

# **Maximizing Descriptive Representation**

**The Failure of the Two-Party System and the Promise of a Proportional Alternative**

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**Senior Thesis**

**5/3/10**

## **Evaluative Criteria in Madisonian Governments**

In this paper, I will argue for fundamental changes to the political structures and mechanisms of the United States – structures and mechanisms which were implemented at an early stage of our nation's history, which have since evolved and become venerated features of our national political consciousness. I will argue for the abolition of electoral districts, the implementation of a system proportional representation, and the destruction of the two-party system. Each of these arguments may strike particular readers as extreme, radical, or ill-advised in their own right; needless to say, I will attempt to dissuade those readers as my arguments run their course.

But I will not – and I feel this must be stressed, in order to properly frame my intent and dispel any errant notions about the overall goals of this paper – argue for any fundamental change to our nation's traditional Madisonian mindset. I have the utmost respect for Madison's democratic theory, and for the Madisonian elements of our system, often hailed as the core principles of American government: personal liberty and the separation of powers; majority rule, provided that it does not violate the public interest or the rights of political minorities; and republicanism – what Madison wrote of in Federalist No. 39 as “a government which derives all its powers directly or indirectly from the great body of the people.”<sup>1</sup>

Indeed, I will devote a substantial portion of my time and space to detailing the logic of Madison's theory, as buttressed by the theories of his philosophical predecessors – not because I purport to find fault with it, but because the explicit changes I will propose must be viewed through a Madisonian lens, as constrained and shaped by a series of non-negotiable principles; for this some understanding of those principles is necessary.

In the pursuit of detailing those principles I will assume certain observations regarding the fundamental nature and tendencies of man – namely, those of John Locke and the Baron de

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<sup>1</sup>Madison, Hamilton, Jay [1788] 1961:281

Montesquieu – to be both valid and applicable. To do otherwise would require an essential rethinking of the American constitutional theory which they have inspired. Anyone inclined to take issue with the basic conceptualization of power as a corrupting influence, or to disagree that it is the tendency of man to oppress his fellows if left to his own devices, will find serious fault in the theories of Locke, Montesquieu, and Madison, and in the underlying logic of this paper.

Insofar as theories of human nature are little more than intersections of personal faith and subjective observation, one is as good as the other for the purposes of argument so long as it is explicitly delineated. For the purposes of this particular argument, I will assume as evident to right reason the subjective observations of Locke, Montesquieu, and Madison – that “God hath certainly appointed government to restrain the partiality and violence of men”, and that “the great and chief end... of men's uniting into commonwealths, and putting themselves under government, is the preservation of their ['lives, liberties, and estates']; to which in the state of nature there are many things wanting.”<sup>2</sup>

Of course, it must be considered that a government imbued with the power of the people might stray from the straight and narrow path, and fall into corruption or general mischief. In the words of Montesquieu, “constant experience shows us that every man invested with power is apt to abuse it, and to carry his authority as far as it will go... to prevent this abuse, it is necessary from the very nature of things that power should be a check to power.”<sup>3</sup>

“When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty,” Montesquieu wrote, “because apprehensions may arise, lest the same monarch or senate enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the

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<sup>2</sup> Locke [1689] 2002: 7,57

<sup>3</sup> Montesquieu [1748] 1949: 150

judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.”<sup>4</sup> Locke concurred: “because it may be too great a temptation to human frailty, apt to grasp at power, for the same persons, who have the power of making laws, to also have in their hands the power to execute them... the legislative and executive power come often to be separated.”<sup>5</sup>

Government, then – ever directed “to no other end but the peace, safety, and public good of the people” – is tasked with developing “an established, settled, known law”; with appointing “a known and indifferent judge, with authority to determine all differences according to the established law”; and with wielding “power to back and support the sentence when right, and give it due execution.”<sup>6</sup> And it is necessary that these three tasks be performed by separate entities: the legislative, executive, and judicial capacities of government poured into distinct, co-dependent vessels, and buttressed by a system of checks and balances which render the theoretical doctrine of separated powers a practical reality (as “those who administer each department [are given] the necessary constitutional means and personal motives to resist encroachments of the others” and “ambition [is] made to counteract ambition.”)<sup>7</sup>

In American political thought, there has been no greater advocate of the separation of powers than James Madison. At the Constitutional Convention of 1787 – while discussing the proper function and formation of the Senate – Madison remarked that “a people deliberating in a temperate moment... on the plan of Government most likely to secure their happiness, would first be aware, that those charged with the public happiness, might betray their trust. An obvious precaution against this danger would be to divide the trust between different bodies of men, who might watch and check each other.”<sup>8</sup>

However, insofar as Locke had elaborated the doctrine of formal separation of powers long before the convention in Philadelphia, one of Madison's greatest contributions to the theory was his

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4 Montesquieu [1748] 1949: 151-152

5 Locke [1689] 2002: 66-67

6 *Ibid*, 57-59

7 Madison, Hamilton, Jay [1788] 1961: 356

8 *Ibid*, 193

insistence that a proper conception of tyranny extend beyond formal rulers to include the possibility of tyranny by the people themselves. Remarking once again on the purpose of the budding Senate, Madison reminded his peers that the goals of the proposed second chamber were “first to protect the people against their rulers: second to protect the people against the transient impressions into which they themselves might be led.” He reminded them of a burgeoning populist sentiment that was stirring the agrarian class into a state of turmoil, of the danger of a “leveling spirit” which in the hands of a numerous majority could be used to deprive the minority of its life, liberty, and property. “How is this danger to be guarded against on republican principles?” he asked. “How is the danger in all cases of interested coalitions to oppress the minority to be guarded against?”<sup>9</sup>

Madison's answer to this fundamental question came in the pages of Federalist No.10, his most famous work. The danger, to Madison's mind, was not so much the interested factions of a minority (which could be staved off “by regular vote”); rather, Madison's concern was with majority factions – large groups intent on violating the rights of their fellow citizens or on acting in opposition to the “permanent and aggregate interests of the community”. “When a majority is included in a faction,” Madison wrote, “the form of popular government... enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed.”<sup>10</sup>

Madison's solution to the problem of majority faction was simple: in addition to the checks and balances built into our formal Constitutional structure, the sheer size and diversity of the American population would act as a *de facto* check on majority faction by limiting the likelihood that a majority faction would form at all. A diversity of personal background and ideological preference, Madison wrote, “makes[s] it less probable that a majority of the whole will have a common motive to invade the

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9 Madison [1787] 1966: 194-195

10 Madison, Hamilton, Jay [1788] 1961: 132

rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.”<sup>11</sup>

The point in all of this is to emphasize a crucial point: democratic theorists like Locke and Madison treated the preservation of individual rights and the public interest as the chief responsibility of government, above and beyond the effective rule of the majority. The fact that men like Madison devoted so much time to devising mechanisms to thwart factious majorities is *prima facie* evidence that merely enacting the will of a majority was not their foremost goal in constructing the system which governs us to this day; that there were qualifying factors which superseded the majority will – namely, the preservation of the rights of citizens, regardless of their politics, and the pursuit of the public interest.

