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, MULTIETHNIC DEMOCRACY

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.1 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.2 (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.3 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

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American system of government was born. 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. 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. 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. And further, the alleged promise of clear majoritarian accountability is muddled by partisan loyalties and too-short time frames.

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

7 See generally id. (discussing proportionalism).
interest, the rights of the minority will be insecure.”9 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.”10 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.”11 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.”12 Citizens of the then-confederation 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.13

12 The Federalist No. 10, at 48 (James Madison).
13 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. 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
identity-based issues. 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. 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. 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, and democratic breakdowns often follow narrow elections fought along racial, ethnic, religious, and cultural lines with mono-ethnic parties supporting ethnically exclusive agendas. The most “pernicious” forms of polarization all involve competing identities fighting zero-sum battles over majority...
control. 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. 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 and the Spanish Civil War. The


22 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).

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 distin-
guish between majoritarian and proportional electoral systems.24 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, some-
times even more importantly, which party must be kept out of
power.25 Typically, majoritarian systems trend toward two parties, lim-
iting voter choices.26 The purest majoritarianism concentrates power
in parliament, preventing any separation of powers. This is the model
of the British Westminster system.27 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 elec-
tions 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.28 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

of election-related violence in civil wars and democratic collapses). See generally Antony
24 See Powell, Jr., supra note 6, at 4 (identifying elections by whether they are
majoritarian or proportional).
25 See G. Bingham Powell, Jr., Ideological Representation: Achieved and Astray: Elec-
majoritarian elections result in majority control).
26 Id. at 20 (describing how election law theory “predicts that single-member district
plurality election rules will (under specific conditions) produce two-party systems”).
27 See Ganghol, supra note 8, at 69 (describing the Westminster system as a model of
the majoritarian electoral system).
28 See Matthew S. Shugart & Rein Taagepera, Votes from Seats: Logical Models of Elec-
toral 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
but generate losers who are much angrier. In majoritarian democracies, losers demonstrate much lower levels of support for democracy, and as a result, majoritarian democracies have less overall support for democracy. Low levels of citizen support for democracy, in turn, create opportunities for authoritarian takeover. 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. 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. 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-


31 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).


racy and a country’s ethnic and racial diversity. 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.” 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.” And when “rival parties respond in kind, a process of ‘outbidding’ can take hold, pushing the locus of political competition towards the extremes.” 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. 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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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.”39 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.”40 When politics crystallizes into a fight between two distinct camps, representing two distinct identities, politics gets reduced to a battle of “us” against “them.”41 McCoy and Somer note that the more majoritarian (winner-take-all) the political system, the worse pernicious polarization is likely to become.42 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.”43 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.44 Many scholars have

39 McCoy, Rahman & Somer, supra note 20, at 18.
40 Id.
41 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)).
42 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.”).
43 Id. at 244.
also observed the ways in which this sorting paved the way for the rise of nativism in the Republican Party and ultimately the rise of Donald Trump and his particular brand of zero-sum nativist politics, with dire consequences for communities of color. 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. 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. 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


46 See generally, e.g., Rachel M. Blum, How the Tea Party Captured the GOP: Insurgent Factions in American Politics (2020).


when politics is binary and winner-take-all. The best way to accomplish both goals is through a proportional voting system.\textsuperscript{49}

\textbf{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.\textsuperscript{50} 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-

\textsuperscript{49} See Arend Lijphart, \textit{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, \textit{supra} note 35, at 815. See generally \textit{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); \textit{ADRIAN GUELKE, POLITICS IN DEEPLY DIVIDED SOCIETIES} (2012) (discussing proportional representation systems); \textit{HANNA LERNER, MAKING CONSTITUTIONS IN DEEPLY DIVIDED SOCIETIES} (2011).

\textsuperscript{50} See \textit{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. 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. 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,” 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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Our political opponents appear as less than human.54 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.55 “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.”56

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.57 This goes for political ideology as well. Homogenous political communities breed extremism.58 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.59

54 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 Roccato, 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).

55 See generally KALMOE & MASON, supra note 54; MASON, supra note 20, at 14.

56 MASON, supra note 20, at 13.


58 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.”).

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.”60 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.”61 The goal, as Horowitz puts it, is “making moderation pay.”62 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.63 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.64 The historical record is clear: Proportional representation leads to less racial and ethnic conflict, while majoritarian systems lead

60 Reilly, supra note 35, at 815.
61 Id. at 816.
63 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.”).
64 See Somer & McCoy, supra note 48.
to more conflict in divided societies.\(^{65}\) 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.\(^{66}\) 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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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.\footnote{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).} 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.\footnote{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.").} 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.\footnote{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.”).} 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.\footnote{See id. at 3 (noting that by the end of the Great Migration, “[c]andidates and parties believed that they must address Black voters” in northern states).} Thus, whatever moral force civil rights had, it was also good politics.\footnote{See id. at 18 (“[W]hite political elites did believe that Black voters were important to their political success.”).} 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.\footnote{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 “[t]here 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”).} 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
power. Paul Frymer describes this as a condition of “electoral capture.”73 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.74

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 Black interests outside party competition.”75 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.76 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.77

Given the comparative politics lessons discussed in the first section, the revanchist racial radicalism of the contemporary Republican Party

73 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).

