

American Elections, Political Representation, and the Will of the People

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ABSTRACT

The idea that a government's legitimacy depends upon the consent of those governed is a central feature of most democracies. In a representative democracy, the people exercise power indirectly, through voting in elections. Consequently, elections may be regarded as the central institution of a representative democracy. In theory, elections strive to capture the will of the people and translate it into proportional political representation. Yet in practice, they often fail to do so. This paper will examine the main flaws with elections in the United States. First it will discuss issues related to disenfranchisement, which result in large segments of the population being excluded from vote and, thereby, from the democratic process. Then it will examine issues related to electoral systems themselves, such as gerrymandering and design flaws in the electoral college and first-past-the-post elections, which prevent the votes that get made from being translated into proportional influence in the government. Throughout the discussion, this paper will also identify and evaluate potential paths for reform that could resolve or mitigate these problems, improving the health of American democracy.

Introduction

The United States Constitution begins with the assertion that it is ordained and established by "We, the People of the United States."¹ It's a significant detail, for it suggests that the government's power ultimately stems not from lawmakers but from the public. The idea that a government's legitimacy depends upon the consent of those governed is a central feature of most democracies. In fact, the term democracy itself is derived from the words *dēmos* and *kratos*, Greek for "people rule."² In practice, most democracies let the people rule not directly, but indirectly, through representatives whom they have elected to make important policy decisions on their behalf. But can those representatives be counted on to make decisions that actually represent the will of their constituents?

The answer to that question depends largely on the systems and practices used to choose those representatives. That's because the doctrine of democratic representation maintains that "each citizen is the best judge of his own interests" and that no elite, "however enlightened, is capable of 'representing' the view of a people unless chosen by them under appropriate circumstances."³ This is why former United States ambassador to the United Nations Jeane Kirkpatrick calls elections the "central institution of democracy."⁴ When designed well, elections can "produce representatives chosen by and accountable to the people whom they are to represent," ensuring that laws are made "not merely in the name of the community but with their consent."⁵ Indeed, all of the subjects I interviewed in the process

¹ "The Constitution of the United States: A Transcription."

² "Democracy"

³ Kirkpatrick

⁴ Kirkpatrick

⁵ Kirkpatrick

of researching and writing this paper, despite their varied backgrounds and political views, agreed that an ideal electoral system would accomplish this objective. But in practice, elections often fail to do so. In the United States, “deep flaws” in how the people choose their leaders limit democratic representation and even constitute what some consider an “existential threat” to the nation’s survival.⁶ This paper will examine the extent to which American elections reflect the will of the people, why they sometimes don’t, and how they can be improved.

We, the People?

Before we can examine why electoral systems may fail to capture the will of the people, we must discuss who, exactly, is included in “the people.” When the United States was founded, suffrage in most states only extended to white male property owners.⁷ Yet throughout the early 1800s, suffrage was gradually expanded to include all white men. The right to vote was extended to all races with the passage of the 15th Amendment in 1870, though many states found loopholes through which to continue to disenfranchise black voters.⁸ And in 1920, women earned the right to vote with the passage of the 19th Amendment. However, there remain a number of groups excluded from suffrage.

Minors

One must reach legal adulthood to vote in the US, which means that the roughly 73.6 million American citizens under eighteen are disenfranchised.⁹ The rationale for this exclusion is somewhat intuitive—in order to make informed decisions, one must attain an age of maturity. However, while no one is advocating for baby suffrage, there have been increasing calls to lower the voting age to sixteen. One of the main arguments for a lower age of enfranchisement is that many sixteen-year-olds work and pay taxes.¹⁰ As such, denying them suffrage represents a form of taxation without representation—an injustice that America’s founders sought to address. It is also often argued that sixteen-year-olds deserve a voice because they are more likely to experience the long-term impact of policy decisions than their older counterparts. For instance, an issue like climate change or national debt may not matter much to Senators, whose average age is over 64, but they will certainly impact younger voters. A handful of cities have already adopted sixteen as the age of enfranchisement in local elections, and there are currently campaigns to lower the voting age in several states.¹¹ Measures to lower the federal voting age through an amendment to the Constitution have also been introduced in Congress, though to become law it would need a two-thirds majority in both chambers, as well as ratification by three-fourths of state legislatures, a prospect that most analysts deem unlikely.¹²

Nevertheless, critics have expressed concerns that sixteen-year-olds are not mature enough to be responsible voters.¹³ Colleen Fenn, Town Clerk of Simsbury, CT, and a parent of two, recalls that even at eighteen, her children lacked the experience and knowledge to “make an informed decision.”¹⁴ Trish Monroe, another Town Clerk of Simsbury, CT, who is in charge of absentee ballot management, agreed, noting that she would “lean toward a higher age”

⁶ Pilkington

⁷ “Voting Rights: A Short History”

⁸ History.com Editors

⁹ “Number of Children in the U.S.”

¹⁰ Grabenstein

¹¹ “Voting Age Status Report.”

¹² “Meng Reintroduces Legislation.”

¹³ Tracinski, Robert

¹⁴ Author, and Colleen Fenn

if given the choice.¹⁵ Studies conducted in countries where lower ages of enfranchisement have been adopted demonstrate that the “quality” of sixteen-year-old voters is “similar to that of older voters.”¹⁶ And certainly some sixteen-year-olds have demonstrated maturity and political passion by advocating for issues that concern them, like gun control and climate protection.¹⁷ Still, lowering the voting age remains unpopular. One poll found that 84% of Americans oppose letting sixteen year-olds vote. And because eighteen is considered the age of adulthood for most legal purposes, the disenfranchisement of younger voters may be considered reasonable.