If we accept that the United States is a country founded on a system of checks and balances designed to maintain the separation of powers, and we accept that it was so founded in order to protect the rights and liberties of its citizens from any sort of tyranny, then we must come to grips with a hard reality: that “every popular government is faced with the choice between two alternatives: the establishment of effective majority-rule, or the protection of individual and majority rights.”<sup>12</sup>

In systems of strict majority rule, such as parliamentary systems, the rights of citizens will eventually be violated (in keeping with the theories of Locke, Montesquieu, and Madison); in systems designed to protect the rights of citizens, such as the Madisonian system of the US, political minorities will be able to thwart the majority will if they feel sufficiently threatened to utilize the structural tools at their disposal – that is, the tools provided to them by a written Constitution and a Bill of Rights; by the Senate, by the filibuster; by presidential veto; and by judicial review.

If we live under a Constitution designed “to protect the individual, to prevent the majority from oppressing the minority, and, except within certain definite limits, to give effect to the wishes of the

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11 Madison, Hamilton, Jay [1788] 1961: 135

12 A. Lawrence Lowell, paraphrased according to Ranney 1954: 64

people only after such solemn formalities have been complied with as to make it clear that the popular feeling is not caused by temporary excitement, but is the result of a mature and lasting opinion”<sup>13</sup>, then we cannot expect effective majority rule.

One of my first objectives in this paper is to establish an appropriate set of evaluative criteria for the representative capacity of a popular government wed to the doctrine of separated powers. The standard, intuitive evaluative criterion for the representative capacity of any popular government typically looks something like this: is the will of the majority enacted without systematized interruption? In a discussion of populistic democracy, Robert Dahl writes that “the condition of popular sovereignty is satisfied if and only if it is the case that whenever policy choices are perceived to exist, the alternative selected and enforced as government policy is the alternative most preferred by the members” - that is, preferred by the most members.<sup>14</sup>

We are by the fundamental nature of our system periodically denied access to the majority-rule standard by instead dedicating our government to the preservation of rights and liberties. By that standard, our system has a severely limited representative capacity; but the limitations stem from a doctrine which is central to our political culture.

The situation leaves us with three options: first, we may do nothing, assuming that our representative capacity is as high as it will ever be; second, we may attempt to eliminate checks and balances and do away with the separation of powers; finally, we may decide that there is more to representative capacity than adherence to the will of the majority, and strive to make improvements in areas which are not inherently limited by Madisonian mechanisms.

The first option hinges on an assumption I am unwilling to make at this point in time. Over the course of this paper, I hope to show that our representative capacity could indeed be much improved. The second option flies in the face of 250 years of American political culture; if we lend any credence

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13 Lowell, *Essays on Government*, 21-22

14 Dahl 1956:37

at all to the theories of Locke, Montesquieu, and Madison, the elimination of separated powers is highly inadvisable; as I stated from the outset, I will not suggest it.

The third option, then, becomes the only option – to decide that there is indeed more to representative capacity than majority empowerment, and to discover a method of improving representative capacity which is operable within a system of separated powers. The discovery and elaboration of this method is the primary task of this paper.

However, if we are going to go out of our way to discuss improvements to representative capacity, it is worth examining the value of representation itself. For this, we turn once again to the works of Madison and Montesquieu.

“When the body of the people is possessed of the supreme power, it is called a democracy”, Montesquieu wrote<sup>15</sup>; but Madison elaborated, lending further texture to the terminology: “in a democracy, the people meet and exercise the government in person; in a republic, they assemble and administer it by their representatives and agents.”<sup>16</sup> To account for any potential confusion, I will refer to democracy-in-person as “direct democracy”, and democracy-by-representatives as “representative democracy”, as these are standard terms in the study of government, and accurately capture the sentiments of the theorists in question.

Both Montesquieu and Madison recognized the impracticality of direct democracy – that it would be impossible to administer in all but the smallest communities if it were to exist at all<sup>17</sup>; thus, while “the people, in whom the supreme power resides, ought to have the management of everything within their reach... that which exceeds their abilities must be conducted by their [representatives].”<sup>18</sup>

For the purposes of this paper, I too will assume the impracticality of direct democracy; I believe that an examination of the hypothetical logistics of such an undertaking justifies the

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15 Montesquieu [1748] 1949: 8

16 Madison [1788] 1961: 150

17 *Ibid.*

18 Montesquieu [1748] 1949: 9



assumption, and will not belabor it further. However, the concept of direct democracy – or, more accurately, the ideal – has value as a means of teasing out the proper goal of representation, which is one of the primary considerations of this paper; and on those grounds I will examine it a little further.

It may be said that the will of a people may be most accurately expressed in a direct democracy, insofar as they express it themselves. Thus, it may be said that representative democracy – which presumably seeks to replicate the preferences which would be expressed in a direct democracy, if such a thing were feasible – has value as the “next best thing”; or possibly even something better, insofar as representation allows for the translation of a public will to concrete legislation, while circumventing the dangers and difficulties inherent to direct democracy.

Montesquieu wrote that “the more an aristocracy borders on democracy, the nearer it approaches perfection; and, in proportion as it draws toward monarchy, the more it is imperfect”<sup>19</sup>. In some sense, a representative democracy is to a direct democracy what an aristocracy is to democracy in general – the concentration of power in the hands of the few at the realization that it is unwieldy in the hands of the many. Based on Montesquieu’s maxim, then, we may say that a representative democracy approaches perfection as it improves in its likeness to the general citizenry, and is more imperfect as it deviates from it (for “the perfection of the portrait consists in its likeness.”)<sup>20</sup>

There is a second reason to desire representation, one tied directly to Madisonian government. Representation is the mechanism by which popular government functions; it is “a way of justifying government of the many, by the few, a rationale for representative democracy.”<sup>21</sup> Without representation, popular government could not exist; and without popular government, there could be no separation of powers – for the alternatives to popular government are monarchy and despotism (per Montesquieu), where “the prince is the source of all power, political and civil”. Thus, representation is necessary for a system of separated powers; and a system of separated powers will function in

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19 Montesquieu [1748] 1949: 15

20 Pitkin 1967: 61

21 Ibid p. 87

correlation with the representative capacity of a society's government. If we are intent on preserving our Madisonian system, then we must preserve and optimize representation accordingly.

### **Delineating Substantive and Descriptive Representation**

For the purposes of this paper, it is important that we thoroughly distinguish the concepts of substantive and descriptive representation. It is through this key distinction that both the failings of our current system and the means of improving it come to light.

In a legislative context, substantive representation is action, the action of an elected representative on behalf of a group; the criteria for substantive representation can be summarized as “how well [a representative] acts to further the objectives of those he represents.”<sup>22</sup>

At its utmost, substantive representation may be operationally defined as *winning legislative battles for ones' constituents*.<sup>23</sup> A legislature which passes (or stymies) a piece of legislation which is favored (or opposed) by a segment of the population has acted to further the objectives of that segment of the population to the best of its ability, and has thus substantively represented them.

