981) (describing the shortcomings of extremist and aggregative majority systems in limiting violence). See generally G. BINGHAM POWELL, JR., *CONTEMPORARY DEMOCRACIES: PARTICIPATION, STABILITY, AND VIOLENCE* (1984); MICHAEL ADDISON, *VIOLENT POLITICS: STRATEGIES OF INTERNAL CONFLICT* (2002). For a discussion of the cascading nature of ethnic polarization and divisiveness, see Murat Somer, *Cascades of Ethnic Polarization: Lessons from Yugoslavia*, 573 ANNALS AM. ACAD. POL. & SOC. SCI. 127 (2001).

tisan conflict emerging out of parties divided by ethnic and racial identity. Political scientists Jennifer McCoy and Murat Somer describe this as “pernicious” polarization—a pattern of “polarization that occurs when these differences become aligned within (normally two) camps with mutually exclusive identities and interests.”<sup>39</sup> This “alignment of opinions under a single identity, rather than the radicalization of opinion, . . . ‘crystalizes interests into opposite factions’ and threatens to undermine social cohesion and political stability.”<sup>40</sup> When politics crystallizes into a fight between two distinct camps, representing two distinct identities, politics gets reduced to a battle of “us” against “them.”<sup>41</sup> McCoy and Somer note that the more majoritarian (winner-take-all) the political system, the worse pernicious polarization is likely to become.<sup>42</sup> They argue that “[l]eaders and supporters alike describe their own and opposing political groups in black and white terms as good and evil. They ascribe nefarious, often immoral, intentions and demonstrate prejudice and bias against those in the opposing camp.”<sup>43</sup> In this respect, the United States has been following a well-trodden path to democratic breakdown when ethnic and racial divides are elevated to the center of partisan conflict in an all-or-nothing winner-take-all binary conflict. American partisan politics have sorted clearly on group identity lines over the last several decades, with Democrats becoming the party of cosmopolitanism and ethnic and racial diversity and Republicans becoming the party of traditionalism and a vision of American Greatness that is heavy on white and Christian elements. This “sorting” has been widely chronicled by numerous scholars of American politics.<sup>44</sup> Many scholars have

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<sup>39</sup> McCoy, Rahman & Somer, *supra* note 20, at 18.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 19 (“At the extreme, each camp questions the moral legitimacy of the others, viewing the opposing camp and its policies as an existential threat to their way of life . . . . Categorization extends to all aspects of life, not just political, and peaceful coexistence is no longer perceived by citizens as possible.” (internal citation omitted)).

<sup>42</sup> See McCoy & Somer, *supra* note 20, at 242 (“We expect majoritarian electoral systems to deepen the democracy-eroding effects of polarization, and majoritarian and proportional systems to generate different incentives and opportunities for polarizing political agents.”).

<sup>43</sup> *Id.* at 244.

<sup>44</sup> See, e.g., MATTHEW LEVENDUSKY, *THE PARTISAN SORT: HOW LIBERALS BECAME DEMOCRATS AND CONSERVATIVES BECAME REPUBLICANS* (2009); Lilliana Mason, *A Cross-Cutting Calm: How Social Sorting Drives Affective Polarization*, 80 *PUB. OP. Q.* 351 (2016); Nicholas T. Davis, Samara Klar & Christopher R. Weber, *Affective Consistency and Sorting*, 100 *SOC. SCI. Q.* 2477 (2019); Bart Bonikowski, Yuval Feinstein & Sean Bock, *The Partisan Sorting of ‘America’: How Nationalist Cleavages Shaped the 2016 U.S. Presidential Election* (Oct. 3, 2020) (unpublished manuscript), <https://osf.io/preprints/socarxiv/pmg95>; MORRIS P. FIORINA, *UNSTABLE MAJORITIES: POLARIZATION, PARTY SORTING, AND POLITICAL STALEMATE* (2017).

also observed the ways in which this sorting paved the way for the rise of nativism in the Republican Party<sup>45</sup> and ultimately the rise of Donald Trump and his particular brand of zero-sum nativist politics, with dire consequences for communities of color.<sup>46</sup> Viewed solely in the American context, the rise of nativism in the United States is a single case with numerous contributing causes and many narrative explanations that potentially fit the facts.<sup>47</sup> Viewed in a more comparative context, it fits a much more familiar pattern of democratic decline and breakdown when the high stakes of winner-take-all majoritarian politics combine with a party system that gets stuck in a binary partisan polarization structured around racial, ethnic, geographic, religious, and cultural identities.<sup>48</sup> Scholars have thought long and hard not only about the challenges of multiracial, multiethnic democracy but also its successes. In a multiracial, multiethnic democracy, the formula for success is twofold. First, all groups must be represented fairly so that no group feels like it will be totally and permanently shut out of power if it loses an election. Second, partisan politics must not divide cleanly along racial and ethnic lines, especially

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<sup>45</sup> See generally THEDA SKOCPOL & VANESSA WILLIAMSON, *THE TEA PARTY AND THE REMAKING OF REPUBLICAN CONSERVATISM* (2012); Michael A. Bailey, Jonathan Mummolo & Hans Noel, *Tea Party Influence: A Story of Activists and Elites*, 40 AM. POL. RSCH. 769 (2012); Kevin Arceneaux & Stephen P. Nicholson, *Who Wants to Have a Tea Party? The Who, What, and Why of the Tea Party Movement*, 45 PS: POL. SCI. & POL. 700 (2012); CHRISTOPHER S. PARKER & MATT A. BARRETO, *CHANGE THEY CAN'T BELIEVE IN: THE TEA PARTY AND REACTIONARY POLITICS IN AMERICA* (2013).

<sup>46</sup> See generally, e.g., RACHEL M. BLUM, *HOW THE TEA PARTY CAPTURED THE GOP: INSURGENT FACTIONS IN AMERICAN POLITICS* (2020).

<sup>47</sup> Trump's rise has simultaneously been attributed to the culmination of political realignment, ALAN I. ABRAMOWITZ, *THE GREAT ALIGNMENT: RACE, PARTY TRANSFORMATION, AND THE RISE OF DONALD TRUMP* 46 (2018), racial backlash, JOHN SIDES, MICHAEL TESLER & LYNN VAVRECK, *IDENTITY CRISIS: THE 2016 PRESIDENTIAL CAMPAIGN AND THE BATTLE FOR THE MEANING OF AMERICA* 155–57 (2019), a split in the Republican Party, see Marty Cohen, David Karol, Hans Noel & John Zaller, *Party Versus Faction in the Reformed Presidential Nominating System*, 49 PS: POL. SCI. & POL. 701 (2016) (discussing reduced control of nominations by Republican elites), status threat, Diana C. Mutz, *Status Threat, Not Economic Hardship, Explains the 2016 Presidential Vote*, PROC. NAT. ACAD. SCI. (2018), broad-based discontent, JOHN L. CAMPBELL, *AMERICAN DISCONTENT: THE RISE OF DONALD TRUMP AND DECLINE OF THE GOLDEN AGE* (2018), activation of authoritarian attitudes, David Norman Smith & Eric Hanley, *The Anger Games: Who Voted for Donald Trump in the 2016 Election, and Why?*, 44 CRITICAL SOCIO. 195, 196, 203 (2018), Matthew C. MacWilliams, *Who Decides When the Party Doesn't? Authoritarian Voters and the Rise of Donald Trump*, 49 PS: POL. SCI. & POL. 716 (2016), and the broader failures of Republican elites to manage their coalition, J. Eric Oliver & Wendy M. Rahn, *Rise of the Trumpenvolk: Populism in the 2016 Election*, 667 ANNALS AM. ACAD. POL. & SOC. SCI. 189, 190, 192, 202 (2016), among many other potential factors.

<sup>48</sup> See Murat Somer & Jennifer McCoy, *Transformations Through Polarizations and Global Threats to Democracy*, 681 ANNALS AM. ACAD. POL. & SOC. SCI. 8 (2019); STEVEN LEVITSKY & DANIEL ZIBLATT, *HOW DEMOCRACIES DIE* (2018).

when politics is binary and winner-take-all. The best way to accomplish both goals is through a proportional voting system.<sup>49</sup>

*D. The Danger of Binary, Winner-Take-All Political Conflict in a Multiracial, Multiethnic Society*

At one level, the principle is very simple: If the greatest threat to multiracial, multiethnic democracy emerges when partisan electoral conflict becomes a binary high stakes all-or-nothing fight over which one or more groups become dominant, then the straightforward solution is that elections not be zero-sum winner-take-all contests. Further, binary political conflict should be discouraged in favor of more complicated cross-racial, cross-ethnic, and cross-partisan coalitions—precisely Madison’s vision of fluid and overlapping factions.<sup>50</sup> In one sense, then, guarding against this threat of collapsed binary political conflict is a function of political engineering: political and electoral institutions that make it difficult for majorities to oppress minorities and require broad compromise across competing groups are more likely to be stable.

But anybody familiar with the United States system of government should recognize that there is an obvious trade-off. If we do too much to constrain majorities, we empower minorities to rule over majorities, and we create political institutions that are so slow and deliberative that they become unresponsive and immobilized. The key, then, is not so much to prevent the ability of majorities to act, but rather to ensure that majorities are fluid and inclusive—that not only do no groups have permanent majority status and no groups have permanent minority status, but that no groups expect to have such status. Without either the tantalizing promise of total power or the terrifying fear of total subjugation, it is far easier to work collaboratively across group and party lines.