Non-Citizens

Currently, around 25 million non-citizens live in the United States, of whom 12.3 are legally classified as long-term permanent residents, yet none are eligible to vote in federal elections.¹⁸ Though it may seem intuitive that people who are not citizens of the United States should not be permitted to have a voice in the government of the United States, this has not always been the case. In fact, non-citizens could vote, provided they met other voting requirements, from the founding of the country until 1926, when “resurgent nativism, wartime xenophobia, and corruption concerns,” led to the adoption of citizenship requirements.¹⁹ Recently, however, there has been a fringe movement to abolish citizenship requirements. One of the primary arguments for allowing non-citizens to vote is that, in a representative democracy, “everyone who is part of the fabric of the community, who is involved, who pays taxes, should have a say in it.” In fact, a handful of towns and cities have begun to allow residents to vote in local elections.²⁰ However, it seems unlikely that such measures will catch on in most areas. According to a recent poll 91% of Republicans and 54% of Democrats oppose giving non-citizens the vote.²¹ Those in opposition have argued that enfranchising non-citizens would “dilut[e] the votes of citizens,” and some have even likened it to legally-sanctioned “foreign interference in our elections.” For those who believe that a government’s first obligation is to its own citizens, such arguments are hard to ignore.

Residents of U.S. Territories

Residents of U.S. territories, which include the over 3.5 million inhabitants of Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands, are not permitted to vote in federal elections, despite being considered full citizens. The reason for their disenfranchisement goes back to the 1890s, when the United States began a period of imperial expansion through the acquisition of overseas territories. Statehood would have been the next logical step for these territories, but in a series of cases known as the Insular Cases, the Supreme Court intervened by creating “an unprecedented new category of ‘unincorporated’ territories, which were not on a path to statehood and whose residents could be denied even basic constitutional rights.”²² The motivation for this distinction can be attributed to racial and cultural prejudices of the time, which deemed the mostly non-white residents of these places as “half-civilized,” “savage,” and “ignorant and lawless” people who lacked the intellectual capacity to participate in the democratic process.²³ As such, it is hardly surprising that many view the disenfranchisement of territories as both

¹⁵ Author, and Trish Monroe

¹⁶ Wagner, Markus, et al.

¹⁷ Grabenstein

¹⁸ Budiman, Abby

¹⁹ Lerner, Kira

²⁰ Vasilogambros, Matt

²¹ “Poll: Americans Overwhelmingly Reject Voting Rights”

²² Plaskett, Stacey

²³ Plaskett, Stacey

racist and antithetical to the principles upon which this nation was founded.²⁴ However, while many racist Supreme Court rulings from that era, such as the infamous *Plessy v. Ferguson*, have been overturned, the Insular Cases still stand. It is possible that they will be revisited, as Justice Stephen Breyer has called them a “dark cloud,” though with the conservative tilt of the current Supreme Court, this seems unlikely.²⁵ Most Republicans oppose any effort to enfranchise the territories, as citizens in the territories tend to be left-leaning.²⁶ Another option may be for territories to pursue statehood. In recent years, there has been growing interest in the possibility of statehood for Puerto Rico, by far the most populous territory.²⁷ The majority of Puerto Ricans voted in support of statehood in a 2020 referendum.²⁸ And in December 2022, a bill that could pave the way for Puerto Rican statehood was approved by the House of Representatives with some bi-partisan support.²⁹ Still, analysts deem it unlikely that the bill would get the 60 votes needed to overcome a filibuster in the Senate.³⁰ Ultimately, some of the concerns about the political and economic ramifications of admitting Puerto Rico as a state may be valid. Yet on ethical grounds, the argument for giving Puerto Rico and other territories the full rights of states is difficult to oppose. Columbia law professor Christina Ponsa-Kraut put it well when she opined, “you don’t annex a place, make it your colony for nearly a century and a quarter, and then reject its people’s vote for statehood.”³¹

Convicts & Ex-Convicts

With roughly 1.6 million people behind bars, the United States has the highest incarceration rate in the developed world.³² Yet almost none of these inmates are permitted to vote in elections. In fact, only two states—Maine and Vermont—allow prisoners to vote.³³ This may be justifiable. A 2019 poll found that nearly 7 in 10 Americans oppose the idea of allowing prisoners to vote in national elections.³⁴ As Democratic Registrar of Voters for the town of Simsbury, CT, Karen Cortes argues, “if you’ve committed a crime. . . there needs to be a period of time where you do not participate in society.”³⁵ This is similar to the concept of “civil death” in old-English common law, which held that felons were “dead in the law” because their crimes had rendered their blood corrupt.³⁶ In other words, disenfranchisement may be viewed as part of the punishment that incarceration entails. Yet many states also impose restrictions on the voting rights of convicted felons even after they have served their full sentences, including parole and probation. In fact, in eleven states, anyone convicted of even a minor felony becomes permanently disenfranchised, while in a number of other states, those who have completed their sentences have to meet specific requirements to regain suffrage, which can be difficult to do in practice.³⁷ One of the most egregious instances of this is in Florida, where an estimated 1.1 million people, roughly 5% of the population, are disenfranchised due to prior convictions. This is in spite of a ballot measure that Florida voters approved in 2018 to restore suffrage to individuals who had completed

²⁴ Kohli, Anisha

²⁵ Plaskett, Stacey

²⁶ Kohli, Anisha

²⁷ Kohli, Anisha

²⁸ Kohli, Anisha

²⁹ Cochrane, Emily, and Patricia Mazzei

³⁰ Cochrane, Emily, and Patricia Mazzei

³¹ Kohli, Anisha

³² Scommegna, Paola

³³ Lopez, Ashley

³⁴ Sheffield, Matthew

³⁵ Author, and Karen Cortes

³⁶ Robinson, Jeffery

³⁷ Lopez, Ashley

their prison sentences, with the exception of murderers and sex offenders.³⁸ Republican lawmakers responded by quickly passing a new bill that made the restoration of voting rights contingent on the payment of fees and fines that often represent a significant barrier for ex-cons.³⁹ And in 2022, Governor Ron DeSantis announced that the state would charge 20 ex-cons with voter fraud for illegally participating in the 2020 election, even though those charged believed that they were eligible to vote because they had completed their sentences and had even been issued voter registration cards by the state.⁴⁰ Some believe that this is an intimidation tactic aimed to dissuade ex-cons who are legally permitted to vote from exercising their right by sparking fear and confusion.⁴¹

