
SKEPTICISM ABOUT PROPORTIONAL REPRESENTATION FOR CONGRESS

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Recently, a number of political reform advocates and advocacy groups have proposed a form of proportional representation (“PR”) for the U.S. House. In the view of reform advocates, our system of single-member election districts and first-past-the-post elections is a major reason for our increasingly tribalistic politics and toxic political culture. The proposed cure is the creation of a five- or six-party Congress, which would be enabled by electing Congress from multi-member districts of five to seven members.

This article reflects skepticism about this proposal. The essay first shows the full range of changes to Congress and the voting system that would be required to institutionalize this proposal. A transition to multi-member districts is not like flicking a switch; it would require numerous other accompanying changes. The article then turns to a comparative perspective to take issue with the proposal.

This comparative perspective questions whether the diagnosis PR proponents offer to motivate their proposal is even accurate. Other democracies that use our same election system do not have our tribalistic politics and levels of affective polarization. This strongly suggests that other factors about the distinct way American politics is institutionally structured, along with distinct features of American society and culture, are the source of our current political ailments. The article then turns to the most important challenge it raises: whether the proposed PR cure is worse than the disease. By exploring the extraordinarily turbulent actual multi-party governments that exist today in Western Europe, the article argues that a five- or six-party Congress would make the political process even more dysfunctional than it is today.

The ability to deliver effective government is the most important challenge democracies face today. The article concludes, based on comparative experience, that PR would make it even harder for Congress to meet this challenge.

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I. INTRODUCTION

In recent years, reform debates over the proper basis of political representation have begun to challenge the single-member districting (“SMD”) system used throughout the United States (also known as first-past-the-post or “FPTP”). In some reform circles, efforts are now being pressed to urge a switch to a distinct American form of proportional representation (“PR”) for electing members to Congress.¹ In the fall of 2002, 200 academics sent an “open letter to Congress” urging it to permit states to elect members of Congress through PR.² The issue is quickly becoming a centerpiece of reform advocacy among some leading political reform groups and their funders; among other efforts, the New America Foundation has launched an advocacy campaign titled “Fix Our House” to press for PR.³ In the last Congress, legislation known as “The Fair Representation Act” was introduced in the House (though with only seven Democratic co-sponsors) to permit states to elect House members through PR.⁴

Debates about the advantages and disadvantages of PR versus FPTP systems have been ongoing ever since Belgium became the first country to adopt PR in 1899 (quickly followed by many other European countries over the next

1. See, e.g., FIX OUR HOUSE, <https://www.fixourhouse.org/> (last visited June 30, 2024) [<https://perma.cc/W26K-J5ZA>].

2. Scholars for Redistricting Reform, *Letter to Congress on Ending Single Member Congressional Districts and Adopting Proportional Representation*, MEDIUM (Sept. 19, 2022), <https://medium.com/@scholars-redistricting-reform/open-letter-to-congress-to-end-single-member-congressional-districts-and-adopt-proportional-97ad1cf6aa2e> [<https://perma.cc/BN6Q-36BD>].

3. See FIX OUR HOUSE, *supra* note 1. Among other groups urging this reform are Unite America and Protect Democracy. See *Toward Proportional Representation for the U.S. House: Amending the Uniform Congressional District Act*, UNITE AM. INST., <https://www.uniteamericainstitute.org/research/towards-proportional-representation-for-the-u-s-house-amending-the-uniform-congressional-district-act> (last visited June 30, 2024) [<https://perma.cc/E75B-6MXX>]; *Towards Proportional Representation for the U.S. House*, PROTECT DEMOCRACY (Mar. 28, 2023), <https://protectdemocracy.org/work/proportional-representation-ucda/> [<https://perma.cc/8VUZ-9CCT>].

4. Fair Representation Act, H.R. 3863, 117th Cong. (2021).

twenty years).⁵ Historians suggest self-interested political calculations of those in power at the time, seeking to cabin the electoral effects of newly emergent universal suffrage, drove these adoptions.⁶ But in principled terms, the central argument for PR has long been, in a nutshell, that it produces fairer political representation: representation that more fully mirrors the range of political viewpoints and preferences in a society. The main argument for the more majoritarian alternative of FPTP is that it enables more effective and more stable government.⁷ I had generally been agnostic about these debates, with probably a slight preference, in the abstract, for the German-style mixed-member PR system.⁸

The recent revival of arguments for PR in the United States inevitably reflects in part these long-standing positions. But the current argument rests much more heavily on more contingent facts about the specific circumstances of American politics today. PR proponents argue that the hyperpolarized, tribalistic nature of our party system in recent decades,⁹ and the more general, toxic political culture of our era, now compel a shift to PR. As political scientist Lee Drutman, perhaps the foremost proponent of current arguments for PR, asserts in his recent

5. STEIN ROKKAN, *CITIZENS, ELECTIONS, PARTIES: APPROACHES TO THE COMPARATIVE STUDY OF THE PROCESSES OF DEVELOPMENT* 157 (1970).

6. In the standard account, traditional parties in Europe moved to adopt proportional representation in an attempt to preserve their power after industrialization and the expansion of the franchise led to the rise of Socialist-influenced parties. *See id.* (“The rising working class wanted . . . to gain access to the legislatures, and the most threatened of the old-established parties demanded PR to protect their position against the new waves of mobilized voters created by universal suffrage.”). This explanation, however, has difficulty addressing examples of countries like Great Britain that did not adopt proportional representation despite facing similar pressures. Carles Boix, *Setting the Rules of the Game: The Choice of Electoral Systems in Advanced Democracies*, 93 *AM. POL. SCI. REV.* 609, 610 (1999). Recent work has refined the classical account by developing a more nuanced picture of the incentives that political elites face. The strength of the new party and the coordinating capacity of the ruling parties are two additional factors that influence the ongoing electoral viability of the parties in power. If one of the old parties is stronger than the other, voters and elites can coordinate around it to block the new party, and the existing electoral system will be preserved. By contrast, when “a new party draws substantial support and the ruling parties are tied in votes, the incentives to embrace PR become irresistible.” *Id.* at 611; *see also* Gary W. Cox, Jon H. Fiva & Daniel M. Smith, *Parties, Legislators, and the Origins of Proportional Representation*, 52 *COMPAR. POL. STUD.* 102, 105 (2018). This dynamic helps account for Britain’s maintenance of the plurality system.

7. For a summary of these debates, with a collection of sources, see SAMUEL ISSACHAROFF, PAMELA S. KARLAN & RICHARD H. PILDES, *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* 1160–67 (2d ed. 2002).

8. In this system, voters cast two ballots, one for a party and one for an individual candidate elected in a district in a plurality, winner-take-all vote. The district winners are first decided, then parties receive additional seats if necessary to ensure the overall party configuration of the legislature reflects the party percentages of votes on the party ballot. Party leaders choose those additional representatives on a closed party list. New Zealand, Scotland, and Wales now also use this system. For a good concise account of New Zealand’s switch in 1993 from FPTP to its current mixed-member proportional system, see *New Zealand: A Westminster Democracy Switches to PR*, ACE: THE ELECTORAL KNOWLEDGE NETWORK, https://aceproject.org/main/english/es/esy_nz.htm (last visited June 30, 2024) [<https://perma.cc/UN9N-BKXX>]. By one measure of the World Bank, the effectiveness of New Zealand’s government has dropped significantly over the last decade and is lower than in the 1990s, though all such measures must be taken with several grains of salt. *New Zealand: Government Effectiveness*, GLOB. ECON., https://www.theglobaleconomy.com/New-Zealand/wb_government_effectiveness (last visited June 30, 2024) [<https://perma.cc/B6QS-MAJQ>].

9. Richard H. Pildes, *Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America*, 99 *CALIF. L. REV.* 273, 276 (2011).

book for a popular audience, *Breaking the Two-Party Doom Loop*,¹⁰ the best way of de-escalating from these current circumstances is to fragment the major parties into a series of smaller parties.

The desire to find a silver bullet that would free us from a state of politics that few would consider healthy is understandable. PR proponents do sometimes present it in these terms. One popular essay, co-written by the legal scholar Aziz Huq, is titled “This One Reform Could Fix Our Elections.”¹¹ Lest you think an overly click-seeking headline writer slapped that title on the piece, the piece itself asserts that “[a] mode of proportional representation, with multimember districts, would solve the problem in one blow.”¹² Drutman’s book titles his proposed legislation as the “Save American Democracy Act.”¹³

I am more skeptical about PR for Congress. My concern is partly whether the diagnosis is even correct that FPTP elections are a major reason American politics has become so toxic and polarized. We also have to be attentive to a variety of trade-offs and costs likely associated with shifting to PR in the American context, which requires appreciating the concrete details involved in institutionalizing PR. But most importantly, my concern is that electing the House through PR would make our political institutions even more dysfunctional. Things might be bad, but that doesn’t mean they can’t get worse. Plenty of well-intentioned political bandwagons have, unfortunately, had that effect.¹⁴ Before that happens here, I want to sketch in this brief essay the beginning of the skeptical case.

In Part II, I explain the mechanics of how a PR system for the House would be structured. Paying attention to the details is important, because the concrete institutionalization of PR in the U.S. immediately reveals a host of issues not readily apparent to those who simply might endorse PR in principle, without considering the institutional details involved in the American context. In Part III, I first engage sympathetically with the case PR proponents make, including noting the points with which I agree. But I then turn to the reasons for skepticism. To foreshadow that analysis, those concerns distill to two issues: (1) the issue of which democratic values ought to be given priority in our current circumstances, given the inevitability of tradeoffs among democratic values; and (2) the issue of how best to understand the predicament of democracy today in the United States, as informed by the situation of democracies more generally across the West today.

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

11. See Lee Drutman & Aziz Huq, *This One Reform Could Fix Our Broken Elections*, DALL. MORNING NEWS (Jan. 21, 2023, 12:01 PM), <https://www.dallasnews.com/opinion/commentary/2023/01/21/this-one-reform-could-fix-our-broken-elections/> [<https://perma.cc/D5YF-Y23R>].

12. See *id.*

13. DRUTMAN, *supra* note 10, at 204.

14. See Richard H. Pildes, *Romanticizing Democracy, Political Fragmentation, and the Decline of American Government*, 124 YALE L.J. 804, 808 (2014).

II. HOW PR WOULD WORK FOR CONGRESS: THRESHOLD ISSUES WITH MECHANICS

At the outset, it is important not to confuse the current arguments for PR with the way many people might understand “proportional representation” from the context of partisan gerrymandering. In that context, PR refers to the view that the two major parties should receive a number of seats roughly proportionate to the share of the vote they receive.¹⁵

The current PR proponents instead seek to create a multi-party House of Representatives. Their aspiration is for a House that would consist of five to seven political parties, including parties that might win no more than 17% of the vote (if five-member districts were used).¹⁶ Their proposals could apply to state legislatures as well, but because the principal focus of current PR efforts is the House, I will focus primarily on that context.

The most common PR proposal for getting to this multi-party House is to replace single-member election districts (“SMDs”) for the House with multi-member ones (“MMDs”). The reason proponents do not advocate a statewide system of PR is their belief that Americans want to, or should, be able to identify an individual representative as “their” representative; many people, particularly lower socio-economic citizens, rely on congressional offices for assistance, for example, on social security or other public entitlements and benefits. Thus, PR proponents advocate a system of MMDs in a state—rather than a statewide election—in order to maintain a connection between voters and their representatives.¹⁷ But implementing this system of MMDs involves more moving parts than might first be appreciated.

First, PR designers must decide on the number of representatives that ought to be elected from these districts. The number of political parties an MMD system is predicted to generate is a function of what is known as “district magnitude.”¹⁸ This is the number of representatives each MMD would elect; the larger the number, the smaller the number of votes needed to be elected, and hence the greater the number of likely political parties.¹⁹ The most common PR proposals seek to construct a House of five to seven parties.²⁰ Hence, proponents suggest

15. See Matthew Yglesias, *The Real Fix for Gerrymandering Is Proportional Representation*, VOX (Nov. 6, 2017, 12:38 PM), <https://www.vox.com/policy-and-politics/2017/10/11/16453512/gerrymandering-proportional-representation> [https://perma.cc/PCS5-HQT7].

16. DRUTMAN, *supra* note 10, at 184.

17. See *id.* at 193–94.

18. Drutman & Huq, *supra* note 11.

19. *Id.*

20. Danielle Allen proposes a very different version of MMDs. Danielle Allen, *Our Democracy Is Menaced by Two Dragons. Here's How to Slay Them*, WASH. POST (July 20, 2023, 5:40 AM), <https://www.washingtonpost.com/opinions/2023/07/20/gerrymandering-electoral-college-solution-democracy> [https://perma.cc/WM2T-XSX3]. She would have each district elect three members using ranked-choice voting. The point of this approach is not to create a multi-party PR legislative body. Instead, it is to provide some representation to either the Democrats or Republicans in areas of the country dominated by the other major party. Thus, in rural areas using SMDs, everyone elected is likely to be a Republican, even though there might be significant minority presence of Democrats. Similarly, in major metropolitan areas, everyone elected is likely to be a Democrat in a

each MMD should be designed to elect five to seven members to Congress (going forward, I will generally assume five).²¹ Even PR proponents recognize that more choices and “more” representation—if that is what more parties in fact means—is not always better. Like any other democratic value, effective political representation must be traded off against other democratic values, including the value of enabling an effective government. Thus, even PR proponents acknowledge that more than six parties would make a legislature dysfunctional, which is why they propose an MMD system designed to constrain the number of parties to around six.²² But this concession does not go far enough, as I’ll explain when I turn to my fundamental concerns with this proposal.

Adopting MMDs for Congress would require new federal legislation, because current federal law requires SMDs for Congress.²³ Congress first enacted that requirement in 1842; Congress let it lapse after 1929 but re-enacted it in 1967 out of fears that Southern states, in the wake of the Voting Rights Act, would use at-large elections to minimize emergent black voting power.²⁴ Thus, states cannot shift to this proposed system for Congress without federal legislation.

Under this system, a state such as North Carolina, with 14 representatives, would be divided into three regional districts, two of which would elect five members and one of which would elect four. In the general election, ten or more candidates would presumably be on the ballot in each region for these five seats. Because the average population of a congressional district currently is about 761,000 people, this would mean that North Carolina would have two districts of 3.805 million people and one with 3.044 million.²⁵ If each MMD ideally should elect seven members instead of five (as leading PR proponents sometimes advocate), each district would have over 5 million people.

Recall, though, that a reason for using MMDs, rather than electing members of Congress statewide, is to preserve the link between individuals and their representatives, which is important in the American context. Whether voters would continue to experience such a link in districts of this size, electing this number of representatives, is hardly clear. As district size increases in SMDs, the

system of SMDs. But with MMDs electing three, if the minority party can attract a third of the vote, it would be able to elect one of the three representatives. Rural Democrats and urban Republicans would not feel unrepresented in such a system. This idea is similar to one Illinois implemented after the Civil War, in which legislative districts elected three members via a cumulative voting system. See *Fair Representation Voting in Illinois*, FAIRVOTE, <https://fairvote.org/archives/fair-representation-voting-in-illinois/> (last visited June 30, 2024) [<https://perma.cc/523Z-NS3V>]. The idea was that in deeply divided Illinois, supporters of the Union in overwhelmingly pro-confederate southern Illinois would be able to elect one member, while pro-confederate supporters in the strongly pro-Union north would also be able to elect one member. See *id.* The system was designed to attempt to bring some unity back to a state deeply divided about the war.

21. Drutman & Huq, *supra* note 11.

22. See *id.*

23. Allen, *supra* note 20.

24. Matthew Yglesias, *There's a Simple Way to End Gerrymandering. Too Bad Congress Made It Illegal*, VOX (July 20, 2015), <https://www.vox.com/2015/7/17/8980137/fix-gerrymandering-multiple-member-districts> [<https://perma.cc/Q33H-TU6L>].

25. Pam Wasserman, *What Is Apportionment?*, POPED BLOG (May 20, 2021), <https://populationeducation.org/what-is-apportionment> [<https://perma.cc/H52R-PG9P>].

quality of constituency services declines.²⁶ Several studies show that representatives from single-member districts prioritize constituency service more than those from multi-member districts.²⁷

Moreover, to make this system work, the method by which we vote would also have to change in fairly substantial ways. If voters simply cast a single vote, this could mean election of candidates with small vote shares; if the major party candidates between them took, say, 90% of the vote, the rest of the votes could well go to any number of small parties. PR proponents understandably want to avoid this, because even they believe a Congress with more than six parties would be dysfunctional.