This basic insight has been validated by repeated social psychology experiments. One of the staples of group psychology is the “minimal group paradigm” in which a group of people is randomly divided into two arbitrary subgroups, who are then put into competi-

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<sup>49</sup> See Arend Lijphart, *Constitutional Design for Divided Societies*, 15 J. DEMOCRACY 96, 100 (2004) (“For divided societies, ensuring the election of a broadly representative legislature should be the crucial consideration, and PR [proportional representation] is undoubtedly the optimal way of doing so.”); Reilly, *supra* note 35, at 815. See generally SUSTAINABLE PEACE: POWER AND DEMOCRACY AFTER CIVIL WARS (Philip G. Roeder & Donald Rothchild eds., 2005) (advancing the “power dividing” model for institution building after civil war); ADRIAN GUELKE, POLITICS IN DEEPLY DIVIDED SOCIETIES (2012) (discussing proportional representation systems); HANNA LERNER, MAKING CONSTITUTIONS IN DEEPLY DIVIDED SOCIETIES (2011).

<sup>50</sup> See *supra* notes 8–12 and accompanying text.

tion with each other. Pretty soon, they start saying nasty things about the other group and support narratives about their own superiority (based, again, on random assignments). In these experiments, people deny resources to out-groups, even if it means that their group gets less too, simply to maintain superiority. These experiments discovered an important truth about human nature—when one divides people into two groups, however arbitrary, and puts them in opposition with each other for resources and power, a mental switch flips and people begin to see the world in terms of *us against them*, with all the negative, zero-sum consequences.<sup>51</sup> But the “minimal group paradigm” only generates hostility and zero-sum thinking when people are divided into *two* groups. When people are divided into more than two groups, or overlapping groups, they do not become hostile, nor do they withhold resources from each other only out of spite.<sup>52</sup> Thus, the importance of crosscutting political alignments.

This is consistent with another insight from political sociology, the “crosscutting” or “cross-pressure” hypothesis. The basic logic goes like this: All societies have some social divisions—religion, geography, education, class, etc. When some of those identities point in one political direction, and some point in another direction, we are less likely to approach partisan politics in *us versus them* terms and more likely to be broadly tolerant of the other side because we could potentially see ourselves as part of it. Crosscutting political identities generate the “capacity to see that there is more than one side to an issue, that a political conflict is, in fact, a *legitimate* controversy with rationales on both sides,”<sup>53</sup> making politics more complicated and uncertain. And while certainty often leads to intolerance of others, *uncertainty* leads to *tolerance*. When we are not sure whether we are right, we are more open to hearing from others. But when big social divisions all line up with partisan divisions, partisan conflict reduces to a single, us against them dimension. We each retreat into our separate camps, surrounded by like-minded people who share our same group identities. And from this isolated position, we become more certain. Certainty makes us passionate and less likely to tolerate dissent. Politics feels like war.

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<sup>51</sup> See Michael Diehl, *The Minimal Group Paradigm: Theoretical Explanations and Empirical Findings*, 1 EUR. REV. SOC. PSYCH. 263 (1990); MASON, *supra* note 20, at 1–2; cf. ROGER D. PETERSEN, UNDERSTANDING ETHNIC VIOLENCE: FEAR, HATRED, AND RESENTMENT IN TWENTIETH-CENTURY EASTERN EUROPE (2002) (setting forth an emotion-based theory of ethnic conflict).

<sup>52</sup> See Margaret Hartstone & Martha Augoustinos, *The Minimal Group Paradigm: Categorization into Two Versus Three Groups*, 25 EUR. J. SOC. PSYCH. 179, 188 (1995) (noting that “a three-group condition does not elicit ingroup bias”).

<sup>53</sup> Diana C. Mutz, *Cross-Cutting Social Networks: Testing Democratic Theory in Practice*, 96 AM. POL. SCI. REV. 111, 122 (2002).



Our political opponents appear as less than human.<sup>54</sup> When all of our salient group identities align into two partisan mega-identities, and politics collapses into an all-or-nothing battle of *us against them*, our primitive survivalist impulses take over.<sup>55</sup> “In this political environment,” Lilliana Mason writes, “a candidate who picks up the banner of ‘us versus them’ and ‘winning versus losing’ is almost guaranteed to tap into a current of resentment and anger across racial, religious, and cultural lines, which have recently divided neatly by party,” and “[t]he increasing political divide has allowed political, public, electoral, and national norms to be broken with little to no consequence.”<sup>56</sup>

When people live, work, and socialize with people from different groups, they tend to be more tolerant of other groups and other opinions and less prone to negative stereotypes. When people live in ethnically and racially homogeneous communities, they grow more intolerant of different groups and more prone to negative stereotypes.<sup>57</sup> This goes for political ideology as well. Homogenous political communities breed extremism.<sup>58</sup> In political life, groups that never share political power and govern together are much more intolerant of each other and much more prone to demonize and stereotype each other. Crosscutting cleavages are essential to preventing the collapse of politics along any single dimension—most dangerously, a single identity dimension.<sup>59</sup>

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<sup>54</sup> See James L. Martherus, Andres G. Martinez, Paul K. Piff & Alexander G. Theodoridis, *Party Animals? Extreme Partisan Polarization and Dehumanization*, 43 POL. BEHAV. 517, 535 (2021) (finding that partisans are consistently willing to dehumanize members of the other party); Maria G. Pacilli, Michele Rocco, Stefano Pagliaro & Silvia Russo, *From Political Opponents to Enemies? The Role of Perceived Moral Distance in the Animalistic Dehumanization of the Political Outgroup*, 19 GRP. PROCESSES & INTERGROUP RELS., 360, 363 (2015) (discussing dehumanization via animalization, or considering a certain group of people as more like animals and less like humans). See generally NATHAN P. KALMOE & LILLIANA MASON, *RADICAL AMERICAN PARTISANSHIP: MAPPING VIOLENT HOSTILITY, ITS CAUSES, & WHAT IT MEANS FOR DEMOCRACY* (2021).

<sup>55</sup> See generally KALMOE & MASON, *supra* note 54; MASON, *supra* note 20, at 14.

<sup>56</sup> MASON, *supra* note 20, at 13.

<sup>57</sup> See JOHN F. DOVIDIO, PETER GLICK & LAURIE A. RUDMAN, *ON THE NATURE OF PREJUDICE: FIFTY YEARS AFTER ALLPORT* 8–9 (2005) (describing Gordon Allport’s theory that “intergroup contact could effectively decrease bias at the individual level”). See generally GORDON ALLPORT, *THE NATURE OF PREJUDICE* (1954).

<sup>58</sup> See CASS R. SUNSTEIN, *GOING TO EXTREMES: HOW LIKE MINDS UNITE AND DIVIDE* 89 (2009) (“As a statistical regularity, deliberating groups will end up in a more extreme point in line with their predeliberation tendencies.”).

<sup>59</sup> See Michael Taylor & Douglas Rae, Research Note, *An Analysis of Crosscutting Between Political Cleavages*, 1 COMPAR. POL. 534, 535 (1969) (“If an individual finds himself torn by contradictory affiliations—or ‘cross-pressured’—we would expect him to be less intense and less aggressive.”). See generally LEWIS A. COSER, *THE FUNCTIONS OF SOCIAL CONFLICT* (1956) (describing the power of inter-group conflict to increase cohesion within groups); G. Bingham Powell, Jr., *Political Cleavage Structure, Cross-Pressure Processes, and Partisanship: An Empirical Test of the Theory*, 20 AM. J. POL. SCI. 1 (1976).



### E. *How Electoral Rules Shape Political Coalitions*

The most productive way to generate and maintain these kinds of crosscutting coalitions is through careful attention to electoral system design and its downstream effects on parties and electoral competition. The basic idea follows from the logic of crosscutting cleavages already discussed: that the best way for multiracial, multiethnic democracies to thrive is for different racial and ethnic groups to sometimes work as political allies. The enemies of multiracial, multiethnic democracy are longstanding party alignments that pit competing racial and ethnic groups in extended zero-sum battles for total control of government.

Political scientist Benjamin Reilly describes this approach as “crafting institutions which de-emphasize the importance of ethnicity in the political process and undermine the potential for mono-ethnic demands, such as the use of ‘vote-pooling’ electoral systems that make politicians dependent on several different groups to gain election.”<sup>60</sup> The most common “vote-pooling” system is ranked-choice voting, known abroad as the alternative vote. As Reilly explains, ranking systems create “electoral incentives for campaigning politicians to reach out to and attract votes from ethnic groups other than their own, thus encouraging candidates to moderate their political rhetoric on potentially divisive issues and forcing them to broaden their policy positions.”<sup>61</sup> The goal, as Horowitz puts it, is “making moderation pay.”<sup>62</sup> Proportional representation is also crucial for creating a cross-racial, cross-ethnic, compromise-oriented approach to governing. Because proportional representation can generate space for multiple parties to form, it is rare that any single party will win enough of a majority to govern by itself. Thus, parties have to form coalitions to govern. These coalitions will typically evolve and change over time, with fewer permanent enemies.<sup>63</sup> This change avoids the type of semi-permanent binary divisions that are so dangerous to democracy because they typically harden around racial, ethnic, religious, and geographical divides.<sup>64</sup> The historical record is clear: Proportional representation leads to less racial and ethnic conflict, while majoritarian systems lead

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<sup>60</sup> Reilly, *supra* note 35, at 815.

<sup>61</sup> *Id.* at 816.

<sup>62</sup> Donald L. Horowitz, *Making Moderation Pay: The Comparative Politics of Ethnic Conflict Management*, in *CONFLICT AND PEACEMAKING IN MULTIETHNIC SOCIETIES* 451 (Joseph V. Montville ed., 1990).

<sup>63</sup> See AREND LIJPHART, *PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES* 2 (2d ed. 1999) (“The consensus model is characterized by inclusiveness, bargaining, and compromise.”).