The injustice of barriers to voting for ex-cons is further compounded by racial disparities in the incarceration system. Because black and hispanic Americans are far more likely to end up behind bars, they are also far more likely to suffer from laws that make it difficult or impossible for ex-cons to vote. One report found that more than 1 in 20 black Americans of voting age are disenfranchised due to current or past incarceration, more than 3 times higher than the rate for other races.⁴² In Florida, that figure is one in five.⁴³ Senator Bernie Sanders has observed that “when we look at the history of why our country has banned incarcerated people from voting, we must understand that the efforts to rob citizens of their voting rights was a legacy of slavery and continuing racist attitudes post-Jim Crow.” Though disenfranchisement of felons may be a justified response to the crimes they have committed, Sanders is right to note the historical link between the practice and racism.⁴⁴ Many laws prohibiting incarcerated individuals from voting were adopted in the immediate aftermath of the 15th Amendment, and were justified in explicitly racist terms, such as the perceived need to avoid the “menace of Negro domination.”⁴⁵

In recent years, there has been a growing push for reform. Thanks to these efforts, the number of Americans disenfranchised due to felony convictions has fallen 24% since 2016, although this is partly due to a decline in incarceration rates.⁴⁶ Nevertheless, given the leeway states are provided under the Constitution, there is little hope for reform on a federal level. Meanwhile, since this issue disproportionately affects black Americans, and black Americans overwhelmingly lean left, it is unlikely that any Republican-dominated state legislatures or courts would be willing to expand voting rights for ex-cons.

Non-Voters & Victims of Friction

In the 2020 election, voter turnout reached its highest level in decades. Yet still, over a third of eligible voters did not vote.⁴⁷ In many recent presidential elections, voter turnout was below 60%. And in congressional elections, turnout tends to be even lower, with less than half of eligible voters casting their ballots in most years.⁴⁸ Low voter turnout is not necessarily a sign of disenfranchisement. Though the United States is built upon the idea that “the people” have a right to select their representatives, there is no law that requires them to vote. Individuals who have no opinion are free to abstain from the democratic process. Nevertheless, if potential voters are abstaining not by choice but because of legal or logistical barriers that make it difficult or impossible for them to exercise their right to vote, the ability of an electoral system to capture the will of the people would be greatly reduced. And there are indications that some of

³⁸ Lopez, Ashley

³⁹ Lopez, Ashley

⁴⁰ Lopez, Ashley

⁴¹ Dixon, Matt

⁴² Lopez, Ashley

⁴³ Robinson, Jeffery

⁴⁴ Sheffield, Matthew

⁴⁵ Robinson, Jeffery

⁴⁶ Uggen, Christopher et al

⁴⁷ DeSilver, Drew

⁴⁸ US Census Bureau

America's low voter turnout may be attributed to such barriers. A study of voters in the 2020 election by USC researcher Asaf Mazar found that issues commonly referred to as "friction," such as conflicting work schedules, being far away from a polling place, and limited poll opening hours, make a significant difference in whether an individual turns out to vote, and that their importance is frequently underestimated.⁴⁹ Unlike most democracies, which hold elections on weekends or on federal holidays, the United States holds them on normal weekdays, which can be "quite inconvenient for many Americans, particularly those who can't take time off work to cast their ballot."⁵⁰

Some states have attempted to mitigate the inconvenience by expanding opportunities to vote. For instance, Monroe notes that Connecticut has recently adopted measures making it simple for voters to cast their ballots early, either in person or remotely.⁵¹ Yet other states have taken steps to make voting more burdensome. Wisconsin recently ruled that voters must turn in their own ballots, rendering it difficult if not downright impossible for those with disabilities to vote.⁵² Meanwhile, Georgia has reduced the number of polling centers, especially in black majority neighborhoods, even though the number of registered voters has increased. This means that those who wish to vote frequently are forced to wait in line for several hours in order to cast their ballots, a luxury that many cannot afford.⁵³ The state also passed a law making it illegal to distribute food or water to those waiting, exacerbating the discomfort of the voting experience.⁵⁴ Another way states may actively discourage voting is through laws that require proof of citizenship documents such as a passport or birth certificate in order to register to vote.⁵⁵ Though such requirements may sound reasonable, the truth is that few people carry the required documents on hand, which means they are often blocked from voting.⁵⁶ For example, a proof of citizenship law was estimated to have prevented the registrations of 30,000 legal voters in Kansas.⁵⁷ And even states that don't require "proof of citizenship" to register often require voters to present official identification at the polls.⁵⁸ Seven states even require voters to present "one of a limited set of forms of government-issued photo ID."⁵⁹ This is a major barrier for the over 20 million eligible voters who lack "qualifying government-issued photo identification," and who are disproportionately people of color.⁶⁰

Electoral Systems

Having explored the extent to which "the people" are able to participate in elections, the next logical question is how well electoral systems capture the will of those who actually do vote. The United States employs a wide range of electoral systems, depending on the position in question and the state or district in which the election is being held. Indeed, states are granted "wide latitude in how they administer elections."⁶¹ As such, the answer to that question naturally varies from election to election. Nevertheless, the analysis that follows seeks to assess some of the most significant reasons why elections may fail to capture the will of voters, as well as to identify potential paths for reform.