Thus, reformers often pair the requirement of MMDs with the use of ranked-choice voting (when electing more than one person, as in these MMDs, RCV is typically referred to as the single-transferrable vote (“STV”).²⁸ Voters would rank as many of these ten or more candidates as they preferred. Any candidate capable of winning 17% or more of the vote after votes have been transferred in a five-member MMD (or 12.5% in a seven-member MMD) would win a seat. The fewer members elected from a district, the higher the minimal winning threshold.²⁹ The vote-transfer process would first take any excess votes the leading candidate receives above that threshold and transfer those to the second preferences of those voters; if another candidate crosses the 17% threshold, that candidate would be elected and the process would be repeated.³⁰ If no candidate reaches that threshold, the candidate with the fewest first-place votes would be eliminated, and votes on those ballots would be transferred to those voters’ second preferences.³¹ Proponents believe a five-member MMD would generate a Congress of five or six parties, with perhaps a Green Party, Socialist Party, and

26. Byron J. Harden, *House of the Rising Population: The Case for Eliminating the 435-Member Limit on the U.S. House of Representatives*, 51 WASHBURN L.J. 73, 92–93 (2011) (explaining the relationship between increasing district size and decreasing quality of constituency services).

27. See, e.g., Valerie Heitshusen, Garry Young & David M. Wood, *Electoral Context and MP Constituency Focus in Australia, Canada, Ireland, New Zealand, and the United Kingdom*, 49 AM. J. POL. SCI. 32, 37 (2005); see also Jeffrey J. Harden, *Multidimensional Responsiveness: The Determinants of Legislators’ Representational Priorities*, 38 LEGIS. STUD. Q. 155, 171, 173 (“[L]egislators in multimember districts rate service as a lower priority, on average, compared to legislators in single-member districts. . . . [L]egislators in multimember districts have incentive to free ride [on the work of other members in that district] and prioritize service lower.”).

28. Andrew Spencer, Christopher Hughes & Rob Richie, *Escaping the Thicket: The Ranked Choice Voting Solution to America’s Districting Crisis*, 46 CUMB. L. REV. 377, 392 (2016).

29. Dylan Difford, *Hare vs Droop: How to Set the Quota Under STV*, ELECTION REFORM SOC’Y (Aug. 10, 2024), <https://www.electoral-reform.org.uk/finding-the-finish-line-how-to-set-the-quota-under-stv> [https://perma.cc/5XJV-6K9K]. If this approach were used, the minimal threshold would be 20% in a five-member district. The Droop formula makes the quota total votes/(total seats +1) +1. *Id.* For various reasons, most experts consider the Droop method the better one, and the STV systems in use in other countries use the Droop quota. *Id.* For five seats, the Droop method means dividing the number of votes by 1/6th (or 16.6%), then adding 1 to the total. That’s where the 17% figure derives from. For an explanation and demonstration of this process for a general audience, see *How Proportional RCV Works*, FAIRVOTE, <https://fairvote.org/our-reforms/proportional-ranked-choice-voting-information/#how-proportional-rcv-works> (last visited June 30, 2024) [https://perma.cc/A9ZJ-PM7A].

30. See *How Proportional RCV Works*, *supra* note 29.

31. *Id.*

moderate Democratic Party on the left, and potentially a Religious, Libertarian, and business-oriented Republican Party on the right.

Recognizing the informational burden this system would put on voters, PR proponents suggest a different option, which involves using an entirely different system of voting. This is the use of what is known as open-list, party-based voting.³² This system would more dramatically change the way we vote. As an initial matter, it would do away with primary elections for choosing a party's nominees. Instead, each party would choose, through whatever internal processes it chose to use, a slate of candidates. The party would rank those candidates on the ballot. Voters would then cast a single vote. They could vote for one specific candidate on the party-chosen list of candidates; that would also count as a vote for that party. Or they could simply vote for a particular party without identifying any specific candidate. Political parties would receive a number of seats proportionate to their vote share.³³ While I am sympathetic to a system in which parties regain more control over who their nominees are, the shift to an open-list PR form of party-based voting would be a radical one in the American context. Persuading Americans to give up their voice in primary elections would be a tall order.

Several further issues about the mechanics of this system should be noted. One immediate problem is that twenty-one states, nearly half of all states, have fewer than five representatives.³⁴ To gain the purported benefits of MMDs electing five representatives, the proposal for PR must also be married with a proposal to increase the size of the U.S. House. Yet if five representatives is the ideal district magnitude to gain the desired level of multi-party competition in all states, the House would have to expand massively (the House has been set at 435 since 1929). Seven states currently have only one representative.³⁵ To give those states five representatives, the House would need to have 2,175 members. Again, even PR proponents are not enamored of that much representation. They typically propose a House of 700 members, making the House roughly the size of the lower chambers in Germany and the U.K.³⁶ At this size, states with two or one representative currently would not be able to constitute a single five-member MMD. Thus, parties that can cross the electoral threshold with 17% of the vote in some states would not win any seats in smaller states with that same 17% of the vote.

As noted above, all this requires new congressional legislation. But on top of that, a critical issue is whether any such new legislation should merely permit

32. *Proportional Representation Voting Systems*, FAIRVOTE, <https://fairvote.org/archives/proportional-representation-voting-systems/> (last visited June 30, 2024) [<https://perma.cc/2T3S-8HPX>].

33. *Id.*

34. *Distribution of Electoral Votes*, NAT'L ARCHIVES (June 26, 2023), <https://www.archives.gov/electoral-college/allocation> [<https://perma.cc/GN36-N6L8>].

35. *Id.*

36. *House of Commons*, UK PARLIAMENT, <https://www.parliament.uk/business/commons/> (last visited June 30, 2024) [<https://perma.cc/8RGC-VZM9>]; *Parliament & Parties*, FACTS ABOUT GER., <https://www.tatsachen-ueber-deutschland.de/en/politics-germany/parliament-parties> (last visited June 30, 2024) [<https://perma.cc/BR9P-HLJ5>].

states to shift to MMDs or require it. While the Fair Representation Act mandates MMDs with PR for all states with multiple representatives, many reform proponents typically suggest Congress should permit, but not require, states to use MMDs.³⁷ This is surely a concession to political realities, for a shift even to the voluntary use of MMDs is a heavy enough political lift. But in a voluntary system, partisan calculations would undoubtedly shape legislative decisions about whether to shift to MMDs, along with calculations about the choice other states would be anticipated to make. The legislative majority in any one state would have to decide to weaken its power by shifting to MMDs without any guarantee that any other state would do the same. State-by-state partisan calculations would drive those choices. Those dynamics are precisely why Congress concluded in 1842—and reaffirmed more recently—that a uniform national requirement for congressional districts is required.³⁸ The system would be unlikely to get off the ground or to remain stable, unless Congress mandates it uniformly.

Indeed, the legislation introduced last Congress to create this system did mandate that states shift to MMDs.³⁹ States with fewer than five representatives were required to shift to electing all their members at large, that is, on a statewide basis.⁴⁰ States with six or more representatives would have been required to create districts electing between three to five members.⁴¹ Introducing the legislation as a mandate recognizes the difficult dynamics of a voluntary option, but would surely raise the political hurdles to enacting the legislation. PR proponents have also offered no account of the context in which Congress would be likely to adopt this system.⁴² Why would members in the majority vote to adopt a system that is likely to diminish their partisan power? Would it be more likely for this system to be enacted under a unified or divided government, and what is the theory of enactment behind the proposal? Changes this fundamental to the structure of elections rarely get adopted without those in power convinced that the change would benefit themselves and their partisan allies.

Similarly, whether MMDs would actually generate the multi-party democracy that is their current *raison d'être* might be questionable. Given hard-wired provisions of the Constitution, the Senate and President would continue to be elected as they currently are (the same would be true of all single-office positions in the states, such as governor or attorney general). Because two-party competition will continue to dominate these higher offices, how many ambitious politicians would run under other party labels for the House?⁴³ To be sure, France

37. See *How Proportional RCV Works*, *supra* note 29.

38. *The 1842 Apportionment Act*, FAIRVOTE, <https://archive.fairvote.org/library/history/flores/apportn.htm> (last visited June 30, 2024) [<https://perma.cc/JQX3-F4AV>].

39. Fair Representation Act, H.R. 3863, 117th Cong. (2021).

40. *Id.*

41. *Id.*

42. See, e.g., *How Proportional RCV Works*, *supra* note 29 (answering numerous questions about PR but failing to account for what context it might be adopted under).

43. For its House, Australia uses single-member districts elected through ranked-choice voting. Two main parties dominate the House, the Labor Party and the Liberal Party, with a third party, the Nationalists, aligned so regularly with the Liberals that the system is often described as a two-party one (historically, about 3% of the seats were held by minor parties but that jumped up to 10.5% after the most recent, 2022 elections). *Party*

does have a multi-party National Assembly—despite independent presidential elections—though that is likely a product of historical developments and the fact that France’s National Assembly is one-third larger than Congress (larger legislatures correlate with more parties); France had a multi-party democracy for many decades before creating its independent presidency.⁴⁴ Australia’s STV elections for its Senate also produce a multi-party system, despite its lower chamber being elected through FPTP (albeit with ranked-choice voting).⁴⁵ Today, ten states elect at least one legislative chamber through some MMDs and four states use MMDs to elect all representatives in one chamber (none use STV voting).⁴⁶

In sum, what “PR for the House” means concretely in these proposals is a 700-member House of around six parties, alongside two-party competition for the Presidency and Senate. Voters would choose among ten or so candidates in districts of around 2.4 million people (about three times the size of current districts, given this expanded House). For a voting system, they would either vote using STV or vote in an open-list, PR system for either one candidate or one political party. Talking about PR in the abstract is one matter. But the practical realities of the range and nature of changes required to implement PR within the constraints of American institutions would be major considerations if we ever got to the point of a major debate within Congress on making this change.

Representation, TALLY ROOM (July 1, 2022, 11:53 AM), <https://results.aec.gov.au/27966/Website/HousePartyRepresentationLeading-27966.htm> [<https://perma.cc/2WWN-VELH>]. The House chooses the Prime Minister. *Prime Minister*, PARLIAMENTARY EDUC. OFF., <https://peo.gov.au/understand-our-parliament/parliament-and-its-people/people-in-parliament/prime-minister> (last visited June 30, 2024) [<https://perma.cc/FRG8-CUNV>]. Representation in the Senate is based on the various Australian states, with twelve Senators elected from each of the six states (two Senators each are also elected from the internal autonomous territories). *Senate Elections*, PARLIAMENT AUSTL., https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter3/Senate_elections (last visited June 30, 2024) [<https://perma.cc/E98N-TGSL>]. The Senate is elected via STV; for the six states, the quota for election is thus 14.3%. This does produce slightly more multi-party representation than in the House. Since 1981, the governing party or coalition has only had a majority in the Senate from 2005–2007. That means the government is always in the position of needing to gain support from minor parties and independents to pass legislation, which means making policy concessions to these minor parties. Currently, the Labor government needs Senate support from the Green Party, along with at least one other Senator, which means the government might have to embrace more aggressive climate policies than it (and its voters) prefers. The Senate has been criticized in various periods for being obstructionist. As one defender of the Senate notes, “The Senate is Australia’s most disdained political institution.” Julian R. Moss, *Unrepresentative Swill? An Unabashed Defence of the Australian Senate*, 9 ANU UNDERGRADUATE RSCH. J. 112, 112 (2019).

44. See *History of the National Assembly*, ASSEMBLÉE NATIONALE, <https://www2.assemblee-nationale.fr/langues/welcome-to-the-english-website-of-the-french-national-assembly/history-and-heritage> (last visited June 30, 2024) [<https://perma.cc/4CYP-EZ58>].

45. AM Benjamin, *Ranked Choice Voting in Australia Explained*, RANK THE VOTE (Jan. 12, 2023), <https://rankthevote.us/ranked-choice-voting-in-australia-explained/> [<https://perma.cc/KDP8-XM6C>].

46. Ten states elect at least one legislative chamber through some MMDs and four states use MMDs to elect all representatives in one chamber. Thus, about 12% of state legislative seats nationwide are elected through MMDs. Most use block voting, meaning that voters get as many votes to cast as seats to be filled and can vote only once for a candidate. *State Legislative Chambers That Use Multi-Member Districts*, BALLOTEDIA, https://ballotpedia.org/State_legislative_chambers_that_use_multi-member_districts (last visited June 30, 2024) [<https://perma.cc/YVU5-RRZH>].

Nonetheless, assuming the threshold issues I've noted with the mechanics of institutionalizing this proposal are not themselves reasons to reject it, I turn now to the central arguments proponents offer.

III. THE ARGUMENTS FOR MMD FOR THE HOUSE

As noted above, the principal, long-standing argument for PR is that it creates a fairer system of political representation.⁴⁷ With more political parties likely to win seats, the broad range of viewpoints in our large, deeply divided society will be better expressed. That, in turn, will also, it is hoped, enhance the perceived legitimacy of the political system. More Americans than ever before define themselves as independent, express dissatisfaction with the two parties, and say they want (as market-oriented Americans typically do) more choices.⁴⁸ More parties also permit voters to maintain greater "purity" in their convictions when they vote. A highly educated, strong environmentalist (as most environmentalists are) can vote for Green Party candidates rather than Democrats who favor climate-change policies but are also responsive to labor's concerns. As Drutman puts it, MMD-STV "promises good-faith representation."⁴⁹

These arguments focus mainly on the input side of democracy. But the main argument of today's PR proponents rests on the condition of politics in the United States in recent years. The parties have become not just ideologically purified but also hyperpolarized; the distance between the medians, at least within Congress, has grown dramatically.⁵⁰ Moreover, the political culture has become more tribalistic and toxic, as evidenced by the rise of "affective polarization."⁵¹ Voting behavior, as well as social attitudes more generally, is now motivated more by hostility to the other party than positive feelings toward their preferred party.⁵²

Over the last forty years, people express about the same level of warmth for their own party, but much greater negativity about the other party.⁵³ In the mid-1990s, for example, 21% of Republicans and 17% of Democrats viewed the other party as "very unfavorable"; today, those figures are 62% and 54%, respectively.⁵⁴ Even in the last six years alone, dramatically larger shares of people view voters of the other party as more immoral, dishonest, and close-minded than other Americans. This dynamic is reflected in the widely cited findings that

47. See *supra* Part II.

48. Alan Greenblatt, *Is America Really Ready for a Third Party?*, GOVERNING (Oct. 12, 2023), <https://www.governing.com/politics/is-america-really-ready-for-a-third-party> [https://perma.cc/4HLJ-LYCG].

49. DRUTMAN, *supra* note 10, at 223–24.

50. *Id.* at 224.

51. *Id.* at 100.

52. *Id.* at 5.

53. See Rachel Kleinfeld, *Polarization, Democracy, and Political Violence in the United States: What the Research Says*, CARNEGIE ENDOWMENT INT'L PEACE (Sept. 5, 2023), <https://carnegieendowment.org/2023/09/05/polarization-democracy-and-political-violence-in-united-states-what-research-says?lang=en> [https://perma.cc/R3UT-XJVK].

54. *As Partisan Hostility Grows, Signs of Frustration with the Two-Party System*, PEW RSCH. CTR. (Aug. 9, 2022), <https://www.pewresearch.org/politics/2022/08/09/as-partisan-hostility-grows-signs-of-frustration-with-the-two-party-system/> [https://perma.cc/Y3HE-GWA9].