<sup>64</sup> See Somer & McCoy, *supra* note 48.

to more conflict in divided societies.<sup>65</sup> In summary, the experiences of multiracial, multiethnic democracies around the world point to a clear conclusion on what to avoid. The most significant threats to the stability of multiracial, multiethnic democracy, and thus the wellbeing of minority groups within those democracies, are a party system that reifies and elevates racial and ethnic divides and an electoral system that raises the stakes of those divides. The binary, majoritarian, and highly nationalized party system of the United States as currently structured thus violates everything we know about how best to make multiracial, multiethnic democracy work. It is both dangerous to democracy, and harmful to minority representation. We now turn to the American experience of multiracial, multiethnic democracy within a two-party system of single-member districts.

## II

### THE AMERICAN EXPERIENCE

We must now examine the flaws of minority representation within the American two-party system of single-winner plurality elections.

#### A. *The Two-Party System*

Let us start with the party system. At three moments in United States history, racial justice has ascended to the center of American politics: the Civil War, the Civil Rights era, and today. Prior to the Civil War, the two-party system suppressed the issue of slavery, forging a series of increasingly unsustainable “compromises” until the Whig Party split in half over the issue.<sup>66</sup> The Democratic Party followed, polarizing politics along a North-South cleavage that led to civil war, showing that a binary conflict over American national iden-

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<sup>65</sup> See David Lublin & Shaun Bowler, *Electoral Systems and Ethnic Minority Representation*, in THE OXFORD HANDBOOK OF ELECTORAL SYSTEMS 6–7 (Erik S. Herron, Robert J. Pekkanen & Matthew S. Shugart eds., 2018) (“[A] major building block in building ethnic differences is to rely on proportional election systems of some kind.”); Stephen M. Saideman, David J. Lanoue, Michael Campenni & Samuel Stanton, *Democratization, Political Institutions, and Ethnic Conflict: A Pooled Time-Series Analysis, 1985-1998*, 35 COMPAR. POL. STUD. 103, 118 (2002) (“[D]emocracies with proportional representation systems have much less . . . ethnic conflict.”). See generally Gerald Schneider & Nina Wiesehomeier, *Rules That Matter: Political Institutions and the Diversity–Conflict Nexus*, 45 J. PEACE RSCH. 183 (2008); John D. Huber, *Measuring Ethnic Voting: Do Proportional Electoral Laws Politicize Ethnicity?*, 56 AM. J. POL. SCI. 986 (2012).

<sup>66</sup> See Corey Brooks, *What Can the Collapse of the Whig Party Tell Us About Today’s Politics?*, SMITHSONIAN MAG. (Apr. 12, 2016), <https://www.smithsonianmag.com/history/what-can-collapse-whig-party-tell-us-about-todays-politics-180958729> (discussing the Whig Party’s split).

tity is not a sustainable basis for a party system. Whether there was another path to ending slavery, we will never know. But we do know that the highly polarizing politics of the 1850s led the South to double down on the defense of slavery as a cause.<sup>67</sup> Following the compromise of 1876, which ended Reconstruction, civil rights took a back seat in American party politics. Black voters were disenfranchised in the South under Jim Crow and they lacked the bloc voting power in the North to have their concerns elevated. But following the Great Migration, Black voters became an increasingly pivotal voting bloc in many northern states.<sup>68</sup> And because both major parties had an equally bad record on civil rights, Black voters did not have strong partisan loyalties. They were, essentially, swing voters.<sup>69</sup> Thus, in the 1950s and 1960s, both political parties had powerful incentives to win over the growing share of “gettable” Black voters, who held the balance of power in some key northern states.<sup>70</sup> Thus, whatever moral force civil rights had, it was also good politics.<sup>71</sup> But once the Democrats became the party of civil rights, the coalitional dynamics of American party politics shifted. Black voters became a reliable Democratic Party constituency. Thus, Republicans increasingly stopped trying to appeal to them, except perhaps at the margins based on religious conservatism.<sup>72</sup> And with no genuine threat that more than a small percentage of Black voters would vote Republican, Democrats could largely take them for granted and then focus on policies that might appeal to white swing voters with more conservative views on race. In a two-party system, groups taken for granted by one of the two major parties and ignored by the other lose their voting

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<sup>67</sup> See ERIC FONER, *POLITICS AND IDEOLOGY IN THE AGE OF THE CIVIL WAR* 34, 36–37 (1980) (describing how the South and North polarized in the decade before the Civil War).

<sup>68</sup> See KENESHIA N. GRANT, *THE GREAT MIGRATION AND THE DEMOCRATIC PARTY: BLACK VOTERS AND THE REALIGNMENT OF AMERICAN POLITICS IN THE 20TH CENTURY* 3 (2020) (“[The] northward migration created Black Americans’ ability to participate in politics.”).

<sup>69</sup> See *id.* at 18 (“In instances where party factions or the electorate is split, Black voters sometimes had an exceptional ability to influence the outcome of elections.”).

<sup>70</sup> See *id.* at 3 (noting that by the end of the Great Migration, “candidates and parties believed that they must address Black voters” in northern states).

<sup>71</sup> See *id.* at 18 (“[W]hite political elites did believe that Black voters were important to their political success.”).

<sup>72</sup> See Louis Bolce, Gerald De Maio & Douglas Muzzio, *Blacks and the Republican Party: The 20 Percent Solution*, 107 *POL. SCI. Q.* 63, 77 (1992) (concluding that “there is nothing . . . that points to any segment of the [B]lack community that can be successfully mined for Republican votes,” but that Republicans might target Black voters who are “politically and culturally conservative”).

power. Paul Frymer describes this as a condition of “electoral capture.”<sup>73</sup> According to Frymer:

Unlike those in other democratic societies, our party system exacerbates rather than diminishes the marginalized position of a historically disadvantaged minority group. The United States is not the only democratic nation with sharp racial divisions, nor are we the only democratic nation with cleavages between a large majority and small minority. We are, however, one of the few democratic nations where party leaders have an incentive to appeal almost exclusively to the majority group.<sup>74</sup>

In a system of plurality, single-winner elections, an entrepreneurial third or fourth party cannot emerge to represent the voters without a proportional voting system. Thus, it is only in moments of political flux, in which Black voters are not aligned with either political party, when they can have some leverage over politics in the American two-party system. But those moments only emerge when both parties are *equally* nonresponsive to the concerns of Black voters, leaving Black voters up for grabs. “Instead of giving rise to a truly nonracial politics and nonracist ideologies,” writes Frymer, “the two-party system legitimates an agenda reflecting the preferences of white voters, and it structures [B]lack interests outside party competition.”<sup>75</sup> Arguably, the Democratic Party has become slightly more responsive to the concerns of minority, and especially Black, voters since 2016, as Democratic Party strategists have realized the importance of these voting blocs to Democratic electoral success, and as white liberals in the party have become more supportive of social justice causes.<sup>76</sup> But elevating these concerns to the center of American politics has caused the Republican Party to take a more extreme position in response, with unmistakable white nationalist overtones.<sup>77</sup> Given the comparative politics lessons discussed in the first section, the revanchist racial radicalism of the contemporary Republican Party

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<sup>73</sup> PAUL FRYMER, *UNEASY ALLIANCES: RACE AND PARTY COMPETITION IN AMERICA* 8 (2d ed. 2010) (defining electoral capture as a situation where a “group has no choice but to remain in the party. . . . The party leadership, then, can take the group for granted . . . . [A] captured group will often find its interests neglected by their own party leaders,” who offer their benefits to swing voters instead).

<sup>74</sup> *Id.* at 6.

<sup>75</sup> *Id.* at 28.

<sup>76</sup> See Asma Khalid, *How White Liberals Became Woke, Radically Changing Their Outlook on Race*, NPR (Oct. 1, 2019), <https://www.npr.org/2019/10/01/763383478/how-white-liberals-became-woke-radically-changing-their-outlook-on-race>.

<sup>77</sup> See *id.* See generally ASHLEY JARDINA, *WHITE IDENTITY POLITICS* (2019); MARISA ABRAJANO & ZOLTAN L. HAJNAL, *WHITE BACKLASH: IMMIGRATION, RACE, AND AMERICAN POLITICS* (2015); ZOLTAN L. HAJNAL, *DANGEROUSLY DIVIDED: HOW RACE AND CLASS SHAPE WINNING AND LOSING IN AMERICAN POLITICS* (2020).

should hardly be surprising. In a majoritarian party system with winner-take-all elections, a political cleavage around national identity is likely to activate a heightened threat on behalf of a former majority group that fears losing its power.<sup>78</sup> Thus, a rise in white identity politics follows logically from the structure of partisan and electoral conflict. With it comes potential catastrophic consequences for both the stability of American democracy and for the wellbeing of minority communities, which is endangered when racial extremists have power, especially disproportionate power. Worse, because the Republican Party has largely given up practical hope of appealing to many voters of color, it has instead followed a strategy of targeted voter suppression, trying to make it hard for communities of color to vote.<sup>79</sup> Whether this is a racial strategy or a partisan strategy is hard to tell. The two are fundamentally linked. And this entanglement is the core problem. When one party no longer bothers to compete for the votes of certain minority groups, it has powerful political incentives to make it harder for that group to vote. This incentive is especially pronounced in a closely contested two-party system where every blocked Democratic vote directly helps the Republican Party and where elections that can hinge on only a few thousand votes determine total control.