In systems of strict majority rule, substantive representation is the province of majorities. Insofar as a majority in a system of majority rule may pass whatever legislation it wishes, the constituents of a majority will be substantively represented, and the constituents of a minority will not.

In a Madisonian system, which places checks on majority rule, substantive representation may be obtained by either political majorities or political minorities. Consider a hypothetical piece of legislation, the passage of which is supported by a majority and opposed by a minority. If the majority circumvents the obstructive attempts of the minority and passes a bill favored by its constituents, the majority has won the legislative battle for its constituents, and those constituents are substantively

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<sup>22</sup> Pitkin 1967: 116

<sup>23</sup> For the purposes of this paper, “constituent” may be defined as “someone who is represented”, either substantively or descriptively or both.

represented. If the minority is successful in its obstruction, and no bill is passed, then the minority has won the legislative battle for its constituents, and those constituents are substantively represented.

It may be protested that a successfully obstructionist minority has not substantively represented its constituents, in that it has not actually passed a bill which those constituents favored but merely stymied a bill which they opposed. This is beside the point: substantive representation is not “passing bills”, but “winning legislative battles.” For a majority, the two often overlap; but for a minority which cannot actively legislate, “winning legislative battles” consists of the successful opposition of bills opposed by the minority’s constituents.

Of course, opposing coalitions within a legislature may cooperate with one another to avoid long, drawn-out legislative battles. If the constituents of the majority favor making certain concessions to a particular bill to ensure its passage, and the constituents of the minority prefer extracting those concessions to opposing the bill entirely, then the bill may be deemed a legislative victory for both sides, and both groups of constituents may be substantively represented. If neither group of constituents favors cooperation and concession, and it proceeds nonetheless, then the passage of the bill is not a legislative victory for either side, and neither group of “constituents” is substantively represented.

The point is this: substantive representation is winning legislative battles; and in any legislative battle where the preferences of constituents are intense enough there will be both winners and losers. The mutual exclusivity of policy preferences in an ideologically divided electorate often makes substantive representation a zero-sum game. A bill permitting clear-cutting in national forests is a substantive victory for logging companies and a substantive defeat for the Sierra Club; the imposition of graduated income tax brackets is a substantive victory for the poor and a substantive defeat for the rich; the inclusion of federal funding for abortions in a health care bill is a substantive victory for Planned Parenthood and a substantive defeat for Focus on the Family; and so on.

It is not the purpose of this paper to take issue with the zero-sum dynamic of substantive

representation, or to suggest that it would differ significantly under any other electoral system or system of government with separated powers, or to suggest that there is a “lack” of substantive representation in our own legislature, or to suggest substantive “improvements” in kind. The elimination of separated powers and the adoption of a strict majority rule system would perhaps provide different substantive representation, assuring the substantive representation of a majority in all cases (rather than a minority in a few); but it would in no way alter the fundamental zero-sum nature of substantive representation – only the number required for the legislative victory of one constituency, and the legislative defeat of another.

As far as I am concerned, the zero-sum nature of substantive representation is a reality of popular government, a fact of life akin to the assessments of human nature discussed in the works of Locke, Montesquieu, and Madison. As I took those assessments of human nature as “evident to right reason”, so I will take the zero-sum nature of substantive representation, and with the same disclaimer: that anyone who disagrees – that is, believes there to be some system which would ensure that everyone was substantively represented all the time – is likely to find this argument fatuous, and is welcome to argue their system in turn. If they make the argument successfully, I will be one of the first to salute them for it; but for my part, I do not believe there is such a system.

At the conclusion of a given legislative battle, some people will be substantively represented, and some will not – in our system or any other. It is not a failing of our system that it is unable to provide everyone with everything they want all the time. Still, there is another sort of representation where our system could be improved, and does fall short: descriptive representation. The remainder of this paper will concern itself with improving descriptive representation, accepting that limited substantive representation is what it is.

Descriptive representation “depends on the representative's characteristics, on what he *is* or is *like*, on being something rather than doing something. The representative does not act for others; he

'stands for' them, by virtue of a correspondence or connection between them, a resemblance or reflection."<sup>24</sup> Descriptive representation is not an action (though a descriptively representative legislature may of course act); rather, it is "a matter of accurate resemblance or correspondence, and a precondition for justifying governmental action."<sup>25</sup>

Insofar as "perfect accuracy of correspondence is impossible... representation as 'standing for' by resemblance, as being a copy of the original, is always a question of which characteristics are politically relevant for reproduction."<sup>26</sup>

The characteristics most politically relevant for reproduction in a legislature are illuminated by this quote from John Adams: a descriptively representative legislature "should be an exact portrait, in miniature, of the people at large, as it should think feel, reason, and act like them." This sentiment is buttressed by James Wilson, John Stuart Mill, and Edmund Burke, who wrote that "the virtue, spirit, and essence" of a representative body lies "in its being the express image of the feelings of the nation".<sup>27</sup>

Descriptive representation may be operationally defined as *having a representative who 'thinks, feels, reasons, and acts' as you do*. When there is a representative in a given legislature who 'thinks, feels, reasons, and acts' in the same way as a given segment of the population, then that segment of the population is descriptively represented in that legislature (and is the constituency of that representative). For example: a group of democratic socialists think in terms of class struggle, feel sympathy for the working class, and act through democratic channels; a descriptive representative of that group of democratic socialists will think, feel, and act likewise.

Unlike substantive representation, descriptive representation is rarely (if ever) a zero-sum game – the descriptive representation of one citizen has no detrimental effect on the descriptive

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24 Pitkin 1967: 61

25 Ibid p.82

26 Ibid p.87

27 Ibid p.60-61

representation of his ideological foil. While it is often impossible to substantively represent mutually exclusive interests in a single piece of legislation, it is quite simple to descriptively represent those same mutually exclusive interests in a single legislature. The most radical liberal may stand next to the most radical conservative in a given legislature, and each may espouse his beliefs with vehemence; a piece of legislation which is simultaneously radically liberal and radically conservative is a rare thing indeed.

If we were to examine both substantive and descriptive representation through the lens of a “maximizing theory” - which “takes some state of affairs... as a value or goal and asks: What conditions are necessary to achieve the maximum achievement of this goal?” - then we would see that the maximum amount of substantive representation is, on an issue-by-issue basis, limited by the zero-sum nature of the concept. Descriptive representation is not so limited – per a “maximizing theory”, we may easily expect a much higher “descriptive maximum” than a “substantive maximum.”<sup>28</sup>

The aforementioned limitations of substantive representation apply generally, insofar as they spring from the very nature of the concept and not from any particular context or set of circumstances. There are further limitations to substantive representation in a Madisonian system: namely, checks on the will of the majority. Whereas most systems of popular government may at least guarantee the substantive representation of a bare majority – even if it be at the expense of a bare minority – there is no such guarantee in a Madisonian system, where the will of a majority may be stifled in any number of ways.