“inter-party” marriage has become much more disfavored than inter-religious or inter-racial marriage.⁵⁵ In the 1960s, 4% of Democrats and Republicans responded they would be unhappy if their children married someone of the other party; today, it is 45% of Democrats and 35% of Republicans.⁵⁶ Political opposition has become obstructionism; political opponents have been transformed into political enemies.⁵⁷

PR proponents argue the SMD winner-take-all, two-party nature of political competition is responsible for this toxic, “us versus them” political culture that has emerged.⁵⁸ The FPTP structure was supposed to incentivize emergence of two parties, one center-left, the other center-right; in theory, parties would have to compete for the median voter. But the system in the U.S. arguably no longer does so. It is the changing effects of FPTP elections that now, proponents argue, make it necessary to adopt MMDs and the multi-party politics it is claimed they will produce. Escaping our “two-party doom loop” is the heart of the argument for PR.⁵⁹

This aspect of the argument addresses the output side of democracy. PR proponents argue that a six-party Congress would encourage “more complex political thinking” and “more compromise-oriented politics.”⁶⁰ No party would be likely to win an outright legislative majority; coalition building would be required to forge a majority. Parties would purportedly recognize they have to compromise to get anything done. Different coalitional majorities, we are happily told, would be assembled for different issues. But forming a coalition that did not include the political center would be difficult. With more parties, more viewpoints would have to be considered. Channeling political conflict through a multi-party system, rather than two parties, the argument goes, would create “a more responsive and flexible political system.”⁶¹

Drutman argues, for example, that a six-party Congress would mean that U.S. presidents would not face the automatic obstacle they currently do when the opposition party controls the House or Senate.⁶² Nor would Presidents be likely to have an automatic majority in Congress; they would have to work to assemble legislative majorities (this is meant as a positive point). Congress would purportedly become stronger because of coalition building and compromise; indeed, we are told, the legislative branch “might again predominate, like the Framers expected it would.”⁶³

Proponents point to additional side benefits of MMD-PR, some of which are worth noting. They emphasize that MMDs would reduce the importance of

55. DRUTMAN, *supra* note 10, at 168.

56. *Political Polarization in the United States*, FACING HIST. & OURSELVES (Oct. 22, 2019), <https://www.facinghistory.org/resource-library/political-polarization-united-states> [<https://perma.cc/Q8QQ-RLBU>].

57. DRUTMAN, *supra* note 10, at 122.

58. *Id.*

59. *See id.*

60. *Id.* at 212.

61. *Id.* at 180.

62. *Id.* at 235.

63. *Id.*

political geography, given the use of much larger districts.⁶⁴ That is true, to a meaningful extent. No longer would political minorities in current SMDs (Republicans in metropolitan areas, Democrats in rural areas) necessarily be shut out of representation. As long as 17% or more of voters (if five-member MMDs are used) support their preferred candidate by ranking that candidate first if RCV balloting is used, these current geographic minorities would be enabled to elect their preferred candidate (after the Civil War, Illinois adopted three-member MMDs with cumulative voting for its state legislature, so that Republicans in southern Illinois and Democrats in northern Illinois would gain some representation).⁶⁵

Proponents go further and also assert MMDs would “eliminate” gerrymandering.⁶⁶ While that’s a bit exaggerated, MDDs would indeed reduce the degrees of freedom those in charge of redistricting would have (and eliminate it in states with five or fewer seats). But any time lines have to be drawn, redistricting politics will enter the scene. Take Maine, which has only two seats. After the 2010 Census, the population difference between the two districts was a mere 8,669 in districts of around 650,000 people.⁶⁷ You might think a small amount of tinkering to restore equi-populous districts would find easy agreement. But Republicans and Democrats in the state legislature deadlocked over how to rectify that slight imbalance: the need to make any change opened up the opportunity to control one swing district. Litigation ensued, after which a fifteen-member bipartisan commission was created to break the deadlock.⁶⁸ That commission, in turn, divided 8-7 on the plan it recommended.⁶⁹ That plan moved around 20,000 voters between the districts, many more than needed to fix the slight inequality.⁷⁰ As this example attests, the need to draw fewer lines would not eliminate gerrymandering conflicts altogether, but it would reduce them somewhat.

64. *Id.* at 221.

65. RACHEL HUTCHINSON, FAIR VOTE, WHY THREE- AND FIVE- MEMBER DISTRICTS ARE IDEAL FOR THE FAIR REPRESENTATION ACT 1 (Sept. 2022), <https://fairvoteaction.org/white-paper-3-and-5-member-districts/> [https://perma.cc/5GXS-XML5]. For discussion of Illinois’s development of multi-member districts, see SAMUEL K. GOVE, ILLINOIS COMMISSION ON INTERGOVERNMENTAL COOPERATION, CONSTITUTIONAL DEVELOPMENTS IN ILLINOIS 2 (1987), <https://www.ilga.gov/commission/lru/Gove.pdf> [https://perma.cc/TNJ6-3XAF].

66. DRUTMAN, *supra* note 10, at 221.

67. *State of Maine Congressional Districts—2010 Census—Data as of January 1, 2010*, U.S. CENSUS BUREAU, https://tigerweb.geo.census.gov/tigerwebmain/Files/tab20/tigerweb_tab20_cd111_2010_me.html (last visited June 30, 2024) [https://perma.cc/LWK8-KEHW].

68. *Turcotte v. LePage*, No. 1:11-cv-00312-DBH, at 1 (D.M.E. Nov. 30, 2011) (recommended decision by magistrate). For information regarding the bipartisan commission, see Glen Adams, *Panel Chosen for Maine Congressional Redistricting*, FOSTER’S DAILY DEMOCRAT (July 5, 2011, 7:16 PM), <https://www.fosters.com/story/news/local/2011/07/06/panel-chosen-for-maine-congressional/49977668007/> [https://perma.cc/BK44-Z6JC].

69. *Tensions Rise in Maine Redistricting*, ROSE INST. (Sept. 16, 2011), <https://roseinstitute.org/tensions-rise-in-maine-redistricting-2/> [https://perma.cc/3QF3-8AZ9].

70. See Geoff Pallay, *More Drama Unfolding Over Maps*, BALLOTPEdia: REDISTRICTING ROUNDUP (Sept. 2, 2011), https://ballotpedia.org/Redistricting_Roundup:_More_drama_unfolding_over_maps [https://perma.cc/N3JG-77RZ].

One more arrow in the PR argumentative quiver is that it would increase turnout.⁷¹ If so, the causal route would be indirect. Among registered voters, turnout in U.S. elections is among the highest in democracies; in 2020, it was 94.1% (Uruguay, with mandatory voting, is one of the few other countries with similar turnout).⁷² In the U.S., it is turnout among all eligible voters that is low in comparative perspective, which reflects the lower rates of voter registration here. In many democracies, voters are automatically registered to vote, unlike here, where the burden is on the voter to register and update registration when they move.⁷³

If MMDs were to increase turnout, the system would have to spur more eligible voters to register in the first place and then to vote. MMD elections would then “waste” fewer votes than in traditional SMDs, because candidates or parties can be elected with as little as 17% of the vote. Thus, the mechanism for increased turnout would have to be that more voters would be encouraged to register (and then vote) because they will be able to vote for minor parties or candidates who would not be viable in the current SMD system. That could prove the case, but the most direct route to attempting to increase turnout among eligible voters would be to put the burden on the government to register voters, such as through automatic voter registration at 18. Still, empirical data does support the point that more political parties do tend to correlate with higher turnout.⁷⁴

Thus, if the mechanical or threshold issues with implementing MMD-PR can be overcome, these are some of the benefits the system might provide. Nonetheless, I am skeptical about both the diagnosis PR proponents offer and whether, in any event, the cure is worse than the disease.

A. *Is the Diagnosis Accurate?*

As an initial matter, good reasons exist to question whether PR proponents have the correct diagnosis: that FPTP elections are a primary cause of our current political disease. FPTP systems do tend to generate two-party politics (though with some qualifications), but no other FPTP system is characterized by the toxic tribal politics and affective polarization that has come to characterize the U.S.⁷⁵

In the U.K., the birthplace of FPTP, politics instead has long been characterized as consensual, moderate, and pragmatic, despite major differences over policy.⁷⁶ The Thatcher years entailed intense conflict, but in the years between

71. DRUTMAN, *supra* note 10, at 209.

72. Drew Desilver, *Turnout in U.S. Has Soared in Recent Elections but by Some Measures Still Trails That of Many Other Countries*, PEW RSCH. CTR. (Nov. 1, 2022), <https://www.pewresearch.org/fact-tank/2022/11/01/turnout-in-u-s-has-soared-in-recent-elections-but-by-some-measures-still-trails-that-of-many-other-countries/> [<https://perma.cc/TZ5L-SHXG>].

73. See Pam Fessler, *Report: Voter Rolls Are Growing Owing to Automatic Voter Registration*, NPR (Apr. 11, 2019, 12:00 PM), <https://www.npr.org/2019/04/11/711779753/report-voter-rolls-are-growing-due-to-automatic-voter-registration> [<https://perma.cc/H6SP-S5XC>].

74. DRUTMAN, *supra* note 10, at 210.

75. See discussion *infra* notes 76–92 and accompanying text.

76. James Adams, Jane Green & Caitlin Milazzo, *Has the British Public Depolarized Along with Political Elites*, 4 COMP. POL. STUD. 507, 508 (2012).

then and Brexit, political scientists had noted that, “[i]n contrast to American elites’ policy polarization, British politics [in this period] witnessed dramatic depolarization, that is, policy convergence between the elites of the two dominant political parties”⁷⁷ Brexit, of course, has roiled U.K. politics for at least half a decade, but Brexit was an existential issue that countries confront rarely.⁷⁸ More importantly, Brexit did not entail tribal political conflict between the two major parties; both were themselves internally riven over Brexit and related issues.⁷⁹

The current leaders of both major U.K. parties are again generally viewed as technocratic and pragmatic.⁸⁰ Although there is much similarity between the constituencies of the left and right parties in the U.S. and the U.K.—the same stark educational divide, the same rural/urban split—there is little that resembles the affective polarization of the U.S., despite policy conflicts. As a leading U.K. political commentator recently put it, for example, the U.K. is “Europe’s haven of moderation.”⁸¹ Indeed, consistent with the central claim of this article, that commentator notes: “Those in the UK [*sic*] who campaign for proportional representation should view contemporary Europe as a warning, not a template.”⁸² The U.K.’s next elections will pit a center-right party against a center-left one, much as traditional political theory about FPTP systems predicts.⁸³ As this commentator goes on to note: “It shouldn’t feel as transgressive as it does to say that Europe’s other democracies should be so lucky.”⁸⁴

Similarly, one hardly would view Canada, the other major Western democracy using FPTP elections, as characterized by a toxic political culture of affective polarization akin to the tribalized politics of the U.S.⁸⁵ As a major comparative study on affective polarization concluded, the rise of affective polarization in the United States since the 1990s is “not part of a cross-national trend”: in other Western democracies, affective polarization was fairly stable, and much

77. *Id.*

78. See Hanna Ziady, *Brexit Has Cracked Britain’s Economic Foundations*, CNN (Dec. 24, 2022, 8:35 AM), <https://www.cnn.com/2022/12/24/economy/brexit-uk-economy/index.html> [<https://perma.cc/NQQ7-7JXJ>]; Luke McGee, *Britain Weathered Political Turmoil in 2022. But Brexit Remains the Elephant in the Room*, CNN (Dec. 27, 2022, 6:38 AM), <https://www.cnn.com/2022/12/27/europe/brexit-2023-intl-analysis-cmd-gbr/index.html> [<https://perma.cc/2BVH-CCXD>].

79. Richard Hayton, *Brexit and Party Change: The Conservatives and Labour at Westminster*, 43 INT’L POL. SCI. REV. 345, 345–46 (2022).

80. See Felix Salmon, *Rishi Sunak, the Technocratic Austerian*, AXIOS (Oct. 29, 2022), <https://www.axios.com/2022/10/29/rishi-sunak-prime-minister-technocratic-austerian> [<https://perma.cc/JLU4-44WB>]; Jonathan Rutherford, *Starmer Has Trapped Labour in a Broken Liberal Consensus*, NEW STATESMAN (Sept. 7, 2023), <https://www.newstatesman.com/comment/2023/09/keir-starmer-labour-broken-liberal-consensus> [<https://perma.cc/5FMB-85V4>].

81. Janah Ganesh, *Britain Is Europe’s Haven from the Hard Right*, FIN. TIMES (Oct. 3, 2023), <https://www.ft.com/content/e8f64d85-5936-4666-94a8-a2b3b135f3ec> [<https://perma.cc/N9VP-LNRN>].

82. *Id.*

83. *See id.*

84. *Id.*

85. Australia is more complicated, because it uses FPTP for its House (but with ranked-choice voting) and MMDs with ranked-choice voting for its Senate. *See supra* note 43. Australia also lacks the affective polarization of the U.S., despite significant policy conflicts over climate change policies and other issues.

lower than in the U.S., during this period.⁸⁶ Indeed, a long-standing position in comparative political science was that the more parties a country has, the *more* polarized it is.⁸⁷

If our FPTP system no longer produces such parties, we should be asking what other distinct institutional features about our elections now cause FPTP to behave so differently. We use primary elections, for example, to choose nominees, and primaries undoubtedly contribute to polarization in Congress.⁸⁸ In most Western European democracies, instead, party leaders choose candidates. We finance our elections privately, and individual donors are much more ideologically polarized than non-donors.⁸⁹ Most Western European democracies instead employ public financing.

Larger sociological and cultural factors are also surely at work. One is the nature of the media and levels of trust in it: Most British media is trusted to roughly the same extent by supporters of both major parties, but almost no US media has similar bipartisan trust.⁹⁰ The distinct role in American political culture of race and religion likely plays a role as well, or the unique paranoid strand in American politics that has always been present.

Nor should we underestimate the role of particular political leaders in catalyzing political tribalism. Political science has repeatedly demonstrated the extent to which citizens take their cues from the political elites they support, certainly on the substance of policy and likely on the style of politics as well.⁹¹ Our uniquely populist system of choosing the parties' presidential nominees also makes the election of more polarizing figures more likely than in systems in which party-elected figures play a central role in choosing their party leaders or nominees for President (despite its various flaws, the convention system used through most of American history, until the 1970s, performed a gate-keeping function that made less likely demagogic nominees who cultivated a tribal style of politics).⁹²

The institutional design of democratic competition does, to be sure, generate incentives that influence, to a degree, the nature of political competition. I've supported reforms such as Alaska's Top-4 primary with RCV in the general election because they reward candidates with the broadest electoral appeal (and thus

86. See Diego Garzia, Frederico Ferreira da Silva & Simon Maye, *Affective Polarization in Comparative and Longitudinal Perspective*, 87 PUB. OP. Q. 219, 220 (2023); see also Levi Boxell, Matthew Gentzkow & Jesse M. Shapiro, *Cross-Country Trends in Affective Polarization* 11 (Nat'l Bureau of Econ. Rsch., Working Paper No. 226669, 2020).

87. GIOVANNI SARTORI, PARTIES AND PARTY SYSTEMS: A FRAMEWORK FOR ANALYSIS 316–17 (1976).

88. See generally Aaron S. King, Frank J. Orlando & David B. Sparks, *Ideological Extremity and Success in Primary Elections: Drawing Inferences from the Twitter Network*, 34 SOC. SCI. COMPUT. REV. 395 (2016).

89. See generally Richard H. Pildes, *Participation and Polarization*, 22 U. PA. J. CONST. L. 341 (2020).

90. John Burn-Murdoch (@jburnmurdoch), X (Jan. 9, 2024, 8:43 AM), https://twitter.com/jburnmurdoch/status/1744716508570550695?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet [<https://perma.cc/LJ4E-PX3Y>].

91. See, e.g., David Darmofal, *Elite Cues and Citizen Disagreement with Expert Opinion*, 58 POL. RSCH. Q. 381, 382 (2005).

92. Eric McGhee, Seth Masket, Boris Shor, Sten Rogers & Nolan McCarty, *A Primary Cause of Partisanship? Nomination Systems and Legislator Ideology*, 58 AM J. POL. SCI. 337, 338–39 (2014).

encourage candidates to seek that appeal). But it's unlikely the FPTP election system can bear all the weight of the disturbing nature of our politics.

Some proponents of PR for the U.S. House might believe this would be a better system even if FPTP elections are not a major cause for the troubling rise of affective polarization and our toxic political culture. But comparisons with other FPTP systems strongly suggests that FPTP is not a major cause for these distinctly American phenomena. Moreover, as I will detail below, during the rise of affective polarization here, the center has been hollowed out of most of the Western PR democracies.⁹³ The traditional center-left and center-right parties of Western Europe have fragmented, with support flowing to more extreme parties of the left or right, as well as parties of more complex ideological characterization.⁹⁴ That suggests that something broader than the FPTP system is at work across many democracies that accounts for this more general weakening of the center—perhaps the unraveling of the social fabric, as part of deindustrialization, that sustained a broad political center.⁹⁵ All this should make us leery of adopting PR out of a belief it would dramatically diminish America's unique levels of affective polarization.