In short, minority representation throughout the history of two-party politics in the United States has played out in four settings. In one setting, both parties are equally nonresponsive to minority interests. This describes much of United States political history from the founding through the mid-1960s, with one exception: 1854 to 1876.<sup>80</sup>

That takes us to the second setting: deep division, in which the fundamental binary cleavage in two-party politics is over national identity. This cleavage led to civil war last time. Now we are entering a second period of deep division, with growing fear of a “second civil war”—and a comparable fight over American national identity, with confederate flags and all.<sup>81</sup>

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<sup>78</sup> See PETERSEN, *supra* note 51, at 74–75 (describing the role of fear in struggles between political factions).

<sup>79</sup> See Michael J. Klarman, *The Supreme Court, 2019 Term—Foreword: The Degradation of American Democracy – And the Court*, 134 HARV. L. REV. 1, 46 (2020) (describing the Republican Party’s decision to shrink the electorate, “rather than alter their agenda to make it more popular”).

<sup>80</sup> See *supra* notes 65–68 and accompanying text.

<sup>81</sup> See David Cay Johnston, *We’re Fighting the Second American Civil War*, SALON (Feb. 9, 2021), [https://www.salon.com/2021/02/09/were-fighting-the-second-american-civil-war\\_partner](https://www.salon.com/2021/02/09/were-fighting-the-second-american-civil-war_partner); Associated Press, *Some Republicans Call for Second Civil War: ‘Citizens Take Arms!’*, AL (Jan. 18, 2021), <https://www.al.com/news/2021/01/some-republicans-call-for-second-civil-war-citizens-take-arms.html>.

The third setting is what Frymer describes as “electoral capture”—which describes the post-Civil Rights era pretty well.<sup>82</sup>

The fourth setting, the rarest, is when minority voters are actually a pivotal swing bloc, and both parties see gain in responding to their concerns. This describes the years leading up to the civil rights legislation from 1964 to 1968.<sup>83</sup> But it was a short window. Once the Democratic Party became the party of civil rights, and once the Republican Party activated racial resentment in a backlash, Black voters lost their leverage as swing voters in the two-party system.<sup>84</sup>

So, in the United States two-party system, there are essentially two ways for minority groups to demand responsiveness. The first way is by being a pivotal or swing constituency. But for reasons discussed above, this can only happen when both parties are *equally* nonresponsive, thus creating the opportunity for one to be responsive. The second way is to become a central power broker within one of the two major parties, as labor unions were for Democrats from the New Deal through the early 1980s and as the Christian Right has been for Republicans since the early 1980s.<sup>85</sup> But the challenge for any minority group is that it is rarely large enough to become such a senior coalition partner in a major party in a two-party system; or, if it does (as could arguably be the case in the post-2016 Democratic Party), it so defines partisan conflict as a racialized fight over national identity, with all potentially destructive consequences that arise from that.

### B. *The Voting System*

Let us now turn to the voting system, specifically the use of single-winner plurality electoral districts, and even more specifically the use of majority-minority districts to maximize minority representation within the system of single-winner districts. In the years following the original Voting Rights Act, the prevailing wisdom was that it was not simply enough to have the right to vote. It was also important to have descriptive representation. The best advocates for people of color would be other people of color. Thus, majority-minority districts, in which the majority of voters were racial minorities, became the most direct path to expanded minority representation.<sup>86</sup> Since

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<sup>82</sup> See *supra* notes 70–73 and accompanying text.

<sup>83</sup> See *supra* notes 68–70 and accompanying text.

<sup>84</sup> See *supra* notes 69–73 and accompanying text.

<sup>85</sup> See DANIEL SCHLOZMAN, *WHEN MOVEMENTS ANCHOR PARTIES: ELECTORAL ALIGNMENTS IN AMERICAN HISTORY* 256 (2015) (reporting on how the Christian Right and organized labor “succeeded in integrating themselves into the political system, and helping to define the contours of politics”).

<sup>86</sup> See Charles Cameron, David Epstein & Sharyn O’Halloran, *Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?*, 90 AM. POL. SCI. REV.

elected representatives are key players in party coalitions, a good strategy for getting the Democratic Party to take the concerns of minority voters more seriously is to have more minority representatives. And in a strict sense, majority-minority districts worked: The number of minority elected officials at all levels of government grew substantially.<sup>87</sup> However, this approach has come at a cost. Here, we discuss the costs as a way of understanding the trade-offs within the party system. Many of today's majority-minority congressional districts were drawn in 1991, following the Voting Rights Act of 1982. To create majority-minority districts, the new maps produced more lopsided Democratic districts, since minority voters support Democrats at extremely high rates. This, in turn, helped Republicans win more seats, since it effectively "packed" Democratic voters into fewer districts, while more evenly distributing Republican voters,<sup>88</sup> an outcome many Republican politicians were happy to comply with.<sup>89</sup> Granted, at

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794, 794 (1996) ("The past quarter-century has seen the rise of . . . the 'theory of black electoral success,' according to which the advancement of minority interests can be measured by the number of minorities elected to public office. This goal has been achieved largely by the construction of concentrated minority voting districts . . ."). See generally CONTROVERSIES IN MINORITY VOTING: THE VOTING RIGHTS ACT IN PERSPECTIVE (Bernard Grofman & Chandler Davidson eds., 1992).

<sup>87</sup> See QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965–1990 (Chandler Davidson & Bernard Grofman eds., 1994) (chronicling the increase in Black and Mexican-American representation in the South); Susan A. Banducci, Todd Donovan & Jeffrey A. Karp, *Minority Representation, Empowerment, and Participation*, 66 J. POL. 534 (2004); JASON P. CASELLAS, *LATINO REPRESENTATION IN STATE HOUSES AND CONGRESS* (2011); Claudine Gay, *Spirals of Trust? The Effect of Descriptive Representation on the Relationship Between Citizens and Their Government*, 46 AM. J. POL. SCI. 717 (2002) (exploring how minority constituents' ability to identify racially with their representatives impacts their perceptions of government); Claudine Gay, *The Effect of Black Congressional Representation on Political Participation*, 95 AM. POL. SCI. REV. 589 (2001) [hereinafter Gay, *The Effect of Black Congressional Representation*] (same); JOHN D. GRIFFIN & BRIAN NEWMAN, *MINORITY REPORT: EVALUATING POLITICAL EQUALITY IN AMERICA* (2008); Vincent L. Hutchings, Harwood K. McClerking & Guy-Uriel Charles, *Congressional Representation of Black Interests: Recognizing the Importance of Stability*, 66 J. POL. 450 (2004) (exploring the relationship between the size of the Black constituency in a district and that district's congressional representative's voting behavior).

<sup>88</sup> See DAVID LUBLIN, *THE PARADOX OF REPRESENTATION* (1997) (discussing the trade-off between more Democratic members of Congress or more Black members of Congress); Kevin A. Hill, *Does the Creation of Majority Black Districts Aid Republicans? An Analysis of the 1992 Congressional Elections in Eight Southern States*, 57 J. POL. 384, 399 (1995) (finding that "Republicans won four districts away from the Democrats as a result of racial redistricting"); Kenneth W. Shotts, *The Effect of Majority-Minority Mandates on Partisan Gerrymandering*, 45 AM. J. POL. SCI. 120 (2001) (exploring the hypothesis that racial redistricting has perverse effects on overall Democratic congressional power).

<sup>89</sup> See Ari Berman, *How the GOP Is Resegregating the South*, NATION (Jan. 31, 2012), <https://www.thenation.com/article/how-gop-resegregating-south> ("In virtually every state in the South, at the Congressional and state level, Republicans . . . have increased the number of minority voters in majority-minority districts represented overwhelmingly by



the time, Democrats had held a majority in the House for four decades and likely did not expect losing a few seats to cost them a majority. This inherent trade-off creates a tension between representation and policy outcomes within the single-member district framework. Creating majority-minority districts has come at the expense of the overall electoral success of the party that advocates for minority interests, the Democratic Party. And yet, descriptive representation is also important. The minority representatives do better represent their co-racial, co-ethnic constituents in both Congress and state legislatures.<sup>90</sup> Creating majority-minority districts has also reduced the share of nonminority representatives with significant minority constituencies, contributing to partisan racial polarization.<sup>91</sup> It has helped accelerate a larger trend, in which the center of gravity in the Republican Party moves further and further from city centers and deeper and deeper into racially conservative exurbs.<sup>92</sup> This raises a question, as Lani Guinier puts it: “[A]re [B]lack better off with one aggressive advocate or several mildly sympathetic listeners?”<sup>93</sup> The single-member district approach advocates for one aggressive advocate. But Guinier goes on: “In the absence of any [B]lack constituents, white representatives have no accountability to the [B]lack community.”<sup>94</sup> This is another trade-off. Writing in 1991, Guinier feared that majority-minority districts would isolate Black voters and reduce the share of elected racial moderates. In retrospect, these fears appear

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[B]lack Democrats while diluting the minority vote in swing or crossover districts held by white Democrats.”); Hill, *supra* note 88.

<sup>90</sup> See, e.g., LUBLIN, *supra* note 88; KERRY L. HAYNIE, *AFRICAN AMERICAN LEGISLATORS IN THE AMERICAN STATES 107–08* (2001) (“[T]he presence and growth of African American representation in government has indeed had noticeable and meaningful policy consequences. . . . African American state legislators . . . provide substantive representation of Black interests.”); Banducci et al., *supra* note 87.

<sup>91</sup> See L. Marvin Overby & Kenneth M. Cosgrove, *Unintended Consequences? Racial Redistricting and the Representation of Minority Interests*, 58 J. POL. 540, 540 (1996) (finding that “white incumbents who lost [B]lack constituents during redistricting became less sensitive to the concerns of African Americans”); Jamie L. Carson, Michael H. Crespin, Charles J. Finocchiaro & David W. Rohde, *Redistricting and Party Polarization in the U.S. House of Representatives*, 35 AM. POL. RSCH. 878 (2007).