⁴⁹ Medzerian, David

⁵⁰ Borresen, Kelsey

⁵¹ Author, and Trish Monroe

⁵² Herman

⁵³ Fowler, Stephen

⁵⁴ Fowler, Stephen

⁵⁵ "Block the Vote"

⁵⁶ "Block the Vote"

⁵⁷ "Block the Vote"

⁵⁸ "Block the Vote"

⁵⁹ "Block the Vote"

⁶⁰ "Block the Vote"

⁶¹ "Elections and Voting"

The Electoral College

The Electoral College is the process through which the President of the United States is selected.⁶² In this system, rather than voting directly for a candidate, voters instead vote for electors who pledge to vote for that candidate. Yet there is no requirement on a federal level that electors must actually vote for the candidate for whom they have pledged to vote, and only fifteen states impose sanctions on electors who fail to do so.⁶³ This means that, theoretically, electors could deny the will of the people entirely. It is often asserted that this convoluted system emerged because the framers of the Constitution feared that the people would be too easily “swayed by demagogues,” leading them to elect bad leaders.⁶⁴ Giving the ultimate power to the electors provided the educated elite a way to overrule such decisions and guard against the dangers of “mob rule.”⁶⁵ Another important feature of the Electoral College is that electors are not selected nationally but by individual states. Each state gets a number of electors equivalent to its number of Senators and Representatives in Congress. And because all states have two Senators, regardless of their population, this means that states with smaller populations get proportionally more influence in elections. For instance, Wyoming, with a population of just 580,000⁶⁶, gets 3 electoral votes, while California, with a population of 39,030,000, gets 55 electoral votes.⁶⁷ This means that, per-person, residents of Wyoming get more than 3 times as many electoral votes as their counterparts in California, a situation Cortes describes as “very problematic.”⁶⁸

However, in practice, it is unlikely that residents of either Wyoming or California would have much voice in the outcome of the election. That’s because, like almost all states, both use a winner-takes-all system in which all of a state’s electoral votes are given to the candidate with the most votes, regardless of how thin or wide that margin of victory may be.⁶⁹ This has crucial implications for which votes candidates actually care about and how they allocate their resources. It would be almost impossible for a Democrat to lose in California, which Joe Biden carried in 2020 with 63.5% of the vote compared to the 34.3% received by Donald Trump. Conversely, it would be almost impossible for a Democrat to win in Wyoming, which Trump carried with 69.9% of the vote in comparison to Biden’s 26.6%.⁷⁰ As such, even if a candidate is able to campaign hard in these states and boost his or her approval by a margin of 5 or 10%, it would have no impact on the number of electoral votes received. One implication of this, Fenn suggests, is that those states will simply be “forgotten,” as candidates are incentivized to devote all of their time and resources to winning over voters in the handful of states where races are competitive.⁷¹ These states are known as swing states, because they swing back and forth in terms of which party they favor.⁷² Meanwhile, voters in non-swing states often feel disenfranchised, and may not even bother to vote at all, recognizing that their votes have absolutely no impact on the outcome.⁷³

Many Americans find the Electoral College problematic. In fact, according to a 2013 poll, nearly two-thirds of Americans said they would vote to replace it with a simple popular vote system.⁷⁴ Yet because the Electoral College is enshrined in the Constitution, abolishing it would be difficult. One solution would be to pass a new Constitutional

⁶² “What Is the Electoral College?”

⁶³ “What Is the Law on Faithless Electors?”

⁶⁴ Pfiffner, James, and Jason Hartke

⁶⁵ Pfiffner, James, and Jason Hartke

⁶⁶ Duffin, Erin

⁶⁷ Duffin, Erin

⁶⁸ Author, and Karen Cortes

⁶⁹ Prokop, Andrew 2016

⁷⁰ “Wyoming 2020 Election Result”

⁷¹ Author, and Colleen Fenn

⁷² Hoban, Brennan

⁷³ “Why We Need to Fix the Electoral College”

⁷⁴ Saad, Lydia

amendment, but that would require a two-thirds majority in both houses of Congress, as well as the approval of 38 states.⁷⁵ Another solution would involve calling for a constitutional convention, but this has never been done before and would need to be called by 34 states.⁷⁶ Both solutions would require the support of small states, which has been deemed “vanishingly unlikely” as abolishing the electoral college would reduce their outside influence on the presidential outcome.⁷⁷ Another possible solution would be for states to split their electoral votes. Instead of giving all electoral votes to the candidate with the most votes, regardless of how slim that majority or plurality may be, states could allocate their votes in fractions proportionate to the number of votes received. Two states—Maine and Nebraska—already employ such a system.⁷⁸ However, it is likely that most states would be reluctant to adopt it, at least unilaterally, as doing so would produce more electoral votes for the less popular candidate, tilting the election in that candidate's favor.

A more promising solution might lie in the National Popular Vote Interstate Compact (NPVIC). States that adopt the NPVIC pledge to “commit all their presidential electors to the winner of the national popular vote.”⁷⁹ If NPVIC-member states hold more than the 270 electoral votes needed to win in the electoral college, this means that the candidate with the most popular votes would automatically win. For that reason, the compact does not even take effect until the 270-vote threshold has been reached. So far, the NPVIC has been adopted by fifteen states and the District of Columbia, which cumulatively control 196 electoral votes.⁸⁰ However, most of those states are left-leaning.⁸¹ It may be more difficult to persuade swing states and right-leaning states to adopt the compact, as it would diminish the outsized influence of the former and the systemic advantage of the latter—Democratic candidates have won the popular vote in seven of the last eight presidential elections, yet due to the quirks of the electoral college, they have only won the presidency in five. Nevertheless, proposals to adopt the NPVIC have made headway recently in swing states like Virginia⁸² and Michigan,⁸³ and given the low popular support for the electoral college, it is not inconceivable that a coalition of states with more than 270 electoral votes could be amassed.

Still, hurdles remain. Some legal scholars have pointed out that the NPVIC may be in violation of the Compact Clause, which stipulates that “No State shall, without the Consent of Congress...enter into any Agreement or Compact with another State.”⁸⁴ Another logistical challenge is that, in order for states to assign their electoral votes to the winner of the national popular vote, they must first determine which candidate won the national popular vote. This may sound straightforward, but in a close election, it might not be, especially if Republican state legislators who wish to retain their advantage undermine efforts to determine it. This nearly happened in North Dakota, where the state senate passed a bill pledging to “withhold its popular vote totals for president until after the Electoral College has voted in December.”⁸⁵ Due to backlash, the state House ended up amending that stipulation out of the bill, but if the NPVIC gains more traction, it is possible that other states will try to subvert it through similar measures.⁸⁶ The NPVIC may still be the most feasible path to reform, but in the words of Cortes, “I don’t see it actually happening anytime soon.”⁸⁷

⁷⁵ Prokop, Andrew 2016

⁷⁶ Prokop, Andrew 2016

⁷⁷ Prokop, Andrew 2016

⁷⁸ “Which States Split Their Electoral Votes?”