B. *Is the "Cure" Worse than the Disease?*

For those still tempted by MMD-PR, I now turn to the major source of my concern. In evaluating the case for MMD-PR, two considerations, in my view, should structure the analysis. First, which democratic values should be weighed most highly, now and for the foreseeable future, when considering the design or re-design of democratic institutions? Democracies seek to realize a range of values, and tradeoffs among them are inevitable (even if advocates often frame their proposals as unalloyed goods). Second, and related, how do we understand the current circumstances of democracy today and the greatest challenges democracies face in our era?

1. *The Neglected Value of Effective Government*⁹⁶

On the first question, the theme in much of my work since 2014 is that the most significant challenge to democracy today—in the U.S. and in Western democracies more generally—is re-establishing the belief and the reality that democratic governments can deliver effective government on the issues citizens care most urgently about.⁹⁷ Democratic and legal theory tend to accord too little attention to the value and importance of delivering effective government. But

93. *See infra* Subsection III.B.2.

94. *See id.*

95. Wolfgang Münchau, *Will the Centre Hold in Europe?*, EURO INTEL. (Apr. 29, 2023), https://www.eurointelligence.com/column/will-the-centre-hold-in-europe?utm_source=pocket_saves [https://perma.cc/59Y4-E48G].

96. *See generally* Richard H. Pildes, *The Neglected Value of Effective Government*, 2023 U. CHI. LEGAL F. 186 (introducing some of this material).

97. *See* Pildes, *supra* note 14, at 830, 851.

President Joe Biden self-consciously defines the historical challenge that has fallen to him as proving that democratic governments can once again deliver effectively on the major issues that matter to citizens. As he has said repeatedly, in one form or another: “We’re in a contest, not with China per se, . . . with autocrats, autocratic governments around the world, as to whether or not democracies can compete with them in a rapidly changing 21st century.”⁹⁸ That theme has been central to his presidency. In light of Biden’s acknowledgment of this challenge, perhaps no need exists to establish in a social-scientific manner the decline in the effectiveness of the American political process over recent decades. That Americans view the political system with great distrust and dissatisfaction is undoubted. In a recent Pew Research Report, for example, only 4% say Congress is functioning extremely well, with only another 23% saying it is functioning even “somewhat well.”⁹⁹ Only 16% say they trust the federal government, the lowest level in seven decades.¹⁰⁰ Social scientists now generate collections of essays on a range of subjects exploring government dysfunction under the title, *Can America Govern Itself?*¹⁰¹

But actual metrics for establishing how effective Congress is now compared to the past are more elusive. The number of enacted laws has certainly fallen: In the 1970s, Congress enacted 800 laws in every two-year term; today, that number is 300–350.¹⁰² In 2023, Congress enacted fewer laws than in any other single year, perhaps ever.¹⁰³ As a sign of the inability of Congress to update earlier statutes and programs, the number of enacted bills that change, revise, or restructure such statutes has gone down dramatically.¹⁰⁴ Empirical studies also demonstrate that more polarized Congresses produce less legislation.¹⁰⁵ Yet one has to be careful with these metrics; for example, Congress now more frequently lumps together many substantive provisions into a single massive omnibus bill.¹⁰⁶

98. See Biden: *Democratic Nations in a Race to Compete with Autocratic Governments*, REUTERS (July 13, 2021, 9:34 AM) (omission in original), <https://www.reuters.com/world/biden-democratic-nations-race-compete-with-autocratic-governments-2021-06-13/> [<https://perma.cc/CD6D-KXG7>].

99. PEW RSCH. CTR., AMERICANS’ DISMAL VIEWS OF THE NATION’S POLITICS 5 (2023), https://www.pewresearch.org/politics/wp-content/uploads/sites/4/2023/09/PP_2023.09.19_views-of-politics_REPORT.pdf [<https://perma.cc/46EP-DYNE>].

100. *Id.*

101. See generally CAN AMERICA GOVERN ITSELF? (Frances E. Lee & Nolan McCarty eds., 2019).

102. *Statistics and Historical Comparison*, GOVTRACK, <https://www.govtrack.us/congress/bills/statistics> (last visited June 30, 2024) [<https://perma.cc/A54B-9UGD>].

103. See Sarah Binder, *Why Congress’s 2023 Was So Dismal*, GOOD AUTH. (Dec. 26, 2023), <https://good-authority.org/news/congress-2023-dismal/> [<https://perma.cc/ZVQ6-NSFW>]; Ian McKinney, *Congress in Action, or Inaction? This Congress Among the Least Productive*, CRONKITE NEWS (Feb. 29, 2024), <https://cronkite-news.azpbs.org/2024/02/29/congress-in-action-or-inaction-this-congress-among-the-least-productive/> [<https://perma.cc/5YYC-VSSQ>].

104. See Binder, *supra* note 103; McKinney, *supra* note 103.

105. Nolan McCarty, *The Policy Effects of Political Polarization*, in THE TRANSFORMATION OF AMERICAN POLITICS: ACTIVIST GOVERNMENT AND THE RISE OF CONSERVATISM 223, 223–25, 248–51 (Paul Pierson & Theda Skocpol eds., 2007).

106. David R. Mayhew, *Congress in the Light of History*, STARTING POINTS J. (Mar. 26, 2018), <https://startingpointjournal.com/congress-light-history/> [<https://perma.cc/5V4U-7ACE>].

In addition, not all bills are created equal. We might care about the passage of significant legislation, rather than less important laws. David Mayhew has been conducting a long-term, well-known study, with a consistent methodology, that identifies how many “important” laws each Congress enacts.¹⁰⁷ For 2003–2023, Congress enacted an average of twelve per session; from 1946–1990, the average was 10; and from 1991–2002, it was eleven.¹⁰⁸ Yet when the category is expanded from Mayhew’s “important” legislation to “substantive legislation,” Congress has passed fewer substantive bills per session since 2010 than in any other sessions since at least 1990.¹⁰⁹

The congressional scholar Sarah Binder has devised a metric that might be the most relevant. Binder compares public polling on the issues citizens care most intensely about and the extent to which Congress legislates on those issues.¹¹⁰ This is a measure of the extent to which Congress is able to address the issues citizens care most about. It provides a baseline against which Congress’ enactment of legislation can be judged. Not surprisingly, that percentage has dropped significantly over time.¹¹¹ Even after the successful passage of major legislation in the second half of 2022, the percentage of “salient issues” on which Congress is gridlocked reached 70% several times in the last twenty years and declined only to 60% after this 2022 flurry; during the 1970s, that rate was generally as low as 30–40%.¹¹² This seems the most appropriate metric to use in judging congressional performance over time. In responding to whether governments are responsive and effective, citizens care about how well the political process is effectively addressing the issues citizens view as most urgent.

It is possible that shifts are taking place within the parties and Congress that might be leading to a more productive legislative process, though it is too early to know. But in the last few years, Congress has generated an ad hoc bipartisan coalition of legislators that has been able to enact major legislative achievements in areas that reflect traditional working-class interests, like infrastructure funding, and more nationalist, industrial policies (as well as in certain areas of foreign

107. For the 1946–1990 period, see generally DAVID MAYHEW, *DIVIDED WE GOVERN* (2d ed., 2005). For the later periods, see David Mayhew, *Datasets and Materials: Divided We Govern*, YALE UNIV., <https://campuspress.yale.edu/davidmayhew/datasets-divided-we-govern> (last visited June 30, 2024) [<https://perma.cc/T42L-GMN8>].

108. See Mayhew, *supra* note 107; Mayhew, *supra* note 106.

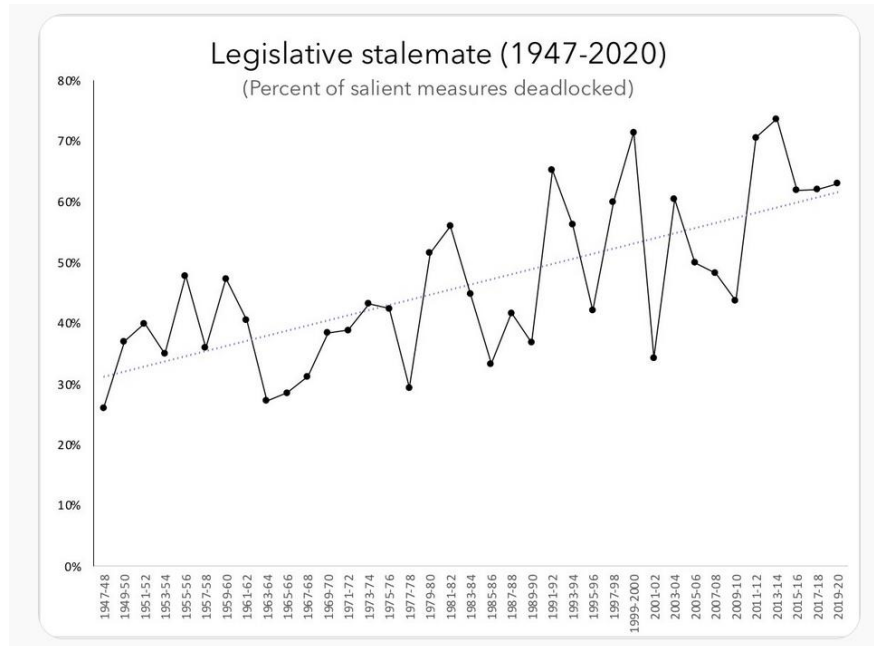
109. See Drew DeSilver, *Nothing Lame About This Lame Duck: 116th Congress Had Busiest Post-Election Session in Recent History*, PEW RSCH. CTR. (Jan. 21, 2021), <https://www.pewresearch.org/short-reads/2021/01/21/nothing-lame-about-this-lame-duck-116th-congress-had-busiest-post-election-session-in-recent-history/> [<https://perma.cc/N3S8-TAKQ>] (defining “substantive legislation” broadly to mean legislation that “changed written law, spent money or established policy, no matter how minor”).

110. SARAH BINDER, *POLARIZED WE GOVERN?* 5 n.2 (2014), https://www.brookings.edu/wp-content/uploads/2016/06/BrookingsCEPM_Polarized_figReplacedTextRevTableRev.pdf [<https://perma.cc/GB4Q-QDM4>].

111. Sarah Binder (@bindersab), X (Dec. 29, 2022, 9:57 AM), <https://twitter.com/bindersab/status/1608477394658070530?s=20&t=TNghCCnYKMmr0LxMA4ExjQ> [<https://perma.cc/383B-EHZ6>].

112. See Sarah Binder, *Goodbye to the 117th Congress, Bookended by Remarkable Events*, WASH. POST (Dec. 29, 2022, 7:00 AM), <https://www.washingtonpost.com/politics/2022/12/29/congress-year-review> [<https://perma.cc/9F5V-W6RC>]; Binder, *supra* note 111.

military support).¹¹³ For the first time in a number of years, the divisions inside the parties might be occurring in such a way to enable a new bipartisan center capable of delivering on at least some major issues.



At the ground level, it's also widely apparent that, in the United States, the government's capacity to deliver basic public goods—roads, airports, bridges, sewage treatment plants, and the like—has diminished greatly.¹¹⁴ The cost and amount of time it takes to complete such projects, when they get completed at all, have increased dramatically over the last several decades.¹¹⁵ These problems trace to the failures of the national political process, as well as those at the state and local levels. Federal environmental statutes enacted decades ago and not updated—such as the National Environmental Policy Act (“NEPA”) (which applies to both public projects and private projects that require a federal permit), the National Historic Preservation Act, and numerous other environmental and public lands statutes—contribute significantly to excessive delays and costs in many public-goods projects. In the early years of NEPA, an Environmental Impact Statement (“EIS”), designed to identify major environmental issues, might be ten pages long. But after courts implied a private right of action to enforce NEPA and aggressively began to review these impact statements, the average EIS has

113. See David Leonhardt, *A New Centrist Is Rising in Washington*, N.Y. TIMES (May 19, 2024), <https://www.nytimes.com/2024/05/19/briefing/centrist-washington-neopopulism.html> [https://perma.cc/QKQ3-SQEA].

114. BRINK LINDSEY & SAMUEL HAMMON, NISKANEN CTR., *FASTER GROWTH, FAIRER GROWTH* 106 (2020).

115. See *id.*

grown to more than 600 pages long today, with appendices that often exceed 1,000 pages.¹¹⁶ On average, an EIS now also takes four and a half years to complete.¹¹⁷ NEPA serves valuable functions, but the costs it now imposes have become excessive in relation to those benefits. Some conclude it is holding up construction of the semi-conductor fabrication plants necessary to lessen US dependence on China in this area.¹¹⁸ Yet Congress has been unable to modernize NEPA.

National legislation has always been required to overcome the collective-action problems at the state and local levels that can frustrate nationally needed programs. Yet it has become more difficult for Congress to play this role. Congress did manage to pass significant infrastructure legislation recently, but the main barrier to major infrastructure development, including the transition to clean energy, is the maze of lengthy permitting requirements and procedural obstacles rather than funding.¹¹⁹ As one vignette on these obstacles, Massachusetts sought to reduce its reliance on fossil fuels by agreeing with Canada to pipe in power from Canadian hydroelectric sites.¹²⁰ But doing so requires transmission lines that would run through a border state; after local opposition blocked a path through New Hampshire, Maine's governor supported running the lines through Maine.¹²¹ But in an exercise of citizen voice, via the most expensive referendum in Maine's history, a coalition of competing power companies and environmentalists persuaded voters to reject the pipeline.¹²² To cut through this type of dysfunction, some progressive groups are even calling for the President to invoke the Defense Production Act, which overrides existing laws and would allow him unilateral power to "accelerate clean energy build-out, with or without the cooperation of Congress and subfederal [*sic*] authorities."¹²³ Similarly, the crisis in homelessness and affordable housing has been attributed, in part, to the

116. *Id.* at 108–09.

117. *Id.* at 109.

118. Noah Smith, *The Big NEPA Roundup*, NOAHPINION (Dec. 10, 2022), <https://noahpinion.substack.com/p/the-big-nepa-roundup> [<https://perma.cc/7QGL-QGD8>]; Noah Smith, *Progressives Need to Embrace Progress*, NOAHPINION (Mar. 22, 2023), <https://www.noahpinion.blog/p/progressives-need-to-embrace-progress> [<https://perma.cc/2WWR-3AU3>].

119. Philip K. Howard, *Two Years, Not Ten Years: Redesigning Infrastructure Approvals*, COMMON GOOD (Sept. 15, 2015), <https://www.commongood.org/articles-reports-and-media-appearances/two-years-not-ten-years-redesigning-infrastructure-approvals-1> [<https://perma.cc/ELE9-3XS7>].

120. Mara Hoplamazian, *A Proposed Clean Energy Transmission Line in New England Gets Federal Boost*, WBUR (Oct. 31, 2023), <https://www.wbur.org/news/2023/10/31/vermont-new-hampshire-national-grid-twin-states-canada-hydropower> [<https://perma.cc/UJ4L-E38S>].

121. Matthew Yglesias, *America Needs More Interregional Electric Lines*, SLOW BORING (July 14, 2021), <https://www.slowboring.com/p/america-needs-more-interregional> [<https://perma.cc/9AJL-ADQ2>]; Richard Valdmanis, *Maine Voters Reject Quebec Hydropower Transmission Line*, REUTERS (Nov. 3, 2021, 3:25 PM), <https://www.reuters.com/world/americas/maine-voters-reject-quebec-hydropower-transmission-line-2021-11-03> [<https://perma.cc/ULP9-686W>].

122. See Valdmanis, *supra* note 121.

123. Joel Dodge, Joel Michaels, Lenore Palladino & Todd N. Tucker, *Progressive Preemption: How the Defense Production Act Can Override Corporate Extraction, Boost Worker Power, and Expedite the Clean Energy Transition*, ROOSEVELT INST. (Dec. 9, 2022), https://rooseveltinstitute.org/wp-content/uploads/2022/12/RI_ProgressivePreemption_Brief_202212.pdf [<https://perma.cc/EC7B-23VP>].

exploitation of participatory and procedural rights through which vested interests hinder increasing the supply of housing.¹²⁴

In our era, the Western European democracies have similarly been plagued by a continual inability to deliver effective government on the issues citizens care most urgently about. Continual dissatisfaction has produced constantly turbulent politics in many of these countries, as explored in detail below, including the rise of “anti-system politics” and parties in many of these countries.¹²⁵

Despite the lack of attention in much academic scholarship and reform advocacy to the importance of effective government,¹²⁶ when democratic governments cannot deliver effectively on issues many of their members care most urgently about, that failure can lead, at a minimum, to distrust, alienation, withdrawal, anger, and resentment. Cross-country empirical studies show that when government fails to provide prosperity and security, people believe the system is rigged or corrupt.¹²⁷ Even worse, it can fuel desires for a strongman figure¹²⁸ who will supposedly cut through the dysfunction and deliver when democratic governments have failed to do so. Walter Lippmann, writing in the 1920s, asserted the following: “[M]en do not long desire self-government for its own sake. They desire it for the sake of the results.”¹²⁹ Indeed, 33% of Americans have at some point in the last three years said that they think having “a strong leader who doesn’t have to bother with Congress or elections” would be a good system of government.¹³⁰ The call of progressives for President Biden to invoke the nearly dictatorial powers in the Defense Production Act, mentioned above, might be seen as a small nod in that direction.