<sup>92</sup> See generally Dante J. Scala & Kenneth M. Johnson, *Political Polarization Along the Rural-Urban Continuum? The Geography of the Presidential Vote, 2000–2016*, 672 ANNALS AM. ACAD. POL. & SOC. SCI. 162 (2017); James G. Gimpel, Nathan Lovin, Bryant Moy & Andrew Reeves, *The Urban–Rural Gulf in American Political Behavior*, 42 POL. BEHAV. 1343 (2020); Jowei Chen & Jonathan Rodden, *Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures*, 8 Q.J. POL. SCI. 239, 240 (2013) (finding “a strong relationship between the geographic concentration of Democratic voters and electoral bias favoring Republicans”).

<sup>93</sup> Lani Guinier, *No Two Seats: The Elusive Quest for Political Equality*, 77 VA. L. REV. 1413, 1443 (1991).

<sup>94</sup> *Id.* at 1446.

justified. The rise of majority-minority districts coincided with the rise of a much more racially conservative Republican Party. Maximizing descriptive representation within the single-member district context also implicitly assumes that for minority voters, descriptive representation and policy representation are interchangeable. But as numerous analyses have observed, Black voters are not monolithic;<sup>95</sup> Hispanic voters are not monolithic.<sup>96</sup> Thus, minority communities within a given district would undoubtedly be better represented with choices that do not collapse descriptive representation and policy representation. This is, of course, true for all voters. The idea that a single district or state has anything approaching a unified interest that can be represented by a single representative no longer makes sense, if it ever did. An additional consequence of majority-minority districts is that they

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<sup>95</sup> See Hakeem Jefferson & Alan Yan, *How the Two-Party System Obscures the Complexity of Black Americans' Politics*, FIVETHIRTYEIGHT (Oct. 6, 2020), <https://fivethirtyeight.com/features/how-the-two-party-system-obscures-the-complexity-of-black-americans-politics> (noting that, despite their overwhelming support for the Democratic Party, “[i]n 2016 . . . 45 percent of Black Americans identified as liberal and 43 percent identified as conservative”); Theodore R. Johnson, *Why Are African-Americans Such Loyal Democrats When They Are so Ideologically Diverse?*, WASH. POST (Sept. 28, 2016), <https://www.washingtonpost.com/news/monkey-cage/wp/2016/09/28/can-trump-win-black-votes-what-we-know-from-5-decades-of-black-voting-data> (exploring why, even though since 1960 “[n]o Democratic presidential nominee has received less than 82 percent of the [B]lack vote . . . . [.] there is still no clean alignment between how [B]lacks describe their political ideology and which candidates they vote for”); see also TASHA S. PHILPOT, CONSERVATIVE BUT NOT REPUBLICAN: THE PARADOX OF PARTY IDENTIFICATION AND IDEOLOGY AMONG AFRICAN AMERICANS (2017); CANDIS WATTS SMITH, BLACK MOSAIC: THE POLITICS OF BLACK PAN-ETHNIC DIVERSITY (2014). But see Theodore R. Johnson, *How the Black Vote Became a Monolith*, N.Y. TIMES MAG. (Sept. 16, 2020), <https://www.nytimes.com/2020/09/16/magazine/black-vote.html> (describing the persistence of “near-unanimity” as a feature of Black voting behavior).

<sup>96</sup> See Michael Jones-Correa, Hajer Al-Faham & David Cortez, *Political (Mis)behavior: Attention and Lacunae in the Study of Latino Politics*, 44 ANN. REV. SOCIO. 213, 215 (2018) (emphasizing that “Latinos do not exhibit homogenous partisanship [or] . . . uniformly identify as Democrats”); MATT BARRETO & GARY M. SEGURA, LATINO AMERICA: HOW AMERICA’S MOST DYNAMIC POPULATION IS POISED TO TRANSFORM THE POLITICS OF THE NATION (2014) (exploring changes in Hispanic political power as Hispanics have become the largest racial group in various states); ZOLTAN L. HAJNAL & TAEKU LEE, WHY AMERICANS DON’T JOIN THE PARTY: RACE, IMMIGRATION, AND THE FAILURE (OF POLITICAL PARTIES) TO ENGAGE THE ELECTORATE (2011) (forecasting the diminished efficacy of anti-immigrant political messaging as Hispanics become the largest racial minority group); Gary M. Segura, *Latino Public Opinion & Realigning the American Electorate*, 141 DAEDALUS 98, 98 (2012) (exploring “the ways in which national origin, nativity, and generational status reveal important differences in how Latinos think about and participate in politics”); see also William Greene & Mi-son Kim, *Hispanic Millennial Ideology: Surprisingly, No Liberal “Monolith” Among College Students*, 41 HISP. J. BEHAV. SCIS. 287 (2019); ANGEL SAAVEDRA CISNEROS, LATINO IDENTITY AND POLITICAL ATTITUDES: WHY ARE LATINOS NOT REPUBLICAN? (2017).

create many extremely safe seats for minority incumbents.<sup>97</sup> Though there is some evidence that minority constituents vote at higher rates when they can vote for a candidate that offers descriptive representation, there is also evidence that this effect fades over time. At best, the effect on turnout appears mixed.<sup>98</sup>

More broadly, uncompetitive elections have many negative consequences. When elections are not competitive, citizens, especially lower-income citizens, frequently do not vote.<sup>99</sup> More competitive elections lead to more participation<sup>100</sup> and higher levels of citizen

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<sup>97</sup> See Amy Rublin, Comment, *The Incompatibility of Competitive Majority-Minority Districts and Thornburg v. Gingles*, 29 BUFF. PUB. INT. L.J. 111 (2010) (arguing that the *Gingles* test is inapposite in the modern political environment, in which multiple minority candidates run to represent majority-minority districts); Michael A. Smith, *Minority Representation and Majority-Minority Districts After Shaw v. Reno: Legal Challenges, Empirical Evidence and Alternative Approaches*, 29 POL. & POL'Y 239, 259 (2001) (“If . . . redistricting . . . results in a large number of uncompetitive elections and safe seats in Congress, it is likely to entrench power in these districts. . . . [R]educ[ing] substantive minority representation within those districts.”). *But see* Alan Abramowitz, Brad Alexander & Matthew Gunning, *Don't Blame Redistricting for Uncompetitive Elections*, 39 PS: POL. SCI. & POL. 87, 89 (2006) (arguing that “[r]edistricting appears to have little or nothing to do with [the] trend” of declining competition in U.S. House elections).

<sup>98</sup> Some studies find that minority candidates contribute to higher levels of co-ethnic voting. Matt A. Barreto, *¿Sí Se Puede! Latino Candidates and the Mobilization of Latino Voters*, 101 AM. POL. SCI. REV. 425 (2007); John D. Griffin & Michael Keane, *Descriptive Representation and the Composition of African American Turnout*, 50 AM. J. POL. SCI. 998 (2006); Ebonya Washington, *How Black Candidates Affect Voter Turnout*, 121 Q.J. ECON. 973 (2006); Kenny J. Whitby, *The Effect of Black Descriptive Representation on Black Electoral Turnout in the 2004 Elections*, 88 SOC. SCI. Q. 1010 (2007). Others show no effect. John A. Henderson, Jasjeet S. Sekhon & Rocío Titiunik, *Cause or Effect? Turnout in Hispanic Majority-Minority Districts*, 24 POL. ANALYSIS 404 (2016); Luke Keele & Ismail White, *African American Turnout in Majority-Minority Districts* (Aug. 22, 2011) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1901450](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1901450); Gay, *The Effect of Black Congressional Representation*, *supra* note 87. Others have mixed and contingent findings. Matt A. Barreto, Gary M. Segura & Nathan D. Woods, *The Mobilizing Effect of Majority-Minority Districts on Latino Turnout*, 98 AM. POL. SCI. REV. 65 (2004); Kimball Brace, Lisa Handley, Richard G. Niemi & Harold W. Stanley, *Minority Turnout and the Creation of Majority-Minority Districts*, 23 AM. POL. Q. 190 (1995); Bernard L. Fraga, *Redistricting and the Causal Impact of Race on Voter Turnout*, 78 J. POL. 19 (2016). This question has generated so many contrasting estimates because many other factors affect turnout, both at the district and individual level.

<sup>99</sup> See STEVEN J. ROSENSTONE & JOHN MARK HANSEN, *MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA* 177–85 (1993) (presenting evidence that people are more likely to vote in competitive elections); Joe Soss & Lawrence R. Jacobs, *The Place of Inequality: Non-Participation in the American Polity*, 124 POL. SCI. Q. 95, 97–98, 118–19 (2009) (discussing lower turnout rates among low income voters and connecting this in part to the reduced incentives campaigns have to mobilize voters in ideologically homogenous districts).

<sup>100</sup> See João Cancela & Benny Geys, *Explaining Voter Turnout: A Meta-Analysis of National and Subnational Elections*, 42 ELECTORAL STUD. 264, 267 (2016) (“[S]trong support exists for a positive relation between the competitiveness of the election and the share of voters turning out on Election Day.”).

engagement and political efficacy.<sup>101</sup> More competitive elections lead to a greater interest in public affairs.<sup>102</sup> Citizens who live in competitive electoral districts are more politically informed.<sup>103</sup> When it comes to voting, citizens in competitive elections weigh issues more carefully when they vote and pay greater attention to issues, as opposed to voting based on simple partisan cues.<sup>104</sup> Citizens who live in competitive electoral areas are also more likely to volunteer and be involved in community activity.<sup>105</sup> These benefits continue beyond a single election cycle.<sup>106</sup> Thus, because citizens in competitive elections have a greater sense of efficacy and engagement, they report higher levels of satisfaction and trust in government.<sup>107</sup> In short, by placing minority voters in largely uncompetitive districts, majority-minority districts are depriving minority voters of the civic benefits and civic power that flows from competitive districts.