⁷⁹ “NATIONAL POPULAR VOTE INTERSTATE COMPACT.”

⁸⁰ Ramos, Elliott

⁸¹ Ramos, Elliott

⁸² Ramos, Elliott

⁸³ Just, Rachel Louise

⁸⁴ Orbuch, Alexandra

⁸⁵ Craig, Andy

⁸⁶ Craig, Andy

⁸⁷ Author, and Karen Cortes

Gerrymandering

Gerrymandering is a practice through which a party in power reshapes legislative districts to give its candidates an advantage in future elections.⁸⁸ The term comes from an 1812 political cartoon lampooning Massachusetts Governor Elbridge Gerry for redrawing districts in odd shapes, such as that of a salamander, to benefit his party. Gerrymandering is possible because most elections in the United States involve single member districts in which representation is awarded to the candidate with the most votes. Under such a system, whether a candidate wins by a landslide or just a single vote has no impact on the result. Therefore, it makes sense for political parties to distribute votes strategically, through practices known as packing and cracking. Packing is when officials try to pack as many of the opposition's voters into a single district as possible, giving the opposition a large majority in that district.⁸⁹ As a result, many of those votes are essentially wasted, because the opposition did not benefit from those extra votes. Conversely, cracking is when officials try to break up an opposition's majority by diluting the opposition's voters into several districts which they will have no chance of winning, ensuring that those votes are effectively meaningless.⁹⁰

To better understand how gerrymandering works, consider a state in which there are 50 precincts, of which 30 want to elect a Blue Party candidate and 20 want to elect a Red Party candidate, as shown in the left panel of Figure 1. However, now imagine that the state is only able to send five representatives to Congress. This means that those 50 precincts need to be consolidated into five districts. Yet how the state arranges those districts can dramatically influence the results of the election and the distribution of political power. For instance, suppose that the state decides to consolidate the precincts into five geographically compact districts, as shown in the middle panel of Figure 1. This may seem fair and reasonable, but it actually leads to a situation in which all five of the state's representatives will be members of the Blue Party, even though only 60% of the precincts wanted a Blue Party candidate to win. Conversely, if the Red Party controls the maps, it could rearrange the precincts into five oddly-shaped districts that enable it to win the majority of districts, despite only having a minority of the votes, as demonstrated in the right panel of Figure 1.

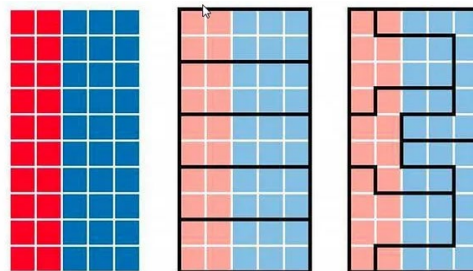


Figure 1: Gerrymandering⁹¹

Though gerrymandering has existed for hundreds of years, it has grown more prevalent recently. Part of that is due to improvements in data collection, which have transformed the practice of gerrymandering “from a guessing game into a more precise formula.”⁹² Yet the rise in gerrymandering can also be attributed to the Supreme Court, which has systematically dismantled protections against it. In 2013, for instance, it struck down a central part of the 1965 Voting Rights Act, which had given the federal government some oversight over state elections.⁹³ And in 2019,

⁸⁸ Wines, Michael 2019

⁸⁹ Avery, Dan

⁹⁰ Avery, Dan

⁹¹ “Gerrymandering: California’s Latest Action Thriller Villain?”

⁹² Avery, Dan

⁹³ Liptak, Adam

it ruled that “partisan redistricting” was a matter “beyond the reach of the federal courts,” effectively preventing victims of gerrymandering from seeking redress through the legal system.⁹⁴

One of the most egregious instances of gerrymandering is in Wisconsin, where districts have been carved out to heavily favor Republicans. In order to secure just half of the seats in the state assembly, Democrats would need to win the popular vote by a margin of 12 points.⁹⁵ In 2018, Republicans maintained nearly a two thirds majority there despite earning 200,000 fewer votes and “losing every statewide race.”⁹⁶ Another state notorious for its gerrymandering is North Carolina. The state is one of the most competitive nationwide, with support divided almost evenly between the two parties. Yet, districts have recently been redrawn that are expected to give Republicans at least 10 of the states 14 seats in the House of Representatives.⁹⁷ Though gerrymandering has been a central part of the Republican playbook for years, however, it is also becoming increasingly common in blue states, which have realized that “refusing to gerrymander would have meant effective unilateral disarmament, ceding the GOP a significant advantage in the battle for control over the House.”⁹⁸ In Illinois, for instance, districts were recently redrawn giving Democrats an edge that could allow them to hold over 80% of the state’s congressional seats with just 60% of the popular vote.⁹⁹

It is almost universally agreed that gerrymandering is a problem. Prominent Democrats and Republicans alike have condemned the practice. On the left, Senator Elizabeth Warren has decried it for creating a “rigged game that suppresses the will of the people,”¹⁰⁰ while Representative Earl Blumenauer has noted that it “protects incumbents, disenfranchises legitimate interests, and allows people to achieve with surgical reappointment what they couldn’t do honestly at the ballot box.”¹⁰¹ On the right, President Ronald Reagan has called it “undemocratic and un-American,” while former Speaker of the House Newt Gingrich has acknowledged that it “leads to bad government.”¹⁰² According to a recent poll, only 5% of Americans have a favorable opinion of the practice.¹⁰³