I do not wish to suggest that this is undesirable, but only to point out the futility of attempting to assess a Madisonian government in terms of substantive representation – the mere maximization of which was never the primary goal of the Framers, but secondary to the preservation of the public interest and the protection of political minorities.

One may realize the limitations of substantive representation in a Madisonian system and

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<sup>28</sup> Dahl 1956: 2

conclude that such a system must be abolished as counterproductive and anti-democratic; and this is indeed the conclusion some modern democratic theorists have reached.<sup>29</sup> However, it is not the only conclusion which may be reached, and not in my opinion, the most reasonable one. It is only if critics take issue with the central goal of a Madisonian government – the protection of the public interest over majority rule – that they should propose its dismantling. If the objections to a Madisonian system stem from a perceived lack of representative capacity, then steps should be taken to remedy that shortcoming without altering the core components of the system.

Critics which fall into the latter category must first separate themselves from the mentality of substantive representation, which can hardly be satisfactorily maximized so long as citizens in a society are fundamentally divided in their political ideologies. Certainly, we may conceive of some issue where the vast majority (or even the entirety) of a society is in agreement; and in such a situation, we may indeed maximize substantive representation. We must simultaneously realize that such confluences of shared sentiment, while conceivable and perhaps even possible, are extremely rare; and if we are willing to accept that even a majority may be wrong, we, as citizens of a republican government, must find an ideal other than substantive representation which we strive to obtain.

That ideal is descriptive representation: we may raise our representative capacity by increasing descriptive representation, which is consistent with and complementary to Madisonian theory. Whereas substantive oppression is not only a possibility but an inevitability if left unchecked, descriptive oppression is practically non-existent, and operates on a different plane than our core Madisonian doctrines. Thus, we may raise our representative capacity through increased descriptive representation, without altering our commitment to Madisonian ideals or hindering substantive representation in any way. The changes I will propose throughout this paper are intended to do just that.

In order to increase descriptive representation, we must first increase competition in our

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<sup>29</sup> See Dahl 1956; Ranney 1954 provides an overview of the works of a number of party government theorists who argued for the abolition of separated powers.

political system. This point benefits from a brief foray into economic theory.

In economics, competition is characterized by a market with “a large enough number of sellers and a large enough number of buyers so that neither one buyer nor one seller affects the price of the product”, which is instead determined “by the interaction of industry demand and supply.”<sup>30</sup>

Competition “permits the optimal allocation of society’s scarce resources” and “[assures] that the appropriate quantity of output is being produced [by competing firms].”<sup>31</sup>

The absence of competition – monopoly – is characterized by a market with “a single seller of a product for which there are no close substitutes... if a consumer wants the product he must buy from the monopolist.”<sup>32</sup> The monopolist, then, may charge whatever price he wants for his product – particularly if it is a product deemed a necessity by consumers.

Competition is the primary engine of excellence and innovation in a given market. It “compels firms to make the best use of all available means to increase their profits”<sup>33</sup>; perhaps more importantly, “competitive pressure places the firm in a position where it has to be responsive to the needs of consumers. If it is not responsive, the consumer can always turn to an alternative source for a product.”<sup>34</sup> Conversely, “the incentive to invent is less under monopoly than under competition”, as aggrieved consumers cannot simply take their business elsewhere.<sup>35</sup>

While the parallels between economics and politics are by no means exact, there are significant analytical overlaps between the two fields; we may therefore use the principles of one field to substantial benefit in the other (e.g. game theory, Pareto-optimality, etc; see Downs 1957 for a classic example of this analytical overlap).

If we view our political sphere as an economic market – with the parties as firms offering a product (their representative service) and voters as consumers of that product – then the competitive

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30 Warren 1975: 16-17

31 Blair and Kaserman 1985: 21

32 Warren 1975: 20

33 Blair and Kaserman 1985: 41

34 Warren 1975: 59

35 Blair and Kaserman 1985:43



failings of our system become readily apparent. At best, our system is a duopoly in the market of general representative service: the two parties as Coke and Pepsi, battling with one another for the ambivalent but insulated from any outside threat. At worst – operating from the perspective that the representative services of the two parties are not in fact “close substitutes” of one another – each of the major parties functions as a monopoly in its own differentiated market: the Republicans completely monopolizing conservative representative service, mirrored (but not challenged) by the Democrats on the liberal side of the ideological spectrum.

In either case, there is substantial evidence to indicate that the two parties are not under the necessary competitive pressure “to be responsive to the needs of consumers”, as detailed above; that the parties exhibit anti-competitive behaviors and tendencies; and that many of the competitive failings of our system stem from the institution of geographic districts.

In the next section of this paper, I will detail the failings of the American two-party system in regard to descriptive representation, and discuss how those failings stem from a general lack of political competitiveness. In the third section, I will propose a systemic change which I believe will make significant improvements to political competitiveness, and to descriptive representation in turn – the elimination of geographic districts and the implementation of a system of proportional election for the House of Representatives.

### **The Descriptive Failings of the American Two-Party System**

The descriptive failure of the American two-party system to provide descriptive representation is evidenced in increasing dissatisfaction with the two parties and rooted in the logic of the single-member district itself. It stems primarily from a number of competitive impediments embedded in the representative election process.

Recall the operational definition of descriptive representation: having a representative who ‘thinks, feels, reasons, and acts’ as you do.<sup>36</sup> As James Wilson argued at the Constitutional Convention, “the portrait is excellent in proportion to its being a good likeness”; similarly, “the legislature ought to be the most exact transcript of the whole society,” “the faithful echo of the voices of the people.”<sup>37</sup>

We witness in this country a general dissatisfaction with politics and a general distrust of politicians in large swaths of the American electorate – evidence that Americans don’t believe that their representatives ‘think, feel, reason, and act’ as they do. In 2006, 77% of respondents to a Gallup survey said that their congressman was “out of touch with average Americans.”<sup>38</sup> In 2008, 57% of respondents said that the tendency of Democratic and Republican leaders to make decisions based on what was best for their party even if it wasn’t best for the country was “a major problem”. In 2009, 55% of respondents ranked the honesty and ethical standards of congressional representatives as “low” or “very low” (making them less trusted than lawyers, stockbrokers, or insurance salesman). In that same year, 61% of respondents said that the political views of the Republican Party were either too conservative or too liberal, with 54% answering likewise for the Democrats. As of March of this year, 40% of respondents identified their party affiliation as “Independent”, higher than either “Democratic” (31%) or “Republican” (28%).

Perhaps most simply: in 2008, 47% of respondents said that the Democrats and Republicans were doing such a poor job of representing the American people that a third party was needed (which is actually down from 2007, when 58% answered likewise).

In data drawn from the National Election Studies, Rosenstone and Hansen found similar evidence of an increasing sense of political inefficacy, rampant distrust of government and government officials, and a perception of government as unresponsive to the will of the people.<sup>39</sup>

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36 Pitkin 1967:60

37 Ibid, p.61

38 All survey data referenced in this paragraph comes from Gallup’s website ([www.gallup.com](http://www.gallup.com)).

39 Rosenstone and Hansen 2003:144-149; the authors write on p.148 that “between 1958 and 1988, Americans’ trust in their government fell by almost half.”