I turn now to my perspective on the predicament and circumstances of democracies across the West today and why that perspective provides the most powerful reasons for resisting the call for MMD-PR here.

124. Christopher S. Elmendorf & Timothy G. Duncheon, *When Super-Statutes Collide: CEQA, the Housing Accountability Act, and Tectonic Change in Land Use Law*, 49 *ECOLOGY L.Q.* 655, 660–61 (2022); MOIRA O’NEILL-HUTSON, ERIC BIBER, RAINE ROBICHAUD, GIULIA GUALCO-NELSON & NICK MARANTZ, EXAMINING ENTITLEMENT IN CALIFORNIA TO INFORM POLICY AND PROCESS: ADVANCING SOCIAL EQUITY IN HOUSING DEVELOPMENT PATTERNS 101 (2022) (finding that “neighborhood level politics” is a principal cause for inability to build more housing in San Francisco); see also *Horn v. County of Ventura*, 24 Cal. 3d 605, 615 (1979) (concluding that state due process law requires neighbors to be given notice and opportunity to be heard before local government can approve certain land-use decisions, such as approval of new housing projects).

125. JONATHAN HOPKIN, *ANTI-SYSTEM POLITICS* 3 (2022) (describing the rise of a “xenophobic Right and the anti-capitalist Left as part of a common global trend: anti-system politics”).

126. For one recent work that does highlight the failure in recent decades of democratic governments to enable rising economic prosperity and effective delivery of public goods, see generally SAMUEL ISSACHAROFF, *DEMOCRACY UNMOORED* (2023).

127. See generally Nathaniel Persily & Kelli Lammie, Note, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 *U. PA. L. REV.* 119 (2004).

128. Donna Rouviere Anderson, *The Psychology of Strongmen*, ROUVIERE MEDIA (Mar. 15, 2022), <https://hobblecreek.us/blog/entry/the-psychology-of-strongmen> [<https://perma.cc/A48K-VBUR>]. This can certainly be a woman, as several prominent past and current examples attest.

129. WALTER LIPPMANN, *PUBLIC OPINION* 312 (1922).

130. Lee Drutman, Joe Goldman & Larry Diamond, *Democracy Maybe: Attitudes on Authoritarianism in America*, DEMOCRACY FUND VOTER STUDY GRP. (June 2020), <https://www.voterstudygroup.org/publication/democracy-maybe#share-content> [<https://perma.cc/ZGC4-7B7N>].

2. *The Circumstances of Democracies Today*

The fundamental feature of democracy in our era, I believe, is the emergence of political fragmentation across most Western democracies. By fragmentation, I mean the dispersion of political power across so many political parties, organized groups, non-organized but effective spontaneous organizations, and even individuals, such that it is far more difficult to marshal the concerted political power needed to deliver effective government. My concern is that a House of five or six political parties would make the political process in the U.S. even more fragmented and gridlocked than it is already.

The best place to examine how a five- or six-party Congress might function is with the PR democracies of Western Europe. The way these democracies have functioned over the last decade or so—the same period in which politics here has become so much more divisive—is very different from how they had functioned for most of the time between the end of World War II and the last decade. Assessments of these PR democracies from before this past decade are now outdated and can be misleading.

PR proponents here insist that the rise of the toxic, tribalistic politics of our time calls for PR, but they largely ignore what has happened during this same period to the structure of politics in the PR democracies of Western Europe.

Recent years have seen a tremendous fragmentation in that structure.¹³¹ From World War II until the last decade, many of the PR democracies in Europe that are formally multi-party systems had functioned instead as, in effect, two-and-one half party systems.¹³² That generated fairly stable and continuous government, even as control might shift from one of the two dominant parties to the other. The impression many have of how well PR worked in these countries might easily be based on this long period of relatively stable politics.

But over the last decade, that structure has collapsed across most of Western Europe. The inability of European governments to deliver effective policies on the issues citizens care most about has led to a hemorrhaging of support for the long-dominant European parties.¹³³ As a result, the major parties have splintered into an array of parties, with new, insurgent parties of various ideologies emerging or previously minor parties gaining greater support.¹³⁴ The centrist forces have been hollowed out there, just as in American politics. Indeed, we are seeing exactly the kind of splintering of those larger parties that PR advocates claim would be a virtue for the United States. These systems, which effectively functioned for decades as two-and-a-half-party systems, have become effectively five- or six-party systems. But the record of those multi-party systems is one of ineffective government and continual citizen dissatisfaction.

131. The material in this section is drawn from Richard H. Pildes, *Democracies in the Age of Fragmentation*, 110 CALIF. L. REV. 2051, 2053 (2022) and Richard H. Pildes, *Political Fragmentation in the Democracies of the West*, 37 BYU J. PUB. L. 209, 209 (2023).

132. Pildes, *supra* note 14, at 809; *see also* Richard H. Pildes, *The Age of Political Fragmentation*, 32 J. DEMOCRACY 146, 148 (2021).

133. Pildes, *supra* note 132, at 149.

134. *Id.* at 148–49.

The most express manifestation of political fragmentation in Western Europe is the decline of the vote share and, hence, political power of the traditional two major parties across various European democracies. Between 1970 and 2010, the number of new political parties grew from four to twenty-eight; between 1990 and 2010, the percentage of people who were members of new parties exploded from 1.33% to 41%.¹³⁵ Overall, the mean vote share for the traditional major parties declined from 86% to 72% between 2004 and 2015; emerging new parties doubled their vote share during this time to 23%.¹³⁶ A standard summary measure of the fragmentation of a country's party system is the "effective number of parliamentary parties."¹³⁷ While it is based on a mathematical formula, it gives an intuitive sense of how many parties matter in a legislature for purposes of assembling a majority. In FPTP systems, the number is generally under three (in the U.S. it is two, and in parliamentary systems it tends to be three; in the U.K. about 2.4, Canada 2.8, Australia 3.2). In most of the PR systems of Europe today, the effective number ranges between five and seven; in parliamentary Belgium, which has had chronic problems in forming governments, it is nearly ten. In Germany, over time, the number has risen from under four in 1990 (and three in the former West Germany) to 5.5 today.¹³⁸

This fracturing of power across more and smaller parties not only makes putting together effective governing coalitions more difficult; it also makes the political sphere more volatile. New parties pop up almost overnight and grab slices of power, including parties that style themselves as "anti-parties," reflecting a view that politics should somehow do away with parties altogether.¹³⁹ In various individual countries, the details of this general story are particularly dramatic.¹⁴⁰

Germany, for example, had been considered over recent decades the stable heart of Europe. Germany had been a typical two-and-a-half party system since World War II, "with the traditionally dominant large parties of the center-left (the Social Democrats) and center-right (the Christian Democrats) alternating in government."¹⁴¹ "In the 1970s, these parties regularly combined to receive over 90% of the vote. But in recent years, Germany has fragmented into a six-party system."¹⁴² In the 2017 elections, the two previously dominant parties combined

135. Luciano Bardi, Enrico Calossi & Eugenio Pizzimenti, *Which Face Comes First?: The Ascendancy of the Party in Public Office*, in ORGANIZING POLITICAL PARTIES: REPRESENTATION, PARTICIPATION, AND POWER, 62, 68 tbl. 3.3 (Susan E. Scarrow et al. eds., 2017).

136. ROGER EATWELL & MATTHEW GOODWIN, NATIONAL POPULISM: THE REVOLT AGAINST LIBERAL DEMOCRACY 247 (2018).

137. *Effective Number of Parties*, WIKIPEDIA, https://en.wikipedia.org/wiki/Effective_number_of_parties (last visited June 30, 2024) [<https://perma.cc/6VL2-2DBK>].

138. See *id.*; Aiko Wagner, *Party System Change in Eastern and Western Germany Between Convergence and Dissimilarity*, 32 GERMAN POLS. 85 (2023).

139. Nadia Urbinati, *A Revolt Against Intermediary Bodies*, 22 CONSTELLATIONS 477, 480 (2015).

140. See Pildes, *Democracies in the Age of Fragmentation*, *supra* note 131, at 2053; Pildes, *Political Fragmentation in the Democracies of the West*, *supra* note 131, at 209; PETER MAIER, RULING THE VOID: THE HOLLOWING OF WESTERN DEMOCRACY 56–59 (2013).

141. Pildes, *Political Fragmentation in the Democracies of the West*, *supra* note 131, at 217.

142. *Id.*

to receive only 53% of the vote;¹⁴³ “in the [most] recent, 2021 elections, they did not even manage together to receive over 50% of the vote.”¹⁴⁴ The votes the major parties bled were absorbed “by smaller parties of the right and left, including the Alternative for German (“AfD”); the Free Democrats; the Greens; and the Left. After 2017, it then took six months to put together a governing coalition, the longest since the creation of Germany’s post-WWII democracy.”¹⁴⁵ Germany is now governed by a three-party coalition for the first time. While that coalition has remained mostly united over Ukraine policy, the ideological conflicts between the three parties, particularly on domestic issues, raise questions about the capacity of the government to function effectively.¹⁴⁶ This three-party coalition has proven extremely unpopular, partly because, unsurprisingly, “fierce disputes” rage between the two smaller parties in the coalition.¹⁴⁷ Dissatisfaction with government in Germany remains extremely high; only 19% of people report being even “satisfied” with the government.¹⁴⁸ Partly as a result, the far-right AfD party is, at the time of this writing, the second most popular party in Germany.¹⁴⁹ Commentators describe Germany as “slipping further and further into crisis.”¹⁵⁰

In the last two French presidential elections, neither the principal center-left (the Socialists) or center-right (the Republicans) parties that had governed France since World War II were able to garner sufficient support even to get a candidate into the second and final round of the election.¹⁵¹ Dissatisfaction with these long-dominant parties and their leaders enabled Emmanuel Macron to capture the Presidency and then the parliament with a new party he created virtually overnight.¹⁵² Macron managed to be re-elected, but it turned out his re-election

143. Stefan Wagstyl, Guy Chazan & Tobias Buck, *Merkel Wins Fourth Term but Far-Right Populists Make Gains*, FIN. TIMES (Sept. 25, 2017), <https://www.ft.com/content/12de72a0-a11c-11e7-9e4f-7f5e6a7c98a2> [<https://perma.cc/5JW9-Y9X7>].

144. Pildes, *Political Fragmentation in the Democracies of the West*, *supra* note 131, at 217.

145. *Id.*

146. *What Lies Ahead for Germany’s Coalition Government*, RANE (Dec. 23, 2022, 3:33 PM), <https://worldview.stratfor.com/article/what-lies-ahead-germanys-coalition-government> [<https://perma.cc/69AA-LFK2>]; Sarah Marsh, *German Coalition, Beset by Crises, Could Get More Fractious After Vote*, REUTERS (Oct. 10, 2022, 11:59 PM), <https://www.reuters.com/world/europe/german-coalition-beset-by-crises-could-get-more-fractious-after-vote-2022-10-10> [<https://perma.cc/FW5P-FQP5>].

147. Rebecca Staudenmaier & Sabine Kinkartz, *Satisfaction in German Government Plummets*, DW (Sept. 1, 2023), <https://www.dw.com/en/satisfaction-in-german-government-plummets/a-66690143> [<https://perma.cc/ET9C-7R7Z>]; see also Joseph de Weck, *Germany Is No Longer Exceptional*, ATLANTIC (July 22, 2023), <https://www.theatlantic.com/international/archive/2023/07/germany-national-identity-afd-party-political-instability/674786> [<https://perma.cc/B38G-W3JJ>].

The three parties in Scholz’s ruling coalition . . . squabble over everything, including whether to ban gas heating systems, how to deal with China, and whether to raise the child-benefits system. The result is neither calm nor order, at a time when inflation and the energy crisis are already destabilizing life in Germany.

148. Staudenmaier & Kinkartz, *supra* note 147.

149. *Id.*

150. *Id.*

151. Aurelien Breeden & Constant Méheut, *Are Traditional Political Parties Dead in France?*, N.Y. TIMES (Apr. 28, 2022), https://www.nytimes.com/2022/04/28/world/europe/france-socialists-republicains.html?utm_source=pocket_saves [<https://perma.cc/75YD-3366>].

152. *Id.*

was more a rejection of his opponent than an endorsement.¹⁵³ In a sign of the continuing instability and dissatisfaction with government, when legislative elections were then held two months later after his re-election, he immediately lost control of the National Assembly.¹⁵⁴

Reaction against Macron enabled the Marie Le Pen-led National Rally party, which is frequently labeled “far-right,” to become the second-largest party in the Assembly.¹⁵⁵ Commentators predicted this structure would be so unstable that Macron might be unlikely to serve a full second term before new elections would have to be called.¹⁵⁶ Indeed, after Macron suffered recent legislative defeats on major issues, France has been called “ungovernable.”¹⁵⁷ Widespread social media-enabled riots against the government led Macron to suggest the possibility that the government should impose temporary bans on social media.¹⁵⁸ As with Germany’s government, support for Macron’s government was at its lowest point at the time this article is being written.

France also illustrates how fragmented, and hence ineffectual, parliaments can produce demands for strong-man executives. That dangerous dynamic lies behind Macron’s recent explosive executive decree changing pension retirement policy.¹⁵⁹ During the Fourth French Republic, from 1946–1958, France was a multi-party parliamentary democracy. But the system was perpetually unstable; voter turnout was high, but during this time, no party ever gained a majority in parliament and no fewer than twenty-one different coalitions held office, without much change in underlying support for the constituent parties.¹⁶⁰ As the political scientist Maurice Duverger concluded, “[a]ll governments had to be coalition governments, and the political glue that held them together proved extremely

153. James McAuley, *Macron Remade French Politics. Now He’s Paying the Price.*, WASH. POST (June 20, 2022, 6:13 PM), https://www.washingtonpost.com/opinions/2022/06/20/france-legislative-elections-takeaways-macron-melenchon-le-pen/?utm_source=pocket_saves [https://perma.cc/EW2M-VV6M].

154. *Id.*

155. See Breeden & Méheut, *supra* note 151; Staudenmaier & Kinkartz, *supra* note 147.

156. Céilia Belin & Agneska Bloch, *Macron Survives, but How Long Can the Center Hold in France?*, BROOKINGS (May 6, 2022), <https://www.brookings.edu/articles/macron-survives-but-how-long-can-the-center-hold-in-france/> [https://perma.cc/M3DN-AHZD].

157. Clea Caulcutt, ‘End of Reign’: *Macron Faces Ungovernable France After Shock Immigration Loss*, POLITICO (Dec. 12, 2023, 6:47 PM), https://www.politico.eu/article/emmanuel-macron-gerald-darmanin-immigration-bill-defeat/?utm_source=substack&utm_medium=email [https://perma.cc/W6WF-AY97].

158. Una Hajdari, *Macron Threatens to Cut Off Social Media During Protests, After Unrest*, EURONEWS (May 7, 2023), https://www.euronews.com/2023/07/05/violent-protests-prompt-french-president-to-consider-suspending-social-media-tools?utm_source=pocket_saves [https://perma.cc/QU6C-FAK6]; see also John Leicester, ‘Liberty, Equality, Fraternity’ for All? *New Riots Make France Confront an Old Problem*, ASSOCIATED PRESS (July 4, 2023, 6:47 AM), https://apnews.com/article/france-riots-police-shooting-5618c6749ea9d9e5f30f5865f79b7fbb?utm_source=pocket_saves [https://perma.cc/F78Q-6CAJ] (“This generation weaned on TikTok and Snapchat not only celebrated mayhem in short videos but, the government says, sometimes organized on their networks, too.”).