However, fixing the problem of gerrymandering may be difficult. Some have called for taking the responsibility for drawing districts out of the hands of partisan bodies and giving it to a “neutral third-party actor, such as a judge, special master, or independent tie-breaker, trusted by both political parties, to select a fair map.”¹⁰⁴ One of the most common such proposals is for the creation of independent redistricting commissions. A 2019 survey found that over 60% of Democrats and Republicans alike would support such a change.¹⁰⁵ Yet practical questions remain, like how members of these ostensibly “independent” redistricting commissions would be selected, and whether it would truly be possible to create an unbiased commission. As Harvard Professor of Public Policy Benjamin Schneer notes, “in today’s hyper-partisan environment, there are few such actors considered able to fulfill this role fairly by both sides.”¹⁰⁶ Furthermore, even if electoral districts can be drawn without any attempt to advantage one side, they are likely to result in unequal representation. In fact, it has been noted that it is often “legitimately difficult to draw districts that are compact, don’t split up contiguous regions, and are fair in partisan terms.”¹⁰⁷ That’s because Democrats tend

⁹⁴ Avery, Dan

⁹⁵ Serwer, Adam

⁹⁶ Serwer, Adam

⁹⁷ Wines, Michael 2023

⁹⁸ Prokop, Andrew 2022

⁹⁹ Rakich, Nathaniel, and Tony Chow

¹⁰⁰ “Can We Solve Gerrymandering?”

¹⁰¹ “Americans Are United against Partisan Gerrymandering.”

¹⁰² “Americans Are United against Partisan Gerrymandering.”

¹⁰³ “Americans Are United against Partisan Gerrymandering.”

¹⁰⁴ Schneer, Benjamin

¹⁰⁵ “Bipartisan Poll Shows Strong Support for Redistricting Reform”

¹⁰⁶ Schneer, Benjamin

¹⁰⁷ Cooper, Ryan

to be concentrated in urban areas whereas Republicans tend to be concentrated in rural areas.¹⁰⁸ As a result, the majority of districts will be “naturally lopsided,” with meaningful elections only taking place in border districts where the “density divide” shifts “from blue to red.”¹⁰⁹ As such, many analysts believe that the only real solution to the problem of gerrymandering is to do away with single member districts entirely and to replace them with larger districts from which multiple representatives are chosen. Such a system is often referred to as proportional representation, as it allocates representative power in proportion to the number of votes received, rather than giving all representation to the candidate with the most votes, no matter how wide or slim that plurality may be. The advantages and disadvantages of proportional representation will be discussed at length later in this paper.

First-Past-the-Post & Alternative Voting Systems

Even if the aforementioned problems could be resolved, there would still be limitations to how well our electoral systems capture the will of the people. That’s because the vast majority of elections, whether at local or state level, employ a winner-takes-all system known formally as first-past-the-post (FPTP). Under FPTP, every voter gets to submit a ballot choosing one candidate to occupy the position in question, and the candidate with the most votes wins.¹¹⁰ While this system is undoubtedly straightforward and may appear fair on an intuitive level, flaws emerge upon closer scrutiny.

The main issue with FPTP is that, in order to win, a candidate does not need a majority of votes but simply a plurality. This means that in a race with many candidates, a highly unpopular candidate could win. For instance, imagine a race with nine candidates of roughly equal popularity. If one candidate earns 12% of the vote and the remaining candidates earn 11% of the vote a piece, the candidate with 12% will win, even though 88% of voters did not want that candidate.¹¹¹ Advocates of FPTP may argue that this is still the best outcome because, even if the winner had just a small fraction of the vote, he or she was still the most popular candidate overall. However, this is not necessarily true. To understand why, it helps to imagine a smaller race with three candidates: blue, indigo, and red. In this hypothetical race, the blue and indigo candidates have similar views, while the red candidate has very different views. Because of their similar views, the blue and indigo candidates appeal to the same voters, and will likely split the vote within that demographic group, to the advantage of the red candidate. For instance, suppose that the blue candidate wins 35% of the vote, the indigo candidate wins 25%, and the red candidate wins 40%. Under FPTP, the red candidate would win. However, it is clear that the blue candidate is more popular, because, despite receiving only 35% of the vote, he or she is also supported by those who voted for the indigo candidate. In other words, FPTP has resulted in the victory of a candidate supported by a mere 40% of voters over a candidate supported by 60% of voters.

This risk is not merely theoretical. In fact, it is sometimes called the Nader Effect after Green Party Candidate Ralph Nader, who is widely regarded to have cost Democrat Al Gore the presidency in 2000 by drawing away just a small portion of his voter base. George Bush defeated Al Gore by a margin of a few hundred votes in Florida (if he won at all—the Supreme Court blocked recount efforts despite serious concerns about flaws in the ballot’s design)¹¹² giving him the state’s 29 electoral votes, enough to secure victory in the Electoral College.¹¹³ Yet 90,000 Floridians cast their vote for Ralph Nader, a candidate with similar views to Gore, whom they almost certainly would have picked

¹⁰⁸ Drutman, Lee

¹⁰⁹ Drutman, Lee

¹¹⁰ Franklin, Josh

¹¹¹ Franklin, Josh

¹¹² Elving, Ron

¹¹³ Lawson, Karl

as a second choice.¹¹⁴ In doing so, they paved the way for the victory of Bush, a candidate “100% hostile to everything Nader and his supporters held dear.”¹¹⁵

One question that may arise is why any left-leaning voters voted for Nader, knowing that doing so would only benefit Bush. Indeed, many Floridians who favored Nader probably cast their ballots for Gore. That’s because one of the ways to mitigate the risk of splitting the vote is a practice known as strategic voting. Strategic voting occurs when voters do not cast their ballots for their preferred candidate but rather “vote for their second, third, or even fourth choices to increase the probability of affecting the final electoral result.”¹¹⁶ In a FPTP system, it makes sense to vote for a less-preferred candidate that could realistically win over a first choice candidate that has no chance of victory. However, since not all voters have the foresight to vote strategically, there remains a risk that the candidate with the widest base of support will not win. Furthermore, strategic voting presents problems of its own. First, it masks the true preferences of voters. How can an electoral system be relied upon to capture the will of the people when voters are not even able to indicate their true preferences? Moreover, since strategic voters are unlikely to vote for a candidate with little chance of winning, the practice poses a barrier to third party candidates. As Cortes observes, even though third parties might be able to have some success at the local level, it would be “darn near impossible” for them to gain power at a state or national level.¹¹⁷ Some have even suggested that FPTP will automatically result in a two-party system, a phenomenon known as Duverger’s Law.¹¹⁸ And while a two-party system isn’t inherently bad, it does limit voters’ choices. This can increase the odds of dissatisfaction, such as in 2016, when 63% of registered voters reported being “not too or not at all satisfied” with either candidate.¹¹⁹