Rosenstone and Hansen observed that their findings “[had] less to do with the legitimacy of the whole political system than with the attractiveness of the choices the system offers.” Since the 1960s, “the electorate’s identification with the Democratic and Republican parties has weakened considerably,” as voters “neither identify with the alternatives nor expect any policy advantages to accrue from the outcome of [an] election.”<sup>40</sup>

This trend is particularly troubling when viewed through the lens of descriptive representation, in that identification with one’s representatives is the defining dynamic of that perspective. It is difficult for a congressman to claim to “stand for” a constituency that is indifferent to him or rejects him outright; in a similar vein, when citizens label their congressmen as “untrustworthy”, “out-of-touch”, or “too liberal/conservative”, the implication is that those congressmen do not “think, feel, reason, and act” as their purported constituents do.

The failings of descriptive representation in our system are particularly pronounced in regard to the two parties themselves. “Bearing in mind the fact that a major party has only one competitor and that party managers need not meet every demand made by every interest,” and that “to make extreme concessions to one interest at the expense of the others is likely to be fatal to the alignment of interests that make up the constituency of a major party,” the two-party system produces parties with moderate policy agendas.<sup>41</sup> At the same time, we observe increasing partisan polarization in the electorate<sup>42</sup>.

How are systematically moderate parties to descriptively represent the immoderate segments of the electorate? What “resemblance or correspondence” is there between a radical leftist hell-bent on the implementation of a single-payer healthcare system and a moderate Democratic Party which refuses to support so much as a public option is some hypothetical health-care bill? Or a between a stringent conservative dead-set on the immediate deportation of all illegal immigrants and a moderate

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40 Rosenstone and Hansen 2003: 151

41 Schattschneider [1942] 2004:85

42 For a discussion of this polarization, see a Pew Research Center report titled “The 2004 Political Landscape: Evenly Divided and Increasingly Polarized”; also Abramowitz and Stone 2006 and Joe Bond, “Evidence of Increasing Polarization among Ordinary Citizens.”

Republican Party wary of further alienating a growing population of Hispanic voters?

This fundamental descriptive failing of the American two-party system stems from the institution of simple-majority single-member geographic districts. These geographic districts are outmoded as a means of assigning representative responsibility. They are, in Lowi's words, "a horrible anachronism." "With very few exceptions, modern American society has become far too heterogeneous to be districted"<sup>43</sup>. The result is that a single representative finds himself responsible for a district full of constituents with vastly divergent and often mutually exclusive policy preferences. He cannot substantively represent all of them, due to the zero-sum nature of the concept. More importantly, he cannot descriptively represent all of them – one individual cannot simultaneously (genuinely) "think, feel, reason, and act' as both a conservative and a liberal anymore than one can simultaneously "win legislative battles" for both conservative and liberal constituents.

### **The Effects of Limited Competition on Descriptive Representation**

The descriptive failings discussed above stem in large part from a severe lack of competition in American party politics. This may sound strange, insofar as I just blamed the descriptive failings of our system on geographic districts; but the two are closely connected. Simple-majority single-member geographic districts raise prohibitive barriers to competition; those barriers (coupled with additional barriers created by the parties themselves) lead to a two-party system, and a lack of descriptive representation in the Legislature.

Recall the necessary components of a competitive market: "First, there must be a fairly large number of sellers so that they act independently of one another. Second, there should be relatively free entry into the market so that potential competitors can exert pressure on existing ones... Third, no firm should have a significant cost advantage over its competitors that cannot be overcome with time and

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43 Lowi 2003:371

effort. Fourth, there should be a relatively large number of buyers so that purchasers cannot exercise monopsony power. Fifth, [sellers] should not collude with one another... Finally, both buyers and sellers should have knowledge about the market place.”<sup>44</sup>

The American two-party system fails to meet the second, third, and fifth of these six requirements outright: there are formidable barriers to entry into the political market, substantial cost advantages for the existing parties, and instances of collusion between the two parties which are designed to preserve their privileged position. The first requirement – for a “fairly large” number of sellers in a given market – would seem to fit the bill as well, at least from an intuitive perspective; but because the term is left so deliberately ambiguous by economic/political theorists, I will leave it aside. The fourth and sixth requirements – for a “relatively large” and well-informed population of consumers – may certainly be argued as general failings of our political system (in light of relatively low turnout and a well-documented lack of political knowledge in American voters)<sup>45</sup>; but they are not so easily linked to the two-party system as the second, third, and fifth requirements. I will leave them aside as well.

The second necessary element of a competitive market – free entry – is perhaps the one most sorely lacking in the American two-party system; and it is the requirement most inherently limited by the nature of the system itself.

The American House of Representatives consists of 435 members elected by constituents in simple-majority, single-member geographic districts. A candidate receiving a plurality of votes cast in a given election is awarded the office of Representative, and is responsible for representing the interests of each and every citizen within a designated geographic area. In keeping with Duverger’s Law<sup>46</sup>, ours is, and always has been, a predominantly two-party system; but Duverger’s more pressing observation,

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44 Warren 1975: 14-15

45 Delli Carpini and Keeter 1996

46 As discussed in Maurice Duverger’s *Political Parties*, p. 216-218; for further discussion of Duverger’s Law, see Riker 1982.

for the purposes of this paper, has less to do with the mechanical relationship between electoral systems and party systems than the mentality that that relationship spawns in a two-party electorate.

“In cases where there are three parties operating under the simple-majority single-ballot system the electors soon realize that their votes are wasted if they continue to give them to the third party” Duverger wrote; “whence their natural tendency to transfer their vote to the less evil of its two adversaries in order to prevent the success of the greater evil.”<sup>47</sup>

This observation, echoed and evidenced in the works of Anthony Downs<sup>48</sup>, Stephen L. Fisher<sup>49</sup>, and E.E. Schattschneider, who wrote that “the monopoly of the opposition is the most important asset of the second major party” in a two-party system,<sup>50</sup> presents a massive entry cost to any minor party hoping to compete with the established powers. In Duverger’s words, “the third party finds the electoral system mechanically unfair to it... so long as a new party which aims at competing with the two old parties still remains weak the system works against it, raising a barrier to its progress.”<sup>51</sup>

By suppressing minor parties, the two-party system inhibits descriptive representation. Voters in simple-majority single-member districts are forced to choose between two alternatives, candidates of the major parties who ‘think, feel, reason, and act’ a certain (presumably reasonably static) way. If a voter decides that neither of those candidates ‘thinks, feels, reasons, or acts’ like him – a highly foreseeable situation, given the extreme diversity of beliefs, perspectives, opinions, and ideologies in a country like the United States – he finds himself without descriptive representation.