159. Oleg Cetinic & Angela Charlton, *Protests in France as Unions Make Lasts-Ditch Bid to Resist Higher Retirement Age*, ASSOCIATED PRESS (June 7, 2023, 12:07 AM), <https://apnews.com/article/france-protests-retirement-age-macron-strikes-1abb098b104f2b7094e51e650218771d> [https://perma.cc/ZMU7-DFDH].

160. MICHAEL HAAS, WHY DEMOCRACIES FLOUNDER AND FAIL 70 (2018).

thin.”¹⁶¹ This era came to be known as one of *immobilism*, for the inability to forge majorities to act on urgent issues.¹⁶² As one political scientist puts it, *immobilism* is “[a] major threat to substantive democracy.”¹⁶³

Demands for a strong leader to cut through this paralysis emerged. De Gaulle consented to return as leader if France would contain parliamentary dysfunction, following which parliament dissolved itself.¹⁶⁴ He then drafted a new constitution with direct election of the President¹⁶⁵ for a seven-year term (in 2000, this was changed to five years), with the power to rule by decree on finance or social-security financing bills, unless the National Assembly rejects his decree in a vote of no-confidence. This constitution created the Fifth French Republic—which has been called “the closest thing . . . to an elected dictator[ship]” in the West—under which France is governed today.¹⁶⁶ This express power to rule by decree, Art. 49.3, is what Macron recently invoked.¹⁶⁷ Since created, French governments have used that provision 100 times and the Macron Government has deployed it eleven times in the ten months since his re-election.¹⁶⁸

As a party leader in a two-party system, Macron might also have had majority legislative support. The platform of the center-right Republicans, for example, endorsed raising the retirement age to sixty-five (Macron stopped at sixty-four); Macron made various compromises with them; and in the Senate, the party voted for Macron’s policy.¹⁶⁹ But in the National Assembly, many Republicans decided it was in the party’s interest to let Macron take all the responsibility for an unpopular policy.¹⁷⁰ Had they been in the same party, their interests would have been more aligned. Not all PR parliaments are as paralyzed as the Fourth French Republic, of course, and two-party presidential systems can also be immobilized. But the French example highlights the risks.

Spain provides another example of how dysfunctional the multi-party PR systems of Western Europe have become. “Since Spain’s first democratic elections in 1977, after the fall of Franco’s dictatorship, two dominant political parties—on the center-left, the Socialist Worker’s Party (PSOE), on the center-right

161. Martin Schain, *The Fifth Republic*, in *THE FRENCH REPUBLIC: HISTORY, VALUES, DEBATES* 83, 85 (Edward G. Berenson et al. eds., 2011).

162. HAAS, *supra* note 160, at 69.

163. *Id.*

164. *Id.* at 70.

165. Initially, the President was elected by around 80,000 officials, but in 1962, this was changed to direct popular election. Simon Kuper, *Is France on the Road to a Sixth Republic?*, *FIN. TIMES* (Mar. 24, 2023), <https://www.ft.com/content/b78f2a89-1062-4423-a4ba-fb4cdc56c683> [https://perma.cc/MG2C-UVTG].

166. *Id.*

167. *Id.*

168. *Id.*; Aurelien Breeden, *What Is Article 49.3 of the French Constitution?*, *N.Y. TIMES* (Mar. 20, 2023), <https://www.nytimes.com/2023/03/16/world/europe/france-constitution-article-49-3.html> [https://perma.cc/Y5XR-Z9JT].

169. See Jenni Reid, *French Resident Macron Overrides Parliament to Pass Retirement Age Bill*, *CNBC* (Mar. 16, 2023, 10:40 AM), <https://www.cnbc.com/2023/03/16/frances-macron-overrides-parliament-to-pass-pension-reform-bill.html> [https://perma.cc/F74N-L796].

170. See Kuper, *supra* note 165.

the Popular Party (PP),¹⁷¹ had alternated governing Spain. But in 2014, a new party, Podemos, was born partly out of the spontaneous [street-protest movement], known as the Indignados.”¹⁷² “In the immediate 2014 European Parliament election, Podemos stunned even itself by winning 8% of the vote.”¹⁷³ That was a sign of how quickly new parties were able to spring up and disrupt politics in the circumstances of today’s PR systems.

In the ensuing national elections in December 2015, the results were so fragmented that Spain could not put together a functioning government. The PP was the leading party, but with only 28.7% of the vote—the lowest ever for the party that “won”—while the Socialists garnered 22% of the vote and Podemos, having been formed the year before, received 20.7%.¹⁷⁴ Another new party, strongly opposed to Catalan independence, took 14% of the vote.¹⁷⁵ The two-party system in Spain had collapsed. After two months of failed negotiations over how to form a governing coalition, new elections had to be held.¹⁷⁶

By then, another new party on the right had come onto the scene: Vox (or “Voice”), which is strongly nationalist; against Catalonian independence; skeptical of the European Union; and whose emergence was also attributable to its anti-immigration stance, an issue that became more salient as immigration from Africa increased significantly.¹⁷⁷ The first national election in 2019 once again failed to produce a governing coalition.

Spain was then forced to hold four general elections between 2015-2019 in an effort to form a stable government.¹⁷⁸ Spain then became governed in 2020 by a coalitional government led by the Socialists, with Podemos as its junior partner—the first coalitional government there since democratic elections began

171. Peter Matuscheck, *Who Learns from Whom?: The Failure of Spanish Christian Democracy and the Success of the Partido Popular*, in *CHRISTIAN DEMOCRATIC PARTIES IN EUROPE SINCE THE END OF THE COLD WAR* 243-44 (Steven Van Hecke & Emmanuel Gerard eds., 2004) (discussing how the original party of the center-right has been the Union of the Democratic Centre, which the PP eventually replaced).

172. Pildes, *Political Fragmentation in the Democracies of the West*, *supra* note 131, at 209.

173. *Id.*

174. Thomas D. Lancaster, *The Spanish General Elections of 2015 and 2016: A New Stage in Democratic Politics?*, 40 *W. EUR. POL.* 919, 927 tbl.1 (2017).

175. *Id.*

176. *See id.* at 931; *see also* JOHN B. JUDIS, *THE POPULIST EXPLOSION: HOW THE GREAT RECESSION TRANSFORMED AMERICAN AND EUROPEAN POLITICS* 119-30 (2016).

177. *See* Guy Hedgecoe, *Spain’s Far-Right Vox Seeks Italian Inspiration*, *POLITICO* (Nov. 14, 2022, 4:00AM), <https://www.politico.eu/article/spain-far-right-vox-inspiration-giorgia-meloni-brothers-of-italy> [<https://perma.cc/6T63-CXYJ>]; Sofia Sanchez Manzanaro & Marta Rodríguez, *Vox: Who Are Spain’s Far-Right Party and What Do They Stand For?*, *EURONEWS* (Nov. 11, 2019, 6:33 AM), <https://www.euronews.com/2019/11/10/vox-who-are-spain-s-far-right-party-and-what-do-they-stand-for> [<https://perma.cc/8MWK-L4DT>]. Vox’s support is strongest among relatively younger urban populations with higher income and educational levels. José Rama, Stuart J. Turnbull-Dugarte & Andrés Santana, *Who Are Vox, and Who Are Their Voters?*, *LONDON SCH. OF ECON. & POL. SCI.: BLOG TEAM* (July 30, 2020), <https://blogs.lse.ac.uk/europpblog/2020/07/30/who-are-vox-and-who-are-their-voters> [<https://perma.cc/YDY8-FQCD>].

178. *Spain’s Major Parties Begin Negotiations to Form Government After Inconclusive Vote*, *FRANCE 24* (July 24, 2023, 7:48 AM), <https://www.france24.com/en/europe/20230724-spain-s-major-parties-begin-negotiations-to-form-government-after-inconclusive-vote> [<https://perma.cc/67M3-Q6LG>].

in the 1970s.¹⁷⁹ But once again, the government collapsed early, and Spain held yet another general election in 2023.¹⁸⁰ That election, too, was inconclusive, with votes spread across many parties.¹⁸¹ Eventually, the Socialist Party candidate formed a governing majority, but he had to do so with support from the Catalan independence party.¹⁸² The concessions he had to make to that party—amnesty for 400 or so members of the independence movement—then triggered daily mass protests.¹⁸³

Portugal had been thought to be more insulated from some of the forces fueling European politics, partly because of its low immigration and refugee levels.¹⁸⁴ But it, too, now shows the effects of political fragmentation. After its 2015 election, a government eventually had to be cobbled together from such disparate parties that it was called a *geringonca*—a “contraption,” made of odd-fitting components.¹⁸⁵ This was still a minority government, led by the Socialist Party, and a controversial one as well because it had to form agreements with parties on the far left (the Communists, the Left Bloc) that, since the time Portugal had become a democracy, had been considered too extreme for a major party to govern with. In 2019, the Socialists formed a single-party minority government, determined to negotiate with different parties from across the spectrum on specific policy issues.¹⁸⁶ In these two recent elections, four new parties entered the parliament.¹⁸⁷ After just two years, the government collapsed, forcing new elections to be held in 2022, two years early—a rare situation for Portugal.¹⁸⁸ That government soon collapsed, leading to new elections in March of 2024. One of these new parties was a populist party on the right, Chega (“enough”), which went from 1.3% of the vote in 2019 to 18.1% in the March 2024 elections—going from nothing to the third largest party in five years.¹⁸⁹ Currently, Portugal is led

179. Sam Jones, *Socialists and Podemos to Rule Together in Spanish Coalition*, GUARDIAN (Jan. 7, 2020, 9:59 AM), <https://www.theguardian.com/world/2020/jan/07/pedro-sanchez-spain-pm-government-vote-parliament> [https://perma.cc/BR8Z-EFVT].

180. See *Spain’s Major Parties Begin Negotiations to Form Government After Inconclusive Vote*, *supra* note 178.

181. *Id.*

182. Eric Sylvers & José Bautista, *Spain’s Sánchez Wins New Term as Prime Minister After Catalan Amnesty Deal*, WALL ST. J. (Nov. 16, 2023, 7:38 AM), <https://www.wsj.com/world/europe/spains-sanchez-wins-new-term-as-prime-minister-after-catalan-amnesty-deal-c3beb73a> [https://perma.cc/737V-28WS].

183. *Id.*

184. See generally Jorge M. Fernandes & Pedro C. Magalhães, *The 2019 Portuguese General Elections*, 43 W. EUR. POLS. 1038, 1038 (2020) (explaining that the government was based on bilateral policy agreements with these parties, so that they did not formally enter government, a form of government that has been called “contract parliamentarism”).

185. See Joana Ramiro, *The Left Can Win in Portugal*, JACOBIN (June 10, 2019), <https://jacobin.com/2019/10/portugal-elections-geringonca-left-bloc-socialist-party> [https://perma.cc/JX9X-PND3].

186. *Id.*

187. See *id.*; Fernandes & Magalhães, *supra* note 184.

188. *Snap Elections Are Called After Portugal’s Government Collapses*, ECONOMIST (Nov. 6, 2021), <https://www.economist.com/europe/2021/11/06/snap-elections-are-called-after-portugals-government-collapses> [https://perma.cc/86FJ-3SKR].

189. William A. Galston, Opinion, *The Populist Right Rises in Portugal*, WALL ST. J. (June 4, 2024), https://www.wsj.com/articles/the-populist-right-rises-in-portugal-chega-party-7bb54090?mod=hp_opin_pos_4 [https://perma.cc/G8L3-DART].

by a weak minority government, and as observers note, “[i]t’s hard to imagine this government delivering the policies an increasing share of Portuguese voters are demanding.”¹⁹⁰ Commentators suggest Portugal might be facing a permanent *geringonca*, a term that might describe many of the governing coalitions across the West.¹⁹¹

In Austria, the two major parties, the Christian-democratic People’s Party (“ÖVP”) and the social-democratic SPÖ, had dominated Austrian politics throughout the post-World War II decades of the twentieth century and into the twenty-first.¹⁹² But in the 2016 presidential elections, their candidates fell to fourth and fifth place.¹⁹³ The far-right Freedom Party candidate received the plurality, with 35.1%, while the Green Party candidate received 21.3%, with a run-off election needed to find a winner.¹⁹⁴ The country is now governed by an ideologically incoherent coalition of the conservative People’s Party and the Green Party—no party is ideologically further from the Green Party than the People’s Party, according to Austrian political scientists.¹⁹⁵ Levels of dissatisfaction with the government and the political system are historically high.¹⁹⁶

In the Netherlands, after the 2017 elections, it took a record 225 days to form a government.¹⁹⁷ In earlier years, the three largest political parties were able to forge a government among themselves.¹⁹⁸ But, just as in many other European countries, between 1986 and 2012 the proportion of parliament those long dominant (three) parties won plunged from 89% to around 60%.¹⁹⁹ After the 2021 elections, the Dutch formed a fragile, four-party coalitional government, which then collapsed in 2023 over disputes concerning immigration policy.²⁰⁰ The

190. *Id.*

191. See Ramiro, *supra* note 185.

192. Alicia Walker, *The Austrian Government and Political System*, EXPATICA (Feb. 28, 2024), <https://www.expatica.com/at/living/gov-law-admin/austrian-government-95282/> [<https://perma.cc/F9DF-C5RY>].

193. Eva Zeglovits, Hubert Sickinger & Jakob-Moritz Eberl, *Was Austria’s Presidential Election Really a Vote Against Populism?*, LONDON SCH. OF ECON. & POL. SCI.: EUROPP BLOG (Dec. 14, 2016), <https://blogs.lse.ac.uk/europpblog/2016/12/14/austria-presidential-election-populism/> [<https://perma.cc/2JMR-KC2Q>].

194. *Id.*

195. Christopher F. Schuetze & Katrin Bennhold, *Head-Scarf Ban and Carbon Taxes: Austria Gets an Unlikely Government*, N.Y. TIMES (Oct. 9, 2020), <https://www.nytimes.com/2020/01/02/world/europe/austria-kurz-greens-coalition-government.html> [<https://perma.cc/73CA-SJ6K>] (relating how the government elected in 2017 soon collapsed in the wake of political scandal involving parties on the far right, which triggered snap elections in 2019 that produced an ideologically incoherent coalitional government between the People’s Party on the right and the greens on the left—as one story put it, yoking together those who support head-scarf bans and carbon taxes).

196. Robert Semonsen, *Austria: Sky-High Dissatisfaction with Political System; FPÖ’s Kickl Rising*, EUR. CONSERVATIVE (Aug. 1, 2023), <https://europeanconservative.com/articles/news/austria-sky-high-dissatisfaction-with-political-system-fpos-kickl-rising> [<https://perma.cc/7BCZ-9HHK>].

197. Aamna Mohdin, *It Took a Record 225 Days for the Dutch to Get a Government*, QUARTZ (Oct. 26, 2017), <https://qz.com/1112509/the-dutch-took-a-record-long-225-days-to-form-a-government> [<https://perma.cc/R47Y-6N7D>].

198. *Id.*

199. *Id.*

200. Cagan Koc, *What to Know About the Dutch Government’s Sudden Collapse—and What Comes Next*, TIME (July 10, 2023, 4:35 AM), <https://time.com/6293255/mark-rutte-netherlands-government-collapse> [<https://perma.cc/3QU3-Y9WS>].

elections that followed then sent “shockwaves” throughout Europe, as the euro-skeptic, anti-immigration far-right Party for Freedom, led by Geert Wilders, easily won the plurality of seats (thirty-seven), with the center-left GroenLinks-PvdA Party coming in second with twenty-five seats.²⁰¹ Whether a government can be formed, how long it will take, and what its composition will be remain open questions at the time this article goes to print.