Given the flaws inherent in FPTP, it is likely that American elections would better capture the will of the people if alternative methods of voting were adopted. For elections in which one winner must be chosen, such as presidential or gubernatorial elections, a promising option is ranked-choice voting. Under ranked-choice voting systems, rather than simply choosing one candidate, voters have the option to rank multiple candidates, as demonstrated in Figure 2.¹²⁰ If one candidate earns the majority of first-choice votes, that candidate is declared the winner, just like under FPTP. This is demonstrated in Figure 3, in which Bella Bryson has won by earning more than 50% of all first-choice votes.¹²¹ However, if no candidate earns a majority of first-choice votes, the candidate with the fewest votes is eliminated. The votes of those who selected that candidate as their first choice are then reassigned to their second choice candidates. This is demonstrated in Figure 4, in which last-place candidate Aaron Abbott has been eliminated, and his votes have been redistributed to the remaining three candidates.¹²² If still no candidate has passed the 50% threshold, the process of elimination and redistribution is continued. This can be seen in Figure 5, in which Deepika Doshi has been eliminated and her votes have been redistributed to the remaining two candidates.¹²³ At this point, Carlos Cruz has passed the 50% threshold, meaning that he would be declared the winner. It is worth noting that, under FPTP, Bella Bryson would have been declared winner, as she received the most first-choice votes. However, ranked-choice voting makes it clear that she was the last choice for the majority of voters. By reassigning votes for unpopular candidates rather than simply ignoring them, ranked-choice voting has produced a winner that is at least somewhat supported by the majority of voters, rather than one the majority likes least, bypassing the Nader Effect.

¹¹⁴ Lawson, Karl

¹¹⁵ Lawson, Karl

¹¹⁶ Harfst, Philipp, et al.

¹¹⁷ Author, and Karen Cortes

¹¹⁸ Sanders, Eric

¹¹⁹ Fingerhut, Hannah

¹²⁰ Radde, Kaitlyn, and Connie Hanzhang Jin

¹²¹ Radde, Kaitlyn, and Connie Hanzhang Jin

¹²² Radde, Kaitlyn, and Connie Hanzhang Jin

¹²³ Radde, Kaitlyn, and Connie Hanzhang Jin

Borough President Rank up to four choices. Mark no more than one oval in each column.	1st	2nd	3rd	4th
Aaron Abbott	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bella Bryson	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Carlos Cruz	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Deepika Doshi	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Figure 2: Sample Ballot With Ranked-Choice Voting¹²⁴



Figure 3: Candidate Wins With First-Choice Majority¹²⁵

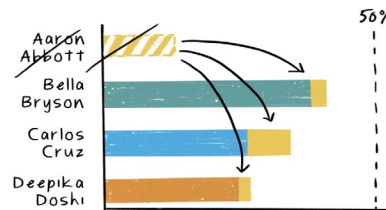


Figure 4: Elimination and Redistribution Round 1¹²⁶

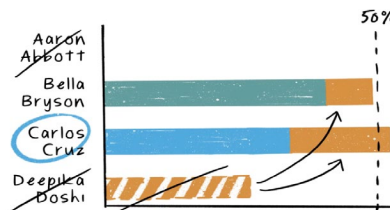


Figure 5: Elimination and Redistribution Round 2¹²⁷

Recently, ranked choice has been gaining traction. It has already been adopted in over 60 jurisdictions nationwide, as well as for state elections in Maine and Alaska.¹²⁸ As director of the non-partisan organization FairVote

¹²⁴ Radde, Kaitlyn, and Connie Hanzhang Jin

¹²⁵ Radde, Kaitlyn, and Connie Hanzhang Jin

¹²⁶ Radde, Kaitlyn, and Connie Hanzhang Jin

¹²⁷ Radde, Kaitlyn, and Connie Hanzhang Jin

¹²⁸ Rodriguez, Barbara

Minnesota Jeanne Massey, ranked-choice voting holds great promise for democracy, as candidates will no longer be able to “win in these high stakes elections with a plurality of 30, 40 percent of the vote and call it a day and govern to that base and ignore the rest of the voters.”¹²⁹ Yet backlash against it has been growing too. This past March, the governors of Idaho and South Dakota approved bans on ranked-choice voting, and similar ban proposals have been filed in Montana, North Dakota, and Texas.¹³⁰

Opponents of ranked-choice voting often contend that it’s too complicated for voters to understand.¹³¹ However, empirical evidence suggests otherwise. When Alaska adopted ranked-choice voting in 2022, 85% of first-time users found the ballot “simple” to complete.¹³² And when New York adopted ranked-choice voting for primary elections in 2021, that figure was 95%.¹³³ Ranked-choice voting also appears to be popular among those who have tried it. 77% of New Yorkers expressed a desire to use it again for future elections. And when Santa Fe introduced ranked-choice voting in 2018, 94% of voters reported satisfaction with the process. Another common argument against ranked-choice voting is that it rewards extremism, by permitting candidates with extremist views and narrow support bases to run “without acting as a spoiler for one of the major party candidates.”¹³⁴ Yet the fact that ranked-choice voting enables less popular candidates to run without sabotaging the chances of more popular candidates, like Nader did to Gore, is actually one of its greatest strengths. And, in fact, ranked-choice voting is generally opposed by extreme candidates on both the left and right, since it actually tends to favor moderates.¹³⁵ That’s because, in order to win under a ranked-choice voting system, a candidate needs a much broader base of support than is needed under FPTP, which extreme candidates tend to lack.¹³⁶