Moreover, because lower-income and poorly educated voters are least likely to seek out political activity and knowledge on their own, the lack of campaign activity and media coverage harms the political engagement of lower-income voters disproportionately. Lower-income citizens benefit most from the “subsidy” that competitive cam-

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<sup>101</sup> See Patrick Flavin & Gregory Shufeldt, *Party Competition and Citizens' Political Attitudes in the American States*, 44 ELECTORAL STUD. 235 (2016) (finding that citizens believe government is more responsive to them—and, therefore, more efficacious—when there is great electoral competition).

<sup>102</sup> See JAMES G. GIMPEL, J. CELESTE LAY & JASON E. SCHUKNECHT, *CULTIVATING DEMOCRACY: CIVIC ENVIRONMENTS AND POLITICAL SOCIALIZATION IN AMERICA* 9–10 (2003); Philip Edward Jones, *The Effect of Political Competition on Democratic Accountability*, 35 POL. BEHAV. 481 (2013).

<sup>103</sup> See John J. Coleman & Paul F. Manna, *Congressional Campaign Spending and the Quality of Democracy*, 62 J. POL. 757 (2000) (finding that increased campaign spending boosts voter knowledge); KEENA LIPSITZ, *COMPETITIVE ELECTIONS AND THE AMERICAN VOTER* 63–92 (2011) (confirming that competitive elections generally increase the political knowledge of voters); Jeffrey Lyons, William P. Jaeger & Jennifer Wolak, *The Roots of Citizens' Knowledge of State Politics*, 13 STATE POL. & POL'Y Q. 183, 195–96 (2013) (same).

<sup>104</sup> See Jeffrey W. Koch, *Electoral Competitiveness and the Voting Decision Evidence from the Pooled Senate Election Study*, 20 POL. BEHAV. 295 (1998); Romain Lachat, *Electoral Competitiveness and Issue Voting*, 33 POL. BEHAV. 645 (2011).

<sup>105</sup> Patrick Flavin & Gregory Shufeldt, *State Party Competition and Citizens' Political Engagement*, 25 J. ELECTIONS, PUB. OP. & PARTIES 444, 446 (2015); see also ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2001) (studying how and why Americans have become disconnected from political and community institutions).

<sup>106</sup> See Heather K. Evans, Michael J. Ensley & Edward G. Carmines, *The Enduring Effects of Competitive Elections*, 24 J. ELECTIONS, PUB. OP. & PARTIES 455 (2014) (finding that “competitive elections have positive effects that endure for at least a year beyond the campaign season”).

<sup>107</sup> See Flavin & Shufeldt, *supra* note 101, at 239 (finding that citizens believe government is more responsive to them when there is more intense party competition); Coleman & Manna, *supra* note 103.

paigns provide.<sup>108</sup> That is because candidates and parties only tend to focus on mobilizing citizens when the votes of those citizens matter. And in uncompetitive elections, the votes of marginal voting groups never matter.

This creates a reinforcing dynamic. Deprived of competitive elections, citizens in many electoral districts, especially those whose socioeconomic status makes them least likely to vote anyway,<sup>109</sup> simply check out of politics both because nothing ever seems to change and because nobody is working to earn their votes.<sup>110</sup> And the more they check out of politics, the less anybody in politics even bothers to attempt to get them to vote, since campaigns typically engage in a form of “rational prospecting”—contacting and reaching out to the higher socioeconomic citizens most likely to be engaged already.<sup>111</sup>

Lawmakers in uncompetitive electoral seats also focus more on their own narrow interests, rather than those of their constituents.<sup>112</sup> Uncompetitive electoral districts lead representatives to focus more on symbolic and high-profile abstract partisan fights, while representatives in competitive districts pay more attention to improving the material wellbeing of their constituents by securing more funding for their districts.<sup>113</sup> Lack of competition also leads to higher levels of corruption, both because more competition gives voters the power to “throw the bum out” by picking a different candidate or party and

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<sup>108</sup> ROSENSTONE & HANSEN, *supra* note 99, at 26–27 (listing some ways political campaigns subsidize the costs of participating in politics).

<sup>109</sup> Neil Nevitte, André Blais, Elisabeth Gidengil & Richard Nadeau, *Socioeconomic Status and Nonvoting: A Cross-National Comparative Analysis*, in THE COMPARATIVE STUDY OF ELECTORAL SYSTEMS 91–100 (Hans-Dieter Klingemann ed., 2009); JAN E. LEIGHLEY & JONATHAN NAGLER, WHO VOTES NOW?: DEMOGRAPHICS, ISSUES, INEQUALITY, AND TURNOUT IN THE UNITED STATES 27–34 (2013).

<sup>110</sup> See Soss & Jacobs, *supra* note 99.

<sup>111</sup> Henry E. Brady, Kay Lehman Schlozman & Sidney Verba, *Prospecting for Participants: Rational Expectations and the Recruitment of Political Activists*, 93 AM. POL. SCI. REV. 153, 153 (1999).

<sup>112</sup> See Glenn R. Parker & Jun Young Choi, *Barriers to Competition and the Effect on Political Shirking: 1953–1992*, 126 PUB. CHOICE 297 (2006) (suggesting that decreased competition in congressional elections since 1970 has allowed legislators to “vote their own preferences without fear of losing reelection”); Brandice Canes-Wrone, David W. Brady & John F. Cogan, *Out of Step, Out of Office: Electoral Accountability and House Members’ Voting*, 96 AM. POL. SCI. REV. 127, 138 (2002) (finding that there is no evidence that representatives “should believe that [they are] accountable to voters with regard to [their] roll-call decisions”).

<sup>113</sup> See JUSTIN GRIMMER, REPRESENTATIONAL STYLE IN CONGRESS: WHAT LEGISLATORS SAY AND WHY IT MATTERS 77–103 (2013); see also R. Douglas Hecock, *Electoral Competition, Globalization, and Subnational Education Spending in Mexico, 1999–2004*, 50 AM. J. POL. SCI. 950 (2006) (analyzing primary education spending in twenty-nine Mexican states and finding that “greater electoral competition leads to increased spending”).

because more competition gives an opposing party the incentive to police the potential scandals of incumbent politicians.<sup>114</sup> All of these negative consequences of uncompetitive elections create a large price for maximizing descriptive representation in a system of single-winner districts.

Additionally, the remedy of majority-minority districts can only work when racial minorities live in distinct and segregated communities. Today, as Black voters are moving out of the urban core and into suburbs, residential segregation is declining.<sup>115</sup> This makes it harder and harder to draw majority-minority districts.<sup>116</sup> And drawing majority-minority districts has always been more challenging for Hispanic people, who were never as residentially segregated as Black people.<sup>117</sup> It has also been challenging for Asian people because the population of Asian Americans is “comparatively low throughout the country.”<sup>118</sup>

More broadly, single-member plurality elections tend to weaken the power of all urban voters (who are more likely to live in safe districts) and to over-represent the power of exurban and suburban voters (who are more likely to live in pivotal districts).<sup>119</sup> Under more proportional voting rules, all voters have equal voting power, and are equally pivotal, regardless of where they live. But in a single-member district setting, the “efficiency” of partisan distribution matters.<sup>120</sup>

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<sup>114</sup> See Kim Quaile Hill, *Democratization and Corruption: Systematic Evidence from the American States*, 31 AM. POL. RSCH. 613 (2003); Petra Schleiter & Alisa M. Voznaya, *Party System Competitiveness and Corruption*, 20 PARTY POL. 675 (2014).

<sup>115</sup> See Glenn Firebaugh & Chad R. Farrell, *Still Large, but Narrowing: The Sizable Decline in Racial Neighborhood Inequality in Metropolitan America, 1980–2010*, 53 DEMOGRAPHY 139, 149 (2016); Kimberly S. Johnson, ‘Black’ Suburbanization: American Dream or the New Banlieue?, SOC. SCI. RSCH. COUNCIL: THE CITIES PAPERS (July 23, 2014), <http://citiespapers.ssrc.org/black-suburbanization-american-dream-or-the-new-banlieue>.

<sup>116</sup> See Nicholas O. Stephanopoulos, *Civil Rights in a Desegregating America*, 83 U. CHI. L. REV. 1329, 1384–88 (2016).

<sup>117</sup> Ruth Greenwood, *Fair Representation in Local Government*, 5 IND. J.L. & SOC. EQUAL. 197, 222 (2017).

<sup>118</sup> *Id.* at 223.

<sup>119</sup> See JONATHAN A. RODDEN, WHY CITIES LOSE: THE DEEP ROOTS OF THE URBAN-RURAL POLITICAL DIVIDE (2019) (discussing this issue in depth); Burt L. Monroe & Amanda G. Rose, *Electoral Systems and Unimagined Consequences: Partisan Effects of Districted Proportional Representation*, 46 AM. J. POL. SCI. 67 (2002) (providing empirical support).

<sup>120</sup> See Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. CHI. L. REV. 831 (2015) [hereinafter Stephanopoulos & McGhee, *The Efficiency Gap*] (introducing a metric called the “efficiency gap” to measure the degree to which each party in an election “wasted” votes); see also Nicholas O. Stephanopoulos & Eric M. McGhee, Essay, *The Measure of a Metric: The Debate over Quantifying Partisan Gerrymandering*, 70 STAN. L. REV. 1503 (2018) (building on the authors’ prior work).