Nor is Scandinavia immune from the fragmentation of politics. In 2010, the Sweden Democrats, a right-wing party with an anti-immigration platform, entered the scene.²⁰² By the 2018 general election, it was able to capture the third-most votes.²⁰³ It then took 134 days to form a coalition, which was a minority government, to govern.²⁰⁴ Then in June 2021, the Prime Minister lost a no-confidence vote—the first time that had happened in Sweden’s modern political history.²⁰⁵ In the 2022 elections, the Sweden Democrats received the second highest vote total and became part of the governing coalition—breaking through a prior “principle” that no party would form a government with them, given their positions and history.²⁰⁶ In Denmark, the “four old parties”—the Social Democrats, Social Liberals, Conservatives, and Liberals—have seen their combined vote share fall from a height of nearly 80% in 1994 to just over 60% today.²⁰⁷

Belgium and Israel have their own unique politics and circumstances, but they represent these developments in their most extreme forms. After its most recent elections in 2019, Belgium took nearly sixteen months to form a government; it is now “governed” by a seven-party coalition.²⁰⁸ Israel was forced to

201. Lisa Homel, *The Shocking Dutch Election Is Done. The Political Maneuvering Is Just Beginning*, ATLANTIC COUNCIL (Dec. 4, 2023), <https://www.atlanticcouncil.org/blogs/new-atlanticist/the-shocking-dutch-election-is-done-the-political-maneuvering-is-just-beginning> [<https://perma.cc/65B2-LMRZ>]; John T. Psaropoulos, *Why Wilders Won: Election Boosts Dutch Far Right, but What Happens Next?*, AL JAZEERA (Nov. 24, 2023), <https://www.aljazeera.com/news/2023/11/24/why-wilders-won-election-boosts-dutch-far-right-but-what-happens-next> [<https://perma.cc/QS9Q-F4DU>].

202. Magnus Blomgren, *Sweden’s Political Crisis: How We Got Here and What’s Next*, LONDON SCH. OF ECON. & POL. SCI.: EUROPP BLOG (July 2, 2021), <https://blogs.lse.ac.uk/europpblog/2021/07/02/swedens-political-crisis-how-we-got-here-and-whats-next> [<https://perma.cc/Q72Q-V9D6>].

203. *See id.*

204. *Id.*

205. *Stefan Loven Becomes the First Swedish PM to Lose a No-Confidence Vote*, THE ECONOMIST (June 24, 2021), <https://www.economist.com/europe/2021/06/24/stefan-lofven-becomes-the-first-swedish-pm-to-lose-a-no-confidence-vote> [<https://perma.cc/K7SQ-DLF2>].

206. *Sweden’s Right-Wing Announces New Government with Far-Right Backing*, LE MONDE (Oct. 14, 2022, 11:21 AM), https://www.lemonde.fr/en/europe/article/2022/10/14/sweden-s-right-wing-announces-new-government-with-far-right-backing_6000299_143.html [<https://perma.cc/L728-M697>]; *see also* Danielle Lee Tomson, *The Rise of Sweden Democrats: Islam, Populism, and the End of Swedish Exceptionalism*, BROOKINGS (Mar. 25, 2020), <https://www.brookings.edu/articles/the-rise-of-sweden-democrats-and-the-end-of-swedish-exceptionalism> [<https://perma.cc/2GXQ-9NGU>].

207. Rune Stubager, Kasper M. Hansen, Michael S. Lewis-Beck & Richard Nadeau, *The State of Denmark: What Voters Can Tell Us About the Future of the Danish Ideal*, LONDON SCH. OF ECON. AND POL. SCI.: EUROPP BLOG (May 28, 2021), <https://blogs.lse.ac.uk/europpblog/2021/05/28/the-state-of-denmark-what-voters-can-tell-us-about-the-future-of-the-danish-ideal> [<https://perma.cc/T59D-W35Q>].

208. Marine Strauss & Philip Blenkinsop, *Belgium Forms New Government After 16-Month Deadlock*, REUTERS (Sept. 30, 2020, 5:49 AM), <https://www.reuters.com/article/uk-belgium-government-idUKKBN26L14L> [<https://perma.cc/LC2Y-RRSZ>].

hold five national elections in four years between 2019 and 2022 in an effort to find a governing coalition, and that was before the war with Hamas began.²⁰⁹

Not surprisingly, the changing nature of the party composition of the European Parliament (“EP”) also reflects the fragmentation of party politics across Europe. In the most recent elections to the EP in 2019, its two main blocs—the European People’s Party and the Socialists and Democrats—failed collectively to reach a majority for the first time in the EP’s history.²¹⁰

Fragmentation is also reflected in political attitudes that reveal a sharp decline in those who strongly identify with any political party. This decline, too, has been developing over a long period of time. The percentage of those in Western European democracies who strongly identify with a political party declined between the 1960s and the 1990s in Austria by 66%; in Italy and Ireland, by 77%; in Sweden and Norway, by 54% and 45%; in France, by 32%.²¹¹ Put another way, in earlier decades in countries such as Sweden, two-thirds of people felt loyal to a particular party; but by 2010, that had fallen to 28%.²¹² So, too, with formal membership in the parties: between 1980 and 2009, party membership declined dramatically in nearly all European countries, with a falloff of more than 30% in the U.K., Norway, France, Sweden, Ireland, Switzerland, Finland, Denmark, Italy, and Belgium.²¹³ The magnitude of these declines, the consistency of their direction, and the fact that they have occurred in nearly all Western democracies for which data is available suggests that general structural forces are at work fracturing all these democracies.

Using one standard measure of volatility, the frequency in Western Europe of high-volatility elections soared in the 1990s and 2000s.²¹⁴ In the 1990s and 2000s, the percentage of high-volatility elections was 33% and 27%, respectively; in each of the four decades before then, it had ranged from only 4% to 15%.²¹⁵ For the fifteen long-standing democracies in Europe, in particular, the level of electoral volatility hardly changed from 1950 to the 1980s until electoral shifts started becoming more volatile in the 1990s.²¹⁶ Amidst increasing political fragmentation, even putting together coalitions capable of governing has become

209. Hadas Gold, *Netanyahu Eyes Comeback as Israel Votes in Fifth Election in Four Years*, CNN (Nov. 1, 2022, 2:30 PM), <https://www.cnn.com/2022/11/01/world/israel-election-walkup-intl/index.html> [<https://perma.cc/5E9J-QZS9>].

210. *Centrist Liberals Gained the Most Power in the EU Parliament*, ECONOMIST (June 1, 2019), <https://www.economist.com/graphic-detail/2019/06/01/centrist-liberals-gained-the-most-power-in-the-eu-parliament> [<https://perma.cc/9GLX-XGBS>].

211. RUSSELL J. DALTON, DEMOCRATIC CHALLENGES, DEMOCRATIC CHOICES: THE EROSION OF POLITICAL SUPPORT IN ADVANCED INDUSTRIAL DEMOCRACIES 33 tbl.2.3 (2004).

212. Pildes, *Political Fragmentation in the Democracies of the West*, *supra* note 131, at 12.

213. PETER MAIR, RULING THE VOID: THE HOLLOWING OF WESTERN DEMOCRACY 41 tbl.4 (2013).

214. This measure calculates the level of volatility by summing the (total) electoral gains of all the winning parties in an election. *Id.* at 30–32. This measure reveals the extent to which party strength shifts from one election to the next between winning and losing parties. See Mogens N. Pedersen, *The Dynamics of European Party Systems: Changing Patterns of Electoral Volatility*, 7 EUR. J. POL. RSCH. 1, 6 (1979).

215. See MAIR, *supra* note 213, at 33 tbl.2.

216. This measure calculates the level of volatility by summing the total electoral gains of all the winning parties in an election. See MAIR, *supra* note 213, at 31; Pedersen, *supra* note 214, at 9.

much more difficult, leading to considerably longer delays in the time it takes actually to form a government.

I have gone on at length about the changing structure of political party dynamics in the European PR countries, and the dissatisfaction with governments there, because they provide the best examples of what true multi-party democracy looks like today.²¹⁷ One point of this account is to emphasize that any assessment of how well the PR democracies of Europe have functioned cannot be based on how they performed in earlier decades. In those years, these democracies functioned, as a practical matter, as two-and-a-half party systems. But for the last decade or so, they have functioned for the first time as five- or six-party systems (much as PR proponents would like to see here). Yet over this period, the European democracies have been and are in crisis—or, at least, struggling mightily.

This extended account of the functioning of Western European democracies illustrates that the more fragmented party systems that have emerged have had at least three troubling effects on governance. These effects should be carefully considered before embracing a six-party U.S. House. First, it now takes much longer to form a governing majority in European parliaments, as bargaining drags on for many months between the various parties and potential coalitional partners.²¹⁸ Second, voters can lack a clear sense of the government and policies they are voting for, since coalitions between a number of parties are often cobbled together after elections—in terms not always foreseeable in advance. Elites bargain after elections to forge majorities and hence policy, though sometimes these coalitional pairings are made clear to voters in advance. These coalitions across several parties are more likely to be ideologically incoherent, since three or more parties in a coalition often have strongly divergent views on major issues.²¹⁹

Third, when those governments form, they are more fragile because the departure of one or more minor parties from the coalition can cause the government to collapse. This has also become more likely, because the conflicting ideologies among the several parties in government are more likely to cause fissures that lead one or more parties to abandon the coalition. As a result, as chronicled above, some of these democracies have had to hold repeated national elections in an effort to find a governing majority. Others lose votes of no-confidence at new rates.

217. A recent comprehensive literature survey and empirical study on the effects of party-system fragmentation on the quality of democracy concludes that there are no discernible causal effects. See Vicente Valentim & Elias Dinas, *Does Party-System Fragmentation Affect the Quality of Democracy?*, 54 BRIT. J. POL. SCI. 152, 153–54 (2024). But the measures of democratic quality the study uses includes only one—the provision of public goods—that is connected to the focus of this article. The study does not examine whether more fragmented democracies are less able to deliver legislation on the issues citizens care most about, nor does it compare the satisfaction of citizens with democracy in more fragmented and less fragmented party systems.

218. See, e.g., Marsh, *supra* note 146.

219. See Pildes, *Democracies in the Age of Fragmentation*, *supra* note 131, at 2053–56; Pildes, *Political Fragmentation in the Democracies of the West*, *supra* note 131, at 215–24; MAIR, *supra* note 213, at 66–70.

To be sure, the challenge of party fragmentation is greater in parliamentary systems than it would be in the presidential system of the United States; in the former, the existence of the government itself usually depends on having a majority coalition in the legislature. But in the United States, a coalition would still have to be organized to govern the House and Senate. The House must choose a Speaker; the chairmanship of committees would have to be decided; the floor agenda must be set. These decisions would not be arrived at issue-by-issue. A coalition would need to control each chamber.

If the coalition necessary to establish the initial governing structure of the House were not stable, then new coalitions would have to be formed on an issue-by-issue basis. Indeed, this is what PR proponents envision occurring. This Western European experience over the last decade or so remains critical to understand because it illustrates the range and difficulties of putting together majority coalitions in systems with five or six political parties—and also puts to rest any notion that the PR systems there are working smoothly and producing effective government with widespread public satisfaction.

To be sure, PR systems score well on certain expert assessments of “Good Governance” or “Government Effectiveness.”²²⁰ But these types of measures focus more on the inputs to government or on general qualities of a government, such as transparency or corruption, rather than on the extent to which governments are delivering effective policy solutions to the most pressing issues of the day, as citizens perceive them. Other general measures on the quality of governance show little difference between the majoritarian and the PR-advanced democracies.²²¹

The most meaningful evidence of how citizens feel about their governments, in my view, is the way they actually vote. And as these patterns I have recounted at length demonstrate, voters in the Western European democracies have been continually dissatisfied with their multi-party systems. They are continually punishing those governments at the polls and searching for new alternatives.

220. See, e.g., YANA GOROKHOVSKAIA & CATHRYN GROTHE, *THE MOUNTING DAMAGE OF FLAWED ELECTIONS AND ARMED CONFLICT* (2024), <https://freedomhouse.org/report/freedom-world/2024/mounting-damage-flawed-elections-and-armed-conflict> [<https://perma.cc/GZF9-VGSG>] (assessing transparency, corruption, and whether elected leaders determine government policy, under “functioning of government” metric); *The Quality of Governance Institute*, UNIV. GOTHENBURG (last updated June 7, 2024), <https://www.gu.se/en/quality-government> [<https://perma.cc/5F7X-BJQB>] (assessing metrics such as government effectiveness).

221. The often-referenced World Bank measures of the quality of governance (government effectiveness, control of corruption, and rule of law) compare two sets of seven advanced industrial democracies, one predominantly majoritarian (with an average effective number of parties of 2.49), and the other PR (and for the most part, highly proportional) systems (with an average effective number of parties of 6.37). The average quality of governance of the two systems is essentially the same. The majoritarian systems have the edge in government effectiveness (with an average percentile rank of 91 compared to 89 for the PR systems); the PR systems do a bit better in controlling corruption (91 to 88); and the two systems have the same average percentile scores on the Rule of Law (89). See *Worldwide Governance Indicators*, WORLD BANK, <https://www.worldbank.org/en/publication/worldwide-governance-indicators/interactive-data-access> (last visited June 30, 2024) [<https://perma.cc/D773-7LB6>], from which these numbers are calculated.

Even in the U.S., the similar economic and cultural conflicts roiling Europe have caused internal fragmentation between the two major parties. Despite being confined within a two-party system, these internal factional conflicts have been bad enough; they have made governing substantially more difficult. The tensions are certainly worse, thus far, on the Republican side. During Republican control of the House in recent years, the party's internal conflicts led to the devouring of three of their Speakers of the House: John Boehner, Paul Ryan, and Kevin McCarthy.²²² Boehner acknowledged he was powerless to control these internal factions; he called his Republican caucus ungovernable.²²³ When the Republicans regained control of the House after the 2022 elections, their internal conflicts required fifteen rounds of balloting before the party could choose a Speaker of the House, the first time since before the Civil War that it took that many rounds of balloting to elect a Speaker.²²⁴ The Democratic Party has internal conflicts between progressives and moderates, though these have not hampered its legislative agenda as much as on the Republican side. Yet these conflicts did delay for several months the passage of President Biden's infrastructure bill, as progressives insisted on linking it with the Build Back Better social-welfare bill.²²⁵ That impasse was broken only after the Democrats suffered major electoral blows in state elections, after which progressives relented and let the infrastructure bill pass on its own.²²⁶ But this prolonged internal conflict seriously damaged President Biden's approval ratings, as well as the public view of Congress.²²⁷ Political paralysis spawns public dissatisfaction and anger.

Yet as internally conflictual as the two major parties might be, these conflicts and their consequences took place *within* the two-party system, in which fellow party members have strong incentives to pull together. Imagine now if each party was split, as PR advocates would like, into three parties, generating a six-party Congress. Now envision having to cobble together majority coalitions on specific policies, if no one party has a majority—which would be a likely scenario. In these circumstances each party's leaders and members would have the incentive to try to expand the party's support, through strategic judgments

222. Moira Warburton, Richard Cowan & David Morgan, *Kevin McCarthy Ousted as House Speaker in Historic Vote*, REUTERS (Oct. 4, 2023, 5:01 AM), <https://www.reuters.com/world/us/mccarthy-says-he-thinks-he-will-survive-leadership-challenge-us-house-2023-10-03/> [<https://perma.cc/N2JU-KRUB>].

223. *John Boehner Unloads on Republican "Crazy Caucus" in New Book Excerpt*, AXIOS (Apr. 2, 2021), <https://www.axios.com/2021/04/02/john-boehner-book-ted-cruz-fox-news> [<https://perma.cc/J5AB-2X8X>].

224. *Kevin McCarthy Elected Speaker of the House After 15th Vote: Live Updates*, WALL ST. J. (Feb. 15, 2023, 11:51 AM), <https://www.wsj.com/livecoverage/house-speaker-vote-kevin-mccarthy-gop> [<https://perma.cc/ZV27-LECT>].

225. Jonathan Weisman & Jenny Gross, *McCarthy Speaks for More than Eight Hours, Delaying a House Vote*, N.Y. TIMES (Nov. 21, 2021), <https://www.nytimes.com/2021/11/19/us/politics/kevin-mccarthy-speech.html> [<https://perma.cc/Q5KZ-263B>]; Kelsey Snell, *The House Passes a \$2 Trillion Spending Bill, but Braces for Changes in the Senate*, NPR (Nov. 22, 2021, 7:55 PM), <https://www.npr.org/2021/11/19/1056833510/the-house-passes-a-2-trillion-spending-bill-but-braces-for-changes-in-the-senate> [<https://perma.cc/PME9-QFAN>].

226. Susan Cornwell & Makini Brice, *U.S. Democrats Pass \$1 Trillion Infrastructure Bill, Ending Daylong Standoff*, REUTERS (Nov. 6, 2021, 1:15 AM), <https://www.reuters.com/world/us/bidens-sweeping-infrastructure-social-spending-bills-finally-get-vote-2021-11-05/> [<https://perma.cc/A2JR-5BLD>].