74 Id. at 6.

75 Id. at 28.


77 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.\(^78\) 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.\(^79\) 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.\(^80\) 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.\(^81\)

\(^{78}\) See Petersen, supra note 51, at 74–75 (describing the role of fear in struggles between political factions).

\(^{79}\) 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”).

\(^{80}\) See supra notes 65–68 and accompanying text.

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

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 1968.83 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.84

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.85 But the challenge for any minority group is that it is rarely large enough to become such a senior coalition partner in a majority 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.86 Since

82 See supra notes 70–73 and accompanying text.
83 See supra notes 68–70 and accompanying text.
84 See supra notes 69–73 and accompanying text.
85 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”).
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. 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, an outcome many Republican politicians were happy to comply with. Granted, at


89 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.\textsuperscript{90} Creating majority-minority districts has also reduced the share of nonminority representatives with significant minority constituencies, contributing to partisan racial polarization.\textsuperscript{91} 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.\textsuperscript{92} This raises a question, as Lani Guinier puts it: “[A]re [B]lacks better off with one aggressive advocate or several mildly sympathetic listeners?”\textsuperscript{93} 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.”\textsuperscript{94} 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

\textsuperscript{90} See, e.g., Lublin, supra note 88; Kerry L. Haynie, African American Legislators in the American States 107–08 (2001) (“The 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.


\textsuperscript{94} 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;\textsuperscript{95} Hispanic voters are not monolithic.\textsuperscript{96} 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


create many extremely safe seats for minority incumbents. 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.

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


engagement and political efficacy. More competitive elections lead to a greater interest in public affairs. Citizens who live in competitive electoral districts are more politically informed. 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. Citizens who live in competitive electoral areas are also more likely to volunteer and be involved in community activity. These benefits continue beyond a single election cycle. Thus, because citizens in competitive elections have a greater sense of efficacy and engagement, they report higher levels of satisfaction and trust in government. 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-

101 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).


107 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.
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Campaigns provide. 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, simply check out of politics both because nothing ever seems to change and because nobody is working to earn their votes. 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.

Lawmakers in uncompetitive electoral seats also focus more on their own narrow interests, rather than those of their constituents. 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. 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

108 Rosenstone & Hansen, supra note 99, at 26–27 (listing some ways political campaigns subsidize the costs of participating in politics).


110 See Soss & Jacobs, supra note 99.


because more competition gives an opposing party the incentive to police the potential scandals of incumbent politicians.114 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.115 This makes it harder and harder to draw majority-minority districts.116 And drawing majority-minority districts has always been more challenging for Hispanic people, who were never as residentially segregated as Black people.117 It has also been challenging for Asian people because the population of Asian Americans is “comparatively low throughout the country.”118

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).119 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.120

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118 Id. at 223.


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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.\(^{121}\)

Gerrymandering is also a problem that largely emerges from having single-member plurality districts, especially with predictable partisan voting.\(^{122}\) 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.\(^{123}\) 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.\(^{124}\)

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.\(^{125}\) One obstacle is that under a single-member system of representation, drawing district lines involves too many competing values\(^{126}\) and provides too many tempting opportuni-

\(^{121}\) Rodden, supra note 119, at 225–26 (noting the existence of urban vote-efficiency problems in the United States and abroad).

\(^{122}\) 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.”).


\(^{124}\) 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”).


\(^{126}\) 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. 127 In a single-winner context, “fair” districts are at best a chimera and at worst an oxymoron. 128 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. 129 The argument here is that elec-

127 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).
128 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.”).
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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\textsuperscript{130}) to pure proportional (e.g., the Netherlands\textsuperscript{131}). 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.\textsuperscript{132}

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.


\textsuperscript{131} 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).

\textsuperscript{132} 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.133

Overall, democracy scholars agree that proportional multiparty systems are better for minority representation.134 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.135

Second, proportional voting rules that create more parties generate higher levels of participation, with all the benefits described above.136 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.137

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.138

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133 See Drutman, supra note 32, at 212–14 (discussing the benefits of a multiparty system with five parties).
135 See supra Part I.
136 See supra Section II.B.
137 See Cancela & Geys, supra note 100, at 267–68 (suggesting proportional representation may increase voter turnout).
138 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.

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.

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. 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. There is also some evidence that ranked-choice voting and multimember districts (with some form of limited voting) alone improve minority representation.

Reilly, supra note 35, at 820.

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”).


representation, 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.

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. 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. 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-

146 See supra note 97 and accompanying text.
147 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.148 But again: Scholars of electoral systems consider proportional voting systems to be better for minority representation than single-winner plurality systems.149

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

148 See supra Section II.B.
149 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.