Since minority voters are less likely to live in swing districts, parties devote fewer resources to mobilizing them, and their votes simply count less because they are “inefficiently” concentrated. Though majority-minority districts exacerbate this problem, it is a problem endemic to all democracies that use single-member districts.<sup>121</sup>

Gerrymandering is also a problem that largely emerges from having single-member plurality districts, especially with predictable partisan voting.<sup>122</sup> Such a condition gives mapmakers options, especially in states with many districts. With sophisticated tools, they can find the one district in ten thousand that maximizes their partisan support.<sup>123</sup> But the larger the districts, the fewer they are in number, and the fewer the possibilities. Gerrymandering gets its power from the simple fact that because forty-five percent of the vote in a single district gets zero party representation, a party that draws maps that maximize its number of fifty-five to forty-five districts can get an unfair advantage. This is not possible under more proportional voting rules.<sup>124</sup>

Litigation around both partisan and racial gerrymandering has been an active area, especially in recent decades. But definitive justiciable tests have proven elusive, leading conservative court majorities to shrug their shoulders and wash their hands of any legal oversight of what state legislatures do.<sup>125</sup> One obstacle is that under a single-member system of representation, drawing district lines involves too many competing values<sup>126</sup> and provides too many tempting opportuni-

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<sup>121</sup> RODDEN, *supra* note 119, at 225–26 (noting the existence of urban vote-efficiency problems in the United States and abroad).

<sup>122</sup> Ferran Martínez i Coma & Ignacio Lago, *Gerrymandering in Comparative Perspective*, 24 PARTY POL. 99, 99 (2018) (“[M]ajoritarian systems are more prone to gerrymandering than mixed-member and above all in Proportional Representation (PR) systems.”).

<sup>123</sup> See generally Eric McGhee, *Partisan Gerrymandering and Political Science*, 23 ANN. REV. POL. SCI. 171 (2020); Stephanopoulos & McGhee, *The Efficiency Gap*, *supra* note 120; Bruce E. Cain, Wendy K. Tam Cho, Yan Y. Liu & Emily R. Zhang, *A Reasonable Bias Approach to Gerrymandering: Using Automated Plan Generation to Evaluate Redistricting Proposals*, 59 WM. & MARY L. REV. 1521 (2018); DAVID DALEY, *RATE\*\*KED: THE TRUE STORY BEHIND THE SECRET PLAN TO STEAL AMERICA’S DEMOCRACY* (2016).

<sup>124</sup> See SHUGART & TAAGEPERA, *supra* note 28, at 318 (observing that electoral systems where the candidate with the most votes wins are “more prone than [proportional representation] systems to manipulative practices like gerrymandering”).

<sup>125</sup> See, e.g., *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019) (holding that “partisan gerrymandering claims present political questions beyond the reach of the federal courts”); see also Guy-Uriel E. Charles & Luis E. Fuentes-Rohwer, *Dirty Thinking About Law and Democracy in Rucho v. Common Cause*, 3 AM. CONST. SOC’Y SUP. CT. REV. 293 (2018–2019) (criticizing *Rucho*’s holding).

<sup>126</sup> See DAVID BUTLER & BRUCE CAIN, *CONGRESSIONAL REDISTRICTING: COMPARATIVE AND THEORETICAL PERSPECTIVES* 90 (1992) (“Redistricting is at least implicitly about choices and trade-offs between competing principles and values.”).



ties for aggressive partisans.<sup>127</sup> In a single-winner context, “fair” districts are at best a chimera and at worst an oxymoron.<sup>128</sup> Trying to maximize across competing values in single-member districts forces too many trade-offs—trade-offs that are simply not present in proportional systems.

### III

#### THE REMEDY: PROPORTIONAL REPRESENTATION

Now let us connect the two Parts of this Article together. In the first Part, I discussed the challenge of democracy in a diverse society. The lesson was clear: Multiethnic democracy is challenging, but it can work as long as ethnic cleavages do not become binary and zero-sum. In order for multiethnic democracy to work, different groups must learn to see each other as potential allies some of the time, and no group must feel as though it is either permanently shut out of power or perhaps on the verge of being permanently shut out of power should it lose the next election. Multiethnic democracy can handle diversity and disagreement only if no group has the power to completely oppress any other, no group feels like it must take antidemocratic and violent measures to protect itself, and politicians who stoke racism do not dominate a major party. Overwhelmingly, proportional multiparty democracy does a better job of fostering the kinds of cross-ethnic compromises and crosscutting alliances and identities necessary for successful multiethnic democracy.

In this context, the struggles of the United States to manage minority representation become clearer and more understandable. The United States is working with inferior tools. This is not to minimize the racism that exists in the United States, and in particular, the troubled legacy of slavery. But the United States is not unique in having widespread racist attitudes—many societies have levels of racism that are similarly pervasive.<sup>129</sup> The argument here is that elec-

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<sup>127</sup> See ANTHONY J. MCGANN, CHARLES ANTHONY SMITH, MICHAEL LATNER & ALEX KEENA, *GERRYMANDERING IN AMERICA: THE HOUSE OF REPRESENTATIVES, THE SUPREME COURT, AND THE FUTURE OF POPULAR SOVEREIGNTY* 225–26 (2016) (noting the possible benefits partisans can gain from gerrymandering, including influencing the House of Representatives and creating safe political districts for all); see also ERIK J. ENGSTROM, *PARTISAN GERRYMANDERING AND THE CONSTRUCTION OF AMERICAN DEMOCRACY* (2013) (providing historical perspective on partisan gerrymandering).

<sup>128</sup> RICHARD S. KATZ, *DEMOCRACY AND ELECTIONS* 190 (1997) (“In discussing single-member (or few-member) districts, then, one must make a distinction between those that are fair (an oxymoron) and those that are accepted as fair.”).

<sup>129</sup> See NEIL MACMASTER, *RACISM IN EUROPE: 1870-2000* (Jeremy Black ed., 2001); DOMINIC THOMAS, *AFRICA AND FRANCE: POSTCOLONIAL CULTURES, MIGRATION, AND RACISM* (2013); ISABEL WILKERSON, *CASTE: THE ORIGINS OF OUR DISCONTENTS* (2020);

toral institutions and party systems vary in their consequences for elevating or mitigating racial conflict. This Article's brief history of minority representation in the United States describes the flaws of the two-party system and the limits of single-winner districts. While majority-minority districts have certainly improved descriptive representation, they have come with significant trade-offs.

### A. *Proportional Multiparty Democracy*

The alternative to two-party majoritarian democracy is proportional multiparty democracy. To be sure, this is not a totally clear binary, as electoral systems range from pure majoritarian (e.g., the United Kingdom, which is arguably the purest majoritarian democracy because of its single-winner districts and concentrated parliamentary power<sup>130</sup>) to pure proportional (e.g., the Netherlands<sup>131</sup>). But as a basic principle, majoritarian systems attempt to concentrate governing power in a single majority party, while proportional systems attempt to spread power out to make it as representative as possible. In a majoritarian system, parties form coalitions *before* the elections, while in proportional systems, parties form coalitions *after* the elections.<sup>132</sup>

Proportional systems use multimember districts to achieve a more direct translation from popular vote share into state share. Imagine a district with one hundred representatives. If Party *A* gets thirty-five percent of the vote, then Party *A* should get thirty-five percent of the legislative seats. If Party *B* gets sixty-five percent of the vote, then Party *B* should get sixty-five percent of the legislative seats.

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ROBERT C. LIEBERMAN, *SHAPING RACE POLICY: THE UNITED STATES IN COMPARATIVE PERSPECTIVE* (2005).

<sup>130</sup> See 12 PETER PULZER, *POLITICAL REPRESENTATION AND ELECTIONS IN BRITAIN* 13–30 (2010) (describing the democratic structure of Britain's Parliament). See generally DAVID DENVER, *ELECTIONS AND VOTERS IN BRITAIN* (2d ed. 2007).

<sup>131</sup> Under the Dutch system, the entire country is treated as one electoral district for the purpose of distributing legislature seats to parties. Rudy B. Andeweg, *The Netherlands: The Sanctity of Proportionality*, in *THE POLITICS OF ELECTORAL SYSTEMS* 491, 497 (Michael Gallagher & Paul Mitchell eds., 2005). Voters select a party based on the list of candidates the party has chosen (a party-list system). *Id.* at 493–94. Parties are represented in the 150-seat legislature in direct proportion to their popular vote share, as long as they get around 0.7% of the popular vote. *Id.* at 497. This leads to many parties in the legislature—in the 2021 election, fourteen parties won at least two seats. Eline Schaart, *4 Dutch Election Takeaways*, POLITICO (Mar. 18, 2021), <https://www.politico.eu/article/4-dutch-general-election-takeaways-mark-rutte>. Israel uses almost the same structure as the Netherlands, though Israel's political system generally functions less well. See Reuven Y. Hazan, Reut Itzkovitch-Malka & Gideon Rahat, *Electoral Systems in Context: Israel*, in *THE OXFORD HANDBOOK OF ELECTORAL SYSTEMS* 581 (Erik S. Herron, Robert J. Pekkanen & Matthew S. Shugart eds., 2018).

<sup>132</sup> See G. BINGHAM POWELL, JR., *IDEOLOGICAL REPRESENTATION: ACHIEVED AND ASTRAY* 1–30 (2019) (comparing majoritarian and proportional systems); POWELL, *supra* note 6, at 20–43 (same).

Under proportional representation, this is automatically the case. And while it is certainly possible to achieve this distribution through one hundred single-member districts, it is highly unlikely. It depends very much on how voters are distributed across districts.