227. Molly Ball & Brian Bennett, *How the Biden Administration Lost Its Way*, TIME (Jan. 20, 2022, 7:00 AM), <https://time.com/6140442/joe-biden-presidency-second-year/> [<https://perma.cc/GUE3-PSP3>].

about whether being part of a majority coalition or refusing on specific issues would enhance the party's electoral prospects. Each party would likely have its own red lines on what compromises it would not make, lest it undermine its appeal to core supporters.

In addition to the primary concern of whether Congress would be even more dysfunctional, at least four other considerations about the way multi-party systems function should be considered. First, as Ian Shapiro and Frances Rosenbluth document in their recent book, *Responsible Parties: Saving Democracy From Itself*,²²⁸ a significant cost of cobbling together political majorities, particularly amidst party proliferation, is that forming a majority frequently requires buying off smaller parties with policy concessions. Smaller parties represent, by definition, smaller segments of the electorate, but buying their support with policy concessions they demand typically weakens aggregate social welfare—by definition, concessions are being made to policies that lack majority support. An example noted above is the Spanish Socialist Party's post-election decision to support an amnesty law for imprisoned Spanish Catalan separatists—after promising not to do so in the run-up to the election—in order to gain the support of the small Catalan Party as part of patching together a majority government; that deal triggered large demonstrations throughout Spain, given its controversial nature and lack of majority support.²²⁹ In addition, voters often perceive these payoffs to smaller parties as a form of vote buying, which fuels a sense that the political system is corrupt. A degree of this can take place in a two-party system, where parties must sometimes logroll between their factions, but the policy price is typically less steep because these factions still retain a shared interest in the party's success. Shapiro and Rosenbluth's book is an extended analysis of why systems with two strong political parties (or two stable, enduring political coalitions in unfragmented PR systems) are more likely to enhance social welfare than fragmented PR systems of five or six parties.²³⁰

Second, another consequence of PR is that it enables voters to remain enclined in ideologically much narrower and smaller parties than in a two-party system. Strong environmentalists can silo themselves in a Green Party; other voters, in a Socialist Party or an Evangelical Party, and the like. Voters can remain more purist in their party affiliations; they have to compromise less in the candidates for whom they vote. In PR systems, the process of negotiating, compromising, and bargaining among competing interests takes place largely among party leaders, after elections (or when party coalitions are formed in advance). This is an elite-driven practice of democracy. In FPTP elections instead, more of

228. FRANCES MCCALL ROSENBLUTH & IAN SHAPIRO, *RESPONSIBLE PARTIES: SAVING DEMOCRACY FROM ITSELF* 30–31 (2018).

229. See Raul Cadenas Susana Vera, *Biggest Protest in Spain Against Catalan Amnesty Law Draws 170,000*, REUTERS (Nov. 18, 2023, 10:56 PM), <https://www.reuters.com/world/europe/biggest-protest-spain-against-catalan-amnesty-law-draws-170000-2023-11-18/> [<https://perma.cc/KYG9-3SZR>]. For a more positive view of the amnesty law, see Omar G. Encarnación, *Spain Is Doing Something Brave*, N.Y. TIMES (Jan. 8, 2024), <https://www.nytimes.com/2024/01/08/opinion/spain-sanchez-amnesty-law.html> [<https://perma.cc/973M-BMY2>].

230. See ROSENBLUTH & SHAPIRO, *supra* note 228, at 4.

that practice takes place among voters themselves; in deciding whether to support Bernie Sanders or Joe Biden in a Democratic primary, for example, a socialist voter has incentives to take into account which would be more effective in the general election because they have the broadest electoral appeal. Because so much of the motivation for PR advocates is to end our tribalistic politics, it is whether enabling voters to remain in ideologically more narrow or more “pure” parties would diminish tribalism or lock it in even more deeply.

Indeed, the election system in the United States already makes it too easy for factional candidates to get elected despite their not having the support of a majority of the electorate.²³¹ Our two-stage electoral process, with primary elections, bears part of the blame. Candidates who would represent a majority of the general electorate (*i.e.*, the median voter) can fail to make it to that election because they cannot survive the traditional party primary. That enables candidates who do win a primary, often without a majority vote in divided fields of even the primary electorate, nonetheless to go on and win the general election. These factional winners often reflect the ideological poles of the parties. There are a variety of institutional reforms that would enable greater success for candidates the majority prefers and help moderate the extremism in our political culture. As I have discussed elsewhere, these include replacing traditional party primaries with the type of Top 4 primary structure Alaska adopted recently; creating many more competitive election districts; public financing of elections; and building back in some role for elected party figures from throughout the country in choosing the parties’ presidential nominees.²³² A system of MMDs and PR would do exactly the opposite: it would enable factional candidates with as little as 17% support in the MMD to get elected. This system would inevitably make it easier for more ideologically extreme candidates to be elected.

Third, multi-party democracy in the U.S. presidential system raises additional issues not present in a multi-party parliamentary system. For many decades, the historical record showed that multi-party systems were dangerous in presidential, as opposed to parliamentary, democracies.²³³ In a well-known article in the 1990s, Scott Mainwaring called multi-party presidential systems the “difficult combination.”²³⁴ Few examples existed, he wrote, of stable multi-party presidential democracies.²³⁵ Juan Linz, an expert on Latin American democracies, had first concluded that multi-party legislatures in presidential systems played a role in the breakdown of democracy.²³⁶

When Mainwaring wrote in the 1990s, he concluded that only one PR-presidential country, Chile (1933–1973), had managed to be a stable

231. See Richard H. Pildes, 2024 Dunwoody Lecture, *Combatting Extremism*, U. FLA. L. REV. (forthcoming 2024).

232. Richard H. Pildes, *Political Reforms to Combat Extremism*, in *OUR NATION AT RISK: ELECTION INTEGRITY AS A NATIONAL SECURITY ISSUE* (Julian E. Zelizer & Karen J. Greenberg eds., forthcoming 2024).

233. Scott Mainwaring, *Presidentialism, Multipartyism, and Democracy: The Difficult Combination*, 26 *COMPAR. POL. STUD.* 198, 223 (1993).

234. *Id.* at 198.

235. *Id.* at 199.

236. *Id.*

democracy.²³⁷ Part of the reason for the failure of multi-party presidentialism that he documented is that the President's party rarely has an outright majority in a multi-party system.²³⁸ That increases the frequency of executive-legislative conflict and deadlocks. This can happen in the U.S. during divided government, of course, but it happens most of the time in multi-party presidential systems, given the difficulties of one party winning an outright majority. Linz argued that this dynamic of regular conflict between Presidents and legislatures often led publics to demand that Presidents take control over a dysfunctional system, which led to authoritarian takeovers.²³⁹ Thus, these scholars concluded, if a country is going to have an independent presidency, it is better to have only two parties.²⁴⁰ The coalitional politics required in multi-party legislatures, they concluded, is less functional—and more threatening to democracy—in presidential systems compared to parliamentary ones.

More recently, Mainwaring, in work with Drutman, has concluded the situation is not quite as dire for multi-party presidential democracies.²⁴¹ Since 1990, they argue, multi-party presidential systems have shown greater capacity to remain democratic.²⁴² Over the last ten years, twenty of the twenty-four countries with multi-party presidentialism have remained stable democracies.²⁴³ They use what they call a “thin” metric that captures a minimal democracy (more precisely, the V-Dem electoral democracy score measures factors such as the integrity of elections, the competitiveness of elections, the nature of voting laws, and similar matters).²⁴⁴ This suggests the risk of PR-presidential systems lapsing into non-democratic regimes is less than previously thought.

Stability over the last ten years might not be a long enough period upon which we can rest comfortably in concluding that the older view, on the risks of multi-party presidentialism, has been put to rest.²⁴⁵ Nor is maintaining this thin level of democracy necessarily sufficient. As a test of this issue over a longer period of time, they also conclude that four countries with multi-party presidentialism—Costa Rica, Cyprus, Chile, and Uruguay—have had high electoral-democracy scores, comparable to that of the U.S., for extended periods of time.²⁴⁶ But Uruguay was a two-party system for many decades; since 2000, it has been a three-party system.²⁴⁷ It does not fit the model of the five- or six-party House that PR proponents advocate for the U.S. Chile is not a good

237. *Id.*

238. *Id.* at 200.

239. *Id.* at 217.

240. *Id.* at 219.

241. Scott Mainwaring & Lee Drutman, *The Case for Multiparty Presidentialism in the US*, PROTECT DEMOCRACY & NEW AM. 4 (2023), <https://protectdemocracy.org/wp-content/uploads/2023/12/The-Case-for-Multiparty-Presidentialism.pdf> [<https://perma.cc/7UC6-J4B8>].

242. *Id.*

243. *Id.* at 15.

244. *Id.*

245. *Id.*

246. *Id.* at 15–16.

247. Jeffrey Cason, *Electoral Reform, Institutional Change, and Party Adaptation in Uruguay*, 44 LAT. AM. POL. & SOC'Y 89, 89 (2002).

example, because until 2017, its Pinochet-designed system allowed two major coalitions to govern, without admitting smaller parties; starting with the 2017 elections, that system was changed to a more PR-style system with districts electing three to eight representatives in an open-list PR system, much as PR advocates do seek here.²⁴⁸ And since then, the country has been wracked by a “fractured political party system” that is “unable to channel demands” into effective action and that is “perceived as out of touch with peoples’ desire for change.”²⁴⁹ As difficult as politics currently is in the U.S., Chile hardly offers an attractive alternative.

Costa Rica is lovely to visit, and I know nothing about government and party structures in Cyprus. But if those are the only two examples of stable long-term multi-party presidential systems with high levels of democracy, one might still be concerned about how much this more recent data puts to rest the earlier scholarly view about the dangers of multi-party legislatures in presidential democracies.

Moreover, other scholars conclude that even if multi-party presidential systems do not lapse into authoritarianism, they pose significant costs to the quality of government. As one study puts it: “the dynamics of multiparty presidentialism foster, and indeed depend upon, a political arena rife with rent-seeking and corrupt behavior.”²⁵⁰ Presidents have to organize coalitions in fragmented legislatures. The legislature becomes a marketplace in which parties and legislators look to extract resources from the President to bestow upon their constituents. This also makes the legislature more dependent on the executive, which undermines checks and balances. When no one party controls a majority of the legislature, it is difficult for parties to enact any programmatic agenda. Thus, even if there is less concern about whether multi-party presidential democracies will survive, there remain substantial questions about their ability to meet the urgent task of democracies today, which is delivering effective government.

The fourth consideration is how PR proponents purport to solve the “here to there” problem. Most PR proponents have said little about what a realistic path

248. Juan Pablo Luna, *Chile’s Fractured Democratic Consensus*, CARNEGIE ENDOWMENT FOR INT’L. PEACE (Feb. 17, 2021), <https://carnegieendowment.org/2021/02/17/chile-s-fractured-democratic-consensus-pub-83784> [<https://perma.cc/QTS3-AM8T>]; see also Javier Sajuria, *Chile Just Went to the Polls—and Transformed Its Legislature*, WASH. POST (Nov. 21, 2017, 7:00 AM), <https://www.washingtonpost.com/news/monkey-cage/wp/2017/11/21/chile-just-went-to-the-polls-and-transformed-its-legislature/> [<https://perma.cc/2XEU-ANDU>] (describing changes to Chile’s electoral system in 2017).

249. *Id.*

250. See Eduardo Mello and Matias Spektor, *Brazil: The Costs of Multiparty Presidentialism*, 20 J. DEMOCRACY 113, 115 (2018). In *Parliamentary America: The Least Radical Means of Radically Repairing Our Broken Democracy*, Maxwell Stearns agrees with me that the proposal for MMDs for the House (1) is unlikely to be enacted, given the incentives of incumbent legislators and (2) would not produce the multi-party House to which its proponents aspire, given the continuing dominance of the two-party structure in electing the independent President. Stearns addresses this problem by proposing constitutional amendments that would end the independently elected President and turn the U.S. into a parliamentary democracy. I consider that highly unrealistic, and Stearns also fails to address the governance problems that have plagued the multi-party democracies of Western Europe over the last decade. MAXWELL L. STEARNS, *PARLIAMENTARY AMERICA: THE LEAST RADICAL MEANS OF RADICALLY REPAIRING OUR BROKEN DEMOCRACY* 18–19 (2024).

might be to congressional legislation that would permit or mandate MMDs for the House. “Good government” proposals, if that’s what this is, rarely get adopted without some political coalition that sees it as in its interest to adopt that proposal (much political reform in the states takes place through direct democracy procedures, when states provide that option). Perhaps it is unfair at this stage to want such an answer. But because proponents insist this is a “realistic” reform proposal, some analysis of the political circumstances under which it is plausible might be appropriate. Is it likely to happen during a period of unified government? If so, would it depend on which party had control? But why would a party that commanded the House, Senate, and White House have any incentive to give up its power through structural changes that would encourage fragmenting itself into smaller parties? Should we imagine the reform to be more likely during a period of divided government, and if so, why? If it would require a bipartisan coalition for this to be adopted, as during divided government, wouldn’t that fact itself signal that we were not suffering from the tribalistic, gridlocked political dynamics for which PR is supposed to be a solution? Put more simply, is the only circumstance in which this might be adopted one in which the justification for it no longer exists? Studies document that in Latin America, for example, countries shifted from majoritarian electoral systems to proportional ones when the dominant party faced “absolute defeat,” and PR became a means to attempt to retain partial power.²⁵¹

The commentator who has addressed this problem of political realism most directly, Jack Santucci, suggests, with considerable skepticism, that one path would require numerous factors aligning: Democrats, who are disadvantaged geographically by SMDs, would have to recognize that fact and be willing to accept new parties coming onto the scene. They would also have to accept Republicans likely picking up additional seats in certain states, such as Massachusetts and Maryland. In addition, enough Republicans would have to be willing to break with their party’s presumed opposition and cooperate with Democrats to push through the legislation.²⁵² But as Santucci also points out, studies show politicians are highly risk-averse about electoral reforms even if their party might benefit, unless their party has been out of power for a long time. But in the American system, out of power Democrats retain veto power over Republican legislation, for example, through the Senate filibuster, which does “not bode well” for Democrats perceiving any strong motivation for this reform.²⁵³

If states want to experiment with MMDs and open-list PR for their own state legislatures (as long as they can do so while complying with the Voting Rights Act), I am less concerned. If such experiments turn out badly, the cost at the state level is less than at the national level. Reversing such experiments, if they turn out badly, is also much easier at the state level because a substantial

251. Laura Wills-Otero, *Electoral Systems in Latin America: Explaining the Adoption of Proportional Representation Systems in the Twentieth Century*, 51 *LATIN AM. POL. & SOC’Y* 33, 33 (2009).

252. JACK SANTUCCI, *MORE PARTIES OR NO PARTIES: THE POLITICS OF ELECTORAL REFORM IN AMERICA* 169–72 (2022).

253. *Id.* at 172.

majority of state legislatures do not have a filibuster rule. In those that do, breaking a filibuster is also easier than in Congress. If states demonstrate they can govern effectively with a six-party system, that would affect national consideration.

IV. CONCLUSION

The inability to deliver effective government, both in terms of legislative policies and the more concrete provision of public goods, is perhaps the major challenge facing democracies today throughout the West. Dissatisfaction with democratic governments is pervasive, whether in the FPTP democracies or the PR ones.²⁵⁴ Across these countries, the last decade or so has seen a hollowing out of the center, regardless of the electoral system employed. Citizens perceive governments as failing to deliver effectively on the major economic and cultural issues they view as most urgent.²⁵⁵

The view that our FPTP elections are a major cause of the affective polarization and toxic political culture that has characterized the United States over recent years is implausible. Other FPTP systems do not exhibit or produce similar characteristics. The United States is deeply divided along many lines, and no change to the electoral structure is going to be able to dissolve those differences, no matter how much we might wish it so. PR does have certain beneficial aspects, though implementing it for the United States would require a cascade of other, substantial changes than might at first be recognized. But most importantly, in my view, Europe no longer provides a model of well-functioning PR democracies. The political turbulence of the last decade or so has caused many of these countries to change from two-and-a-half-party democracies to five or six-party ones. In doing so, these fragmented, multi-party PR governments have become even less able to satisfy their citizens' demands.

Restoring the capacity to deliver effective government is a central democratic challenge of our era. PR for the U.S. House would not make that easier, but more difficult.

254. See Mainwaring & Drutman, *supra* note 241, at 4.

255. Pildes, *Political Fragmentation in the Democracies of the West*, *supra* note 131, at 4.