Certainly, this situation is possible under any system, regardless of the number of available alternatives. A voter who ‘thinks, feels, reasons, and acts’ in a completely unique, obstinate, or outlandish fashion may never find a representative who ‘thinks, feels, reasons, and acts’ in a similar manner – not even a satisfactory approximation. Such a voter will not be descriptively represented in

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47 Duverger 1955: 226

48 Downs 1957:47

49 Fisher 1973:299

50 Schattschneider 2004 [1942]:82

51 Duverger 1955:226

any legislature. Nonetheless, by limiting the number of available alternatives to two, our system severely restricts a voter's opportunity to find and support a candidate who is indeed 'descriptive'. Systems which allow for the modest prosperity of a larger number of parties provide voters with a better chance of finding a descriptive representative by providing them with more alternatives. Ultimately, certain systems make it plausible for voters who cannot find a descriptive representative to rally the likeminded and form a party of their own.

In addition to the systemic barrier mentioned above are barriers erected by the major parties themselves. Labeled by Theodore Lowi as "a 'legal and jurisprudential safety net' of 'biased electoral and party laws'", these barriers largely center around statewide prohibitions on so-called "fusion ballots" (which allow candidates from the two major parties to run on concurrent minor party tickets, raising the profile of the minor party in the minds of the populace and doing away with many of the barriers of presented by "wasted vote" mentality).<sup>52</sup> Lowi also categorized redistricting by the two parties as an entry barrier, pointing to near-total incumbent reelection rates as "a series of 435 Incumbent Protection Acts" orchestrated to keep minor political players out of power.<sup>53</sup>

As in economic markets, these entry barriers allow the preservation of two-party monopoly/duopoly power. The systemic barrier of Duverger's Law is severe enough in its own right, though not an indictment of the two-parties in and of itself. The additional barriers erected by the parties are something else entirely, evidence of malfeasance; for "when a firm raises entry barriers in an artificial way, it is seeking to exclude potential rivals and insulate its monopoly position."<sup>54</sup>

The presence of collusion between the two major parties is the second distinct competitive failure of the two-party system. Mayhew observed that "in a good many ways, the interesting division in congressional politics is not between Democrats and Republicans, but between politicians in and out

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<sup>52</sup> Lowi 2003:365-366

<sup>53</sup> Ibid, p. 361. As I'll discuss later, incumbency may be more of a cost advantage than an entry barrier; but it is a competitive failure of the two-party system, one way or the other.

<sup>54</sup> Blair and Kaserman 1985:118

of office. Looked at from one angle the cult of universalism has the appearance of a cross-party conspiracy among incumbents to keep their jobs.”<sup>55</sup>

This dynamic – decried by Lowi as a “tacit contract between the two parties to avoid taking important issues to the voters and in general to avoid taking risks”<sup>56</sup> – stems from Mayhew’s electoral incentive, that goal of goals among members of Congress. While “behavior of an innovative sort can yield vote gains... it can also bring disaster” – that is, the loss of one’s seat.<sup>57</sup> Thus, the two parties and their members play it safe, relying on the fact that “voters find it difficult to assess blame or praise, making accountability judgments and partisan affiliation difficult,”<sup>58</sup> and on the “wasted vote” mentality of the general electorate.

The most explicit evidence of collusion comes in the form of market division, showcased in bipartisan redistricting designed to protect incumbents from challengers.<sup>59</sup> According to Blair and Kaserman, “by assigning geographic territories to each firm, each geographic market will be characterized by local monopoly.”<sup>60</sup> This is the prevailing reality in an increasing number of highly partisan districts: a recent study of competitiveness in House elections by Abramowitz, Alexander, and Gunning found that “the percentage of Republicans in high-risk districts has fallen from 22% to 11% and the percentage of Democrats in high-risk districts has fallen from 41% to 16%” since the 1970s.<sup>61</sup>

The ‘wasted vote’ mentality of two-party systems limits descriptive representation by limiting the opportunity of a voter to find a descriptive representative; such market division limits that opportunity even further, by effectively reducing the amount of viable “alternatives” from two to one. A district which has been drawn to consistently elect liberal Democrats leaves little hope for the descriptive representation of any conservative Republicans unlucky enough to reside there.

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55 Mayhew 1974:105

56 Lowi 2003:360

57 Mayhew 1974:47

58 Lowi 2003:360

59 Mayhew, “The Case of the Vanishing Marginals”, p. 306; according to Mayhew, “there are good examples of cross-party districting deals among congressmen of large state delegations.”

60 Blair and Kaserman 1985:166

61 Abramowitz, Alexander, and Gunning 2006:80



The aforementioned study by Abramowitz *et al.* also provides substantial evidence for the third competitive failing of the two-party system: cost advantages for the two parties over third-party competitors. Both Mayhew and Abramowitz *et al.* have pointed to incumbency as a significant competitive edge, based on “[incumbents’] ex-officio advantages, their ability to raise huge campaign war-chests, and the inability of most of their challengers to raise the funds required to mount serious campaigns.”<sup>62</sup> Mayhew singled-out the franking privilege as a concrete instance of a cost advantage, a means by which incumbents may advertise themselves on the government’s dime; “peak mailing months are the Octobers of even-numbered years,” Mayhew wrote, and “the mail-flow curve matches well any incumbency-advantage curve” derivable from his data. He concluded that “the incumbency advantage question could be a remarkably simple one: the more hundreds of thousands of messages congressmen rain down on constituents, the more votes they get.”<sup>63</sup>

For their part, Abramowitz and his colleagues found that “while incumbents have been able to increase their fundraising to keep up with rising campaign costs, challengers have been much less successful.” Between 1994 and 2002, “median spending by incumbents in high-risk districts rose from \$596,000 to \$910,000 while median spending by challengers in high-risk districts fell from \$229,000 to \$198,000. Even in potentially competitive districts, challengers have been falling farther behind incumbents in campaign spending.”<sup>64</sup>

Taken in concert, these three competitive impediments severely limit the ability of the American two-party system to descriptively represent the citizenry. Insofar as at least one (and arguably two) of the three competitive impediments – the “wasted vote” mentality (definitely) and tacit collusion (arguably) – are inextricably linked to a two-party system, it is doubtful that our politics will be truly competitive while the two-party system, inextricably tied to our electoral system of simple majority districts, persists.

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62 Ibid, p. 81

63 Mayhew 1974, “The Case of the Vanishing Marginals”, p. 311

64 Abramowitz *et al.* 2006:83

## The Descriptive Benefits of Proportional Representation

If the descriptive failings of the American two-party system stem from barriers to competition, and those barriers to competition stem primarily from the institution of the single-member district and the two-party system which necessarily accompanies it, then the most obvious solution is the elimination of that institution as a means of electing members of the House of Representatives.

The elimination of single-member districts would immediately mitigate Duverger's "wasted vote" mentality, the most severe competitive impediment to multi-partyism and its descriptive benefits. While it might not eliminate that mentality completely – depending on the particular system which replaced it – it would be a definite step in the right direction: away from the traditional majoritarian mode of representation and toward a mode of proportional representation designed to account for the ideological diversity of the electorate.<sup>65</sup>

There are three factors we must take into account if we wish to construct a system of proportional representation to replace the single-member district system. These factors are (1) district magnitude; (2) electoral formula; and (3) ballot characteristics (i.e. open vs. closed list ballots).