For elections in which multiple winners are chosen, such as congressional elections, another option may be proportional representation. Under proportional representation, a political party is awarded a number of seats in a legislative body proportional to the number of votes its candidates have received. To illustrate how this would work, let’s return to the hypothetical example in which 40% of the populace supports the Red Party, 35% supports the Blue Party, and 25% supports the Indigo Party. Now we will imagine that a state legislature needs to elect twenty representatives. Currently, most states would fill these seats by dividing the state into twenty districts, and then, the candidate with the most votes in each district would be selected as the representative of that district through FPTP. Assuming that the distribution of support for parties is geographically consistent, this means that every district would elect a member of the Red Party, even though Red Party was only supported by 40% of the populace and was the last choice of 60%. With ranked choice voting, Indigo would be eliminated and those votes would be transferred to voters’ second choice, Blue, meaning that each district would elect a member of the Blue Party. This is better, since 60% of voters at least somewhat supported the Blue Party, but it still isn’t ideal, because it gives the Blue Party disproportionate influence. Proportional representation solves this problem by awarding representational power in accordance with the vote. With 40% of the vote, the Red Party would get 40% or 8 representatives. With 35% of the vote, the Blue Party would get 35% or 7 representatives. And with 25% of the vote, the Indigo Party would get 25% or 5 representatives.

One criticism of Proportional Representation is that in order to function, it requires much larger districts with multiple representatives that can be split in accordance with the vote. Some fear that this threatens the “intimate relationship that exists between constituents and representatives in small single-member districts.”¹³⁷ Yet this concern is

¹²⁹ Rodriguez, Barbara

¹³⁰ Rodriguez, Barbara

¹³¹ Rodriguez, Barbara

¹³² Horton, Jennifer, and Dakota Thomas

¹³³ Horton, Jennifer, and Dakota Thomas

¹³⁴ Atkinson, Nathan, and Scott C. Ganz

¹³⁵ Horton, Jennifer, and Dakota Thomas

¹³⁶ Horton, Jennifer, and Dakota Thomas

¹³⁷ Amy, Douglas J.

less valid in a digital age in which constituents can easily reach their representatives no matter where they are geographically located. Furthermore, constituents may actually feel more connected to their representatives in larger multi-member districts, because they are more likely to have representatives who share their political beliefs.¹³⁸ And as discussed previously, larger districts with multiple representatives would make gerrymandering nearly impossible. Another common concern is that proportional representation will result in a wider range of political parties, which can make it difficult for any one party to gain a majority within a legislative body.¹³⁹ This means that to get laws passed will require forming coalitions that may prove unstable, leading to “legislative gridlock.”¹⁴⁰ Yet while these outcomes are theoretically possible, they appear relatively uncommon based on the experience of the dozens of countries that use proportional representation in Europe. And as Center for Congressional and Presidential Studies Founder James Thurber has observed, “polarization, gridlock and dysfunction” plague our current Congress, so these problems are by no means unique to proportional representation systems.¹⁴¹

Given its profound advantages and limited disadvantages, it is easy to understand why proportional representation is the “most popular form of democracy for countries in the world today,” embraced in some variation by over a hundred countries, while less than fifty rely on FPTP.¹⁴² Though the United States may be too firmly entrenched to change its ways, adopting ranked choice voting would greatly enhance its elections ability to translate the will of the people into political power.

Conclusion

In summary, there are a number of reasons why elections in the United States often fail to live up to their promise of capturing the will of the people and translating it into political representation. The first broad set of problems relates to disenfranchisement. Despite the Constitution’s assertion that the government’s power is derived from the consent of “the people,” many people lack the right to vote. In some cases, disenfranchisement is justifiable. The arguments for depriving non-citizens, minors, and current felons are particularly strong. Yet, as this analysis has shown, many Americans are deprived of suffrage under much flimsier rationales. And that poses a major problem to democracy because even a perfectly designed electoral system will fail to capture the will of the people if large segments of the people are systematically deprived of the right to express their will at the ballot box. Therefore, expanding enfranchisement should be a priority for anyone who believes in true representative democracy. The second broad set of problems relates to structural or systemic flaws that prevent elections from translating the votes that actually do get made into political representation. FPTP has been demonstrated to give disproportionate influence to some at the expense of others, and is highly vulnerable to threats like gerrymandering. The Electoral College is particularly problematic, as it frequently results in the victory of less popular candidates.

These problems could be greatly mitigated, if not resolved entirely, through the expansion of suffrage and voter protection regulations, as well as through the adoption of better electoral systems such as ranked-choice voting or proportional representation. But actually implementing these changes would be extremely difficult given constraints in the Constitution, which often require a two-thirds majority in Congress. Reform is more realistic on a state or local level. Indeed, a number of states and districts have adopted alternative voting methods and taken steps to reduce barriers to voting. Yet often the states with the least representative systems are the ones more resistant to change, and there is little that can be done to oblige them to embrace reform. As Cortes notes, “I don’t see a time when states lose control over administering elections,” because it’s “so ingrained in the way that we do things.”¹⁴³ Another obstacle is

¹³⁸ Amy, Douglas J.

¹³⁹ Amy, Douglas J.

¹⁴⁰ Amy, Douglas J.

¹⁴¹ Garver, Rob

¹⁴² Ridley-Castle, Thea

¹⁴³ Author, and Karen Cortes

opposition from groups or individuals that benefit from flaws in the system. As research and policy director at FairVote Deb Otis notes of ranked-choice voting, “it challenges the status quo and challenges elected leaders to campaign differently . . . and so, I think support from elected officials tends to be a lagging indicator of support from the voters.”¹⁴⁴ The same argument could be made of many of the reforms discussed in this paper. Those who have the power to implement changes in electoral systems are generally those who have been elected under current electoral systems. A skeptic may note that they have a vested interest in preserving the systems that helped them get elected, and are thus likely to resist change. Still, with enough public support, politicians may be compelled to consider reform. The idea that elections should represent the will of the people is not particularly controversial, and many of the specific reforms discussed in this paper have bipartisan support. By raising greater awareness about the flaws in America’s elections, and how they can be resolved, we may hope to bolster this support and hasten reform.

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