Proportional systems vary across nations, depending on district size, vote share thresholds for representation, and method of voting. A more technical discussion of different proportional systems is beyond the scope of this Article, but a rule of five is good to summarize the consensus across expert opinion—proportionality can be achieved with a district magnitude of around five members, parties should represent at least five percent of the electorate to get a seat in the legislature, and around five parties is probably ideal.<sup>133</sup>

Overall, democracy scholars agree that proportional multiparty systems are better for minority representation.<sup>134</sup> There are three reasons for this.

The first and most important reason is hopefully clear by now, but it is still worth reiterating: Proportional systems are far more likely to foster a more fluid, compromise-oriented inclusive style of both campaigning and governing and to avoid the destructive zero-sum demonization that fuels racial tensions. As discussed above, proportional multiparty democracy fosters a more pluralistic style of politics, which is typically better for minorities.<sup>135</sup>

Second, proportional voting rules that create more parties generate higher levels of participation, with all the benefits described above.<sup>136</sup> The reasons for this are simple. With more parties and candidates, voters are more likely to feel that they have a candidate they are excited to vote for. And because every vote matters equally in proportional elections, voters are more likely to see their vote mattering, and political campaigns are more likely to mobilize as many voters as they can—not just those who happen to live in pivotal swing districts.<sup>137</sup>

Third, in a proportional system, voters do not have to segregate themselves into majority-minority electoral districts in order to elect their candidates of choice.<sup>138</sup>

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<sup>133</sup> See DRUTMAN, *supra* note 32, at 212–14 (discussing the benefits of a multiparty system with five parties).

<sup>134</sup> Shaun Bowler, David M. Farrell & Robin T. Pettitt, *Expert Opinion on Electoral Systems: So Which Electoral System Is “Best”?*, 15 J. ELECTIONS, PUB. OP. & PARTIES 3, 9 tbl.4 (2005).

<sup>135</sup> See *supra* Part I.

<sup>136</sup> See *supra* Section II.B.

<sup>137</sup> See Cancela & Geys, *supra* note 100, at 267–68 (suggesting proportional representation may increase voter turnout).

<sup>138</sup> See *supra* Section II.B.

Proportional representation comes in many varieties, and all voting systems make certain trade-offs. However, some systems appear to be better specifically for multiracial, multiethnic societies. As discussed above, a vote-pooling system like ranked-choice voting has historically been very effective in encouraging cross-racial and cross-ethnic coalitions and in healing divided societies. The proportional form of ranked-choice voting, also known as Single-Transferable Vote (STV) was implemented in Northern Ireland in 1998 following the peace accords. As Benjamin Reilly observed:

Northern Ireland's crucial 1998 "Good Friday" election enabled "pro-agreement" Republican and Unionist voters to give their first vote to their communal party, but to transfer their secondary preference votes to pro-agreement non-communal parties – thus advantaging the "moderate middle" of non-ethnic parties and altering the dynamics of a seemingly intractable conflict.<sup>139</sup>

By most accounts, this version of proportional representation with ranked-choice voting has played an important role in fostering political compromise across long-standing deep divides.<sup>140</sup>

### *B. Fixing American Democracy: How the United States Could Get It Right*

In the United States, Congress could legislate a move to ranked-choice voting, with multimember districts in the House. In fact, the Fair Representation Act would do just this.<sup>141</sup> Though the United States has had limited experience with ranked-choice voting and multimember districts, the scholarly consensus is that where and when it existed, the combination improved minority representation.<sup>142</sup> There is also some evidence that ranked-choice voting and multimember districts (with some form of limited voting)<sup>143</sup> alone improve minority

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<sup>139</sup> Reilly, *supra* note 35, at 820.

<sup>140</sup> See, e.g., Paul Mitchell, *The Single Transferable Vote and Ethnic Conflict: The Evidence from Northern Ireland*, 33 *ELECTORAL STUD.* 246, 246 (2014) (analyzing the impact of STV in Northern Ireland and suggesting "STV may be an appropriate electoral system choice for some divided societies").

<sup>141</sup> H.R. 4000, 116th Cong. (2019).

<sup>142</sup> See, e.g., Douglas J. Amy, *The Forgotten History of the Single Transferable Vote in the United States*, 34 *REPRESENTATION* 13, 15, 18 (1996) (noting the benefits American cities experienced through experiments with STV); Robert A. Burnham, *Reform, Politics, and Race in Cincinnati: Proportional Representation and the City Charter Committee, 1924-1959*, 23 *J. URB. HIST.* 131, 132-33 (1997) (noting the same, specifically in Cincinnati); Richard L. Engstrom, *Cincinnati's 1988 Proportional Representation Initiative*, 9 *ELECTORAL STUD.* 217, 218-19 (1990) (noting how Cincinnati's STV system allowed Black voters to gain more representation).

<sup>143</sup> See Elisabeth R. Gerber, Rebecca B. Morton & Thomas A. Rietz, *Minority Representation in Multimember Districts*, 92 *AM. POL. SCI. REV.* 127 (1998).

representation,<sup>144</sup> though the combination of the two is much fairer, since single-winner ranked-choice voting by itself does not achieve meaningful proportionality or solve the single-member district problem. This is why numerous legal scholars have recommended proportional ranked-choice voting as ideal for promoting diverse representation in the United States.<sup>145</sup>

One understandable objection to proportional representation as a means of ensuring better and fairer minority representation might be to observe the significant progress in minority representation under the existing system of majority-minority districts and question whether we would be wise to give that up. Understandably, many have fought very hard to achieve the current level of minority representation, and many currently elected minority representatives could face new electoral competition under a changed system since many of them have extremely safe districts.<sup>146</sup> Some might argue that minority representatives have fought hard to achieve their current level of seniority within Congress, and that to upset the existing electoral system might jeopardize that progress. These are all fair concerns.

But, as described above, majority-minority districts come at a high cost.<sup>147</sup> A switch to a more proportional voting system would elevate minority representation without these trade-offs. Voters would not need to be *packed* into majority-minority districts in order to elect candidates of color. They could vote for their candidates of choice and be represented proportionally regardless of where they live. And because voters of color would not be concentrated in majority-minority districts, more candidates would have reasons to reach out to such voters who now might vote for them simply because they can. The relative electoral power of minority voters would consequentially rise. The number of minority representatives may change from elec-

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<sup>144</sup> See Sarah John, Haley Smith & Elizabeth Zack, *The Alternative Vote: Do Changes in Single-Member Voting Systems Affect Descriptive Representation of Women and Minorities?*, 54 ELECTORAL STUD. 90 (2018).

<sup>145</sup> See, e.g., Richard Briffault, *Lani Guinier and the Dilemmas of American Democracy*, 95 COLUM. L. REV. 418, 436 (1995) (“STV thus increases the proportion of voters who vote for a winning candidate, and increases the likelihood that the voter will be represented by a legislator of his or her choosing.”); Richard L. Engstrom, *The Single Transferable Vote: An Alternative Remedy for Minority Vote Dilution*, 27 U.S.F. L. REV. 781 (1993) (discussing the positive effects of STV for minority voting groups); Dana R. Carstarphen, *The Single Transferable Vote: Achieving the Goals of Section 2 Without Sacrificing the Integration Ideal*, 9 YALE L. & POL’Y REV. 405, 420 (1991) (“The voting system that best achieves the goals of section 2 [of the Voting Rights Act of 1965] is based on the single transferable vote (STV).”); Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, 80 U. CHI. L. REV. 769, 847–52 (2013) (discussing benefits of multimember districts with alternative voting rules).

<sup>146</sup> See *supra* note 97 and accompanying text.

<sup>147</sup> See *supra* Section II.B.

tion to election, and individual representations would face more competition. But, for voters, competitive elections are a good thing both because they give voters meaningful choices and, perhaps more importantly, because they have many other positive downstream effects that flow from the participation and engagement they engender.<sup>148</sup> But again: Scholars of electoral systems consider proportional voting systems to be better for minority representation than single-winner plurality systems.<sup>149</sup>

## CONCLUSION

Maintaining a thriving, fair, and representative multiracial, multiethnic democracy is difficult. But it is not impossible. Democracy scholars now have a century of observing how different electoral and party systems contribute to democratic stability and health in diverse societies. This history of modern multiracial, multiethnic democracies around the world offers a clear lesson.

The clear lesson is that multiracial, multiethnic democracy has a dark tendency towards instability and violence when electoral and partisan conflict flattens into closely-fought zero-sum contests over national identity. Under such conditions, intense identity polarization divides citizens into a clear “us” and an even clearer “them,” and then treats the threat of “them” as existential enough to justify extra-constitutional actions.

The flip side of this warning, however, is that more proportional systems that encourage more fluid coalitions, diverse power-sharing, and simply less binary partisan politics have a much stronger track record in fostering the kinds of cross-racial and cross-ethnic electoral and governing alliances that foster more inclusive, and thus more stable, democracy.

Viewed in this comparative context, the current crisis of a racially polarized American democracy in decline is hardly *sui generis*. Instead, it fits into a larger pattern of other democracies that have suffered similar falls along similar binary racialized lines. With this pattern in mind, the solution to the current impasse becomes clearer: A more proportional democracy will not only be a fairer American democracy—it will also allow us to manage our diversity. The post-Voting Rights Act approach to descriptive representation via majority-minority districts has always been a second-best solution with significant trade-offs. Today, in an era of eviscerated protections under the steadily-weakening Voting Rights Act and a Republican

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<sup>148</sup> See *supra* Section II.B.

<sup>149</sup> See *supra* note 134 and accompanying text.

Party committed to minority rule that is only possible under America's current electoral institutions, the single-member district that fosters two-party democracy is a significant liability to representative fairness in American democracy. A system of proportional multi-member districts, ideally with ranked-choice voting, offers America the best chance of a democratic renewal that lasts for many decades to come.