District magnitude – “the number of representatives elected in a district (constituency)”<sup>66</sup> – is the most important of these three factors, tied directly to Duverger's Law and central to the concept of proportional representation.

Within an electoral framework, the alternatives to the single-member district are limited: one may either increase the number of representatives elected within a given district (producing a *multi-member district*) or eliminate districts entirely (producing a system of *at-large* representatives).

Each of these alternatives has its own distinct advantages and disadvantages. However, the disadvantages of multi-member districts are magnified when viewed through the lens of descriptive

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65 There is indeed a dichotomy between majoritarianism and proportional representation; a step away from “winner-take-all” is a step toward “loser-take-some”, a doctrine at the heart of proportional representation systems.

66 Lijphart 1994: 10

representation, largely because they must continue to operate within the context of the district itself.

Consider the following scenarios for a transition from single-member districts to multi-member districts: first, additional members may be added to existing districts; second, existing districts may be combined, and their aggregate allocation of representatives selected proportionally; finally, districts may be combined and be granted additional representatives.

The first and second scenarios present an interesting problem – a tradeoff, in one case or the other, between high electoral thresholds and the size of a given legislature.

Electoral thresholds – the percentage of the popular vote which a party or candidate must obtain to secure a seat in a legislature – hinge on district magnitude. A district wishing to lower thresholds and increase proportionality must first increase district magnitude. “Low magnitudes have the same effect as high thresholds: both limit proportionality and the opportunities for small parties to win seats; as magnitudes increase and thresholds decrease, proportionality and the chances for small parties improve.”<sup>67</sup> So, a district which elects four representatives creates an effective minimum threshold of 25%<sup>68</sup> - a formidable challenge for small parties, and one which discourages their participation in much the same way as Duverger’s “wasted vote” mentality.

Such high thresholds are problematic if one’s goal is the maximization of descriptive representation through the inclusion of a wide array of parties in the legislative process, and the removal of systemic biases which favor larger parties. An advocate of the multi-member district might suggest that high thresholds be lowered by increasing district magnitude – that is, allocating more representatives to each district in order to increase proportionality. But in the U.S., such increased allocation would balloon the House of Representatives to a massive size. Assume the goal of an 8%

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67 Lijphart 1994: 10-12; within Lijphart’s work, proportionality is a measure of the likeness between popular vote and legislative composition – a system where 10% of the popular vote nets 10% of the seats in the legislature may be said to be proportional, whereas a system where 10% of the popular vote nets 1% (or 100%) of the seats in the legislature may be said to be *disproportional*.

68 Depending on the particular electoral formula applied – that is, the formula for translating popular vote into seat allocation in a legislature – this number could vary (see Lijphart’s discussion of effective thresholds, p. 25-36); but it is an illustrative approximation.

threshold, as witnessed in Costa Rica, Norway, and Sweden: Lijphart finds that such a threshold requires a district magnitude ranging from 7.8 to 8.3. Implementing such a change in the House of Representatives would produce an assembly of approximately 3500 individuals<sup>69</sup>; and an 8% threshold still produces a relatively high level of disproportionality.

A legislature of 3000, 4000, or 5000 geographically assigned representatives would be unprecedented for a modern democracy, expensive to support, and difficult to justify if a more efficient method were available.

One alternative to simply increasing district magnitude is district combination; but it produces similar problems. For example: if the House districting lines in each state were erased, and the state treated as a single district which elected its House delegation proportionally (in at-large races), then small states would find themselves facing the same “low magnitude = high threshold” dilemma detailed above. While this course of action would positively affect descriptive representation in the largest states – states like New York, California, and Texas, with delegations/magnitudes large enough to produce minimal electoral thresholds – it would have little to no effect in the smallest ones: states like Montana, Wyoming, and the Dakotas (with one representative), Idaho (with two), and New Mexico (with three). Thresholds in these small states would remain prohibitively high, providing little to no relief from the “wasted vote” mentality. So, while a pure combination approach would likely produce *some* improvements in descriptive representation, it would do so in an uneven way.

A combination of the two methods – the allocation of additional representatives to increase district magnitude (particularly for the smallest states) coupled with the erasure of district lines and the treatment of states as at-large electoral districts (to curtail any ballooning effects which might otherwise result) – is perhaps the most viable of the three options which insist on the continued existence of the electoral district as a defining institution in American political life.

However, there is evidence that such an insistence is unwarranted when it comes to systems of

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<sup>69</sup> Lijphart 1994: 31 Table 2.3

proportional representation. Recall: the alternatives to the single-member district are the multi-member district and the *at-large* election – that is, the complete elimination of the geographic district as restraint to magnitude.

In his comparative examination of systems of proportional representation, Lijphart notes that a considerable number of systems – including Israel and the Netherlands – “have the maximum magnitude allowed by their assembly size: a single at-large (nation-wide) district.”<sup>70</sup> This “most proportional magnitude” eliminates the negative effect of high electoral thresholds on proportionality and descriptive representation: at the time of Lijphart’s analysis, Israel’s effective “district” magnitude of 120 produced a threshold of 1%, while a magnitude of 150 for the Dutch House of Representatives produced a threshold of 0.67%.

Systems which insist on maintaining geographic multi-member districts have considerably lower district magnitudes and considerably higher thresholds: Portugal’s district magnitude of 12.4 produced a threshold of 5.7%; Switzerland’s district magnitude of 8.2 produced a threshold of 8.5%; finally, the French system’s district magnitude of 5.79 produces an 11.7% threshold.<sup>71</sup>

One may look at these relative thresholds and conclude simply that the implementation of multi-member districts would be a vast improvement over the single-member district as a means of promoting descriptive representation by the proliferation of small political parties – after all, the single-member district system of the United States produces a standing threshold of 50.1%.

This is correct, to an extent – provided that the multi-member districts were of sufficient magnitude, such a change would make a great deal of headway towards eliminating the “wasted vote” mentality produced by the single-member district and its two-party system. However, the difference in thresholds between the multi-member district systems and the national at-large systems is significant: if our objective is to increase descriptive representation as much as possible, then the miniscule

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70 Lijphart 1994: 24

71 Ibid p. 22

thresholds which accompany a system of nation-wide, at-large proportional election should strike us as most appealing (particularly when we consider the aforementioned difficulties of implementing a system of multi-member districts in a country as large as the United States).

The next question we must consider in crafting a replacement for the single-member district is that of electoral formula – the method of proportionally translating votes into legislative seats.

A system of at-large election in a large country necessitates some sort of list system of election. List formulas are designed for systems where citizens cast their vote for a list of candidates put forth by a political party; within the context of nation-wide, at-large elections, they are the most appropriate sort of formula, allowing a voter to clearly communicate his ideological preference without expecting him to know the policies and proclivities of some 500 individual politicians, which would indeed be expected of him under a number of non-list formulas.

Two of the most prominent list formulas are the d'Hondt formula and the Hare formula. The d'Hondt formula uses a system of increasing divisors to allocate seats; because of this divisor system, the d'Hondt formula “is the least proportional [list formula] and systematically favors the larger parties.”<sup>72</sup>

The Hare formula divides the total vote by the district magnitude to find a minimum quota, then allocates to each party as many seats as it has won quotas: if 100,000 votes are cast in a district with a magnitude of 100, then the minimum quota is 1,000 votes, and a party which secures 15,000 votes is allocated 15 seats (with remaining seats going to parties with the highest remaining vote totals). Because of its method of allocation, “the Hare [formula] is impartial between large and small parties and tends to yield closely proportional results.”<sup>73</sup>

The goal of this entire endeavor is the improvement of descriptive representation by the removal of mechanical and psychological barriers which bias a political system in favor of large

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<sup>72</sup> Lijphart 1994: 23; see Appendix A for further discussion of these PR formulas.

<sup>73</sup> Ibid

political parties.

It makes little sense to choose an allocating formula which produces similar biases (albeit in a more proportional setting). For this reason, the Hare formula is more appropriate than the d'Hondt formula as a tool for promoting descriptive representation.

Finally, we must consider the question of ballot characteristics: insofar as a system of nationwide at-large election seems to necessitate some form of party list ballot, we must decide between an open party list ballot or a closed party list ballot.

In closed list systems, “political parties present a rank-ordered list of candidates in each of the ... districts where they are contesting seats. Voters cast a ballot for the entire list; they cannot alter the ordering of the candidates. Once a party’s seat allocation has been determined (using a proportional representation allocation formula), its seats are distributed based on the list’s rank ordering.”<sup>74</sup>

In open list systems, “there is no rank ordering. Voters are required to select a candidate on the party list (also called exercising a preference vote). The seats are allocated among the parties... similar to the closed list systems. However, the seats are distributed among the party’s candidates based on the ordering of preference votes received, not based on their ordering on the list.”<sup>75</sup>

Closed list systems are party-centered. They allow the maintenance of party discipline, insofar as party leaders control ballot ordering and the electoral fates of their members. Open list systems are less party-centered: candidates on the same slate will battle one another for the preference vote of a citizen already partial to the party’s general platform and outlook.

While one could argue that a closed list system forces parties to adhere more closely to their stated policy platforms, giving voters a better idea of how the candidates of those parties will ‘think, feel, reason, and act’ if elected, the open list ballot is more appropriate for the maximization of descriptive representation. A voter who had indeed identified a descriptive candidate on a party slate

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74 Htun and Jones 2002: 37

75 Ibid

would potentially be denied the opportunity to express so much as a preference for that candidate on a closed list ballot; on an open list ballot, they would be free to do so.<sup>76</sup>

The three factors detailed above – district magnitude, electoral formula, and ballot design – must be carefully considered when constructing systems of proportional representation. Different combinations will produce different systems; thus, different combinations are warranted by different goals.

The goal maximizing descriptive representation is best reached by the replacement of the single-member district with a system of nation-wide, at-large election, using the Hare formula of seat allocation and open party list ballots. The at-large election maximizes district magnitude and minimizes electoral thresholds; the Hare formula maximizes proportionality of seat allocation; and the open party list ballot maximizes voter choice. If implemented, this specific system of proportional representation would likely substantially raise the level of descriptive representation in the United States House of Representatives, providing citizens with increased opportunity to secure a representative who ‘thinks, feels, reasons, and acts’ as they do.

Systems so deliberately constructed to maximize proportionality and multi-partyism are fairly rare in modern democratic contexts. A particular system will often have one or two of the maximizing characteristics; but the simultaneous implementation of all three is uncommon. The closest example is the Netherlands, which uses a system of nation-wide, at-large election, the Hare formula, and open list ballots which allow voters to rank-order the candidates on a given party list. The German Land lists of the Bundestag are another good example: nation-wide, at-large elections, which until recently used the Hare formula of allocation and continue to use open list ballots.

What do we see in these countries, which use such proportional systems? We see an

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<sup>76</sup> With open party list ballots, there is a distinct possibility of an overemphasis on so-called “personal vote-earning qualities” – local roots, dialect, a winning smile, etc. – which distract from ideological policy questions which might be more exclusively addressed in closed-ballot systems (see Shugart, Valdini, and Suominen 2005); however, given this paper’s operational definition of descriptive representation, it’s hard to couch that possibility as problematic, so long as the voter is satisfied that his representative ‘thinks, feels, reasons, and acts’ the right way.



unsurprising proliferation of parties. There are currently ten parties represented in the Dutch House of Representatives; in the German Bundestag, there are six large parliamentary blocs.<sup>77</sup>

The effect of the proliferation of parties and the elimination of the “wasted vote” mentality is a greater satisfaction with popular government. Anderson and Guillory find that satisfaction with democracy is significantly higher in countries like Germany and the Netherlands (which have consensus views of democracy) than in countries like Great Britain (which have a majoritarian, winner-take-all view of democracy).<sup>78</sup> This satisfaction is particularly pronounced in regard to minority parties: voters on the losing end of elections in the Netherlands reported 66% satisfaction with democracy; voters in Germany 80%. In Great Britain, only 45% of voters on the losing end of elections reported satisfaction with democracy.<sup>79</sup>

Summarizing Lijphart’s classic continuum of democratic systems, Anderson and Guillory write that “at the extremes, majoritarian government is about unfettered rule by the majority on the basis of an unwritten constitution without provisions for a minority veto.” Consensus democracy, on the other hand, “is organized on the basis of a rigid constitutional structure with formal veto powers for minorities.” If Great Britain, with its unwritten constitution, centralized government, and plurality electoral rules is a textbook case of majoritarian democracy, then it is the Netherlands – with its “balanced bicameralism, federalism and decentralization, electoral rules based on proportional representation, and written constitution [that] include[s] minority veto power” – that stands as the consensus counterpoint.<sup>80</sup>

The United States falls very easily into the category of a consensus democracy: it has a written constitution with explicit checks and balances on majorities, entrenched bicameralism, and heavy federalist overtones. What it lacks are electoral provisions for the proportional representation of its

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<sup>77</sup> This information may be found on the official websites of the Dutch House and the Bundestag, at [www.houseofrepresentatives.nl](http://www.houseofrepresentatives.nl) and [www.bundestag.de](http://www.bundestag.de), respectively.

<sup>78</sup> Anderson and Guillory 1997: 71; satisfaction scores: Germany = 84%, Netherlands = 70%, Great Britain = 53%

<sup>79</sup> Ibid, p. 73

<sup>80</sup> Ibid, p. 68

citizenry; descriptive representation has suffered accordingly. As long as the U.S. insists on the continued use of the single-member district system – a system completely out of character for a consensus democracy concerned with the rights of political minorities – it will fail to live up to the descriptive promise of its European counterparts. Without the adoption of a system of proportional representation – ideally, a system of nation-wide, Hare formula, open party list proportional representation – there will continue to be a systemic lack of descriptive representation in the United States.

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