

# Chapter 7

## Proportional Representation, the Single Transferable Vote, and Electoral Pragmatism

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*If we're able to stop Obama on [health care reform], it will be his Waterloo. It will break him.*

—Jim DeMint (Smith 2009)

*The single most important thing we want to achieve is for President Obama to be a one-term president.*

—Mitch McConnell (Garrett 2010)

**Abstract** An exploration of competing electoral systems—single-member district plurality systems (predominant in the U.S.) versus proportional representation systems (STV in particular)—and competing theories of participatory democracy: J.S. Mill's optimistic deliberative democracy model, and Richard Posner's more pessimistic elite democracy model. Mill assumes voters are politically educable, capable of making informed contributions to legislative processes through electoral action. Posner assumes voters are too narrowly self-interested to be substantively educable. Elections, consequently, serve merely as a crude form of quality control and smooth succession of political authority. It is argued that the latter theory is plausible only under single-member district plurality electoral systems like ours, so that the electoral system grounds the theory, not the other way around. Under a single transferable vote system (Mill's preferred system), in which voters' ordinal preferences among candidates govern the outcomes in multi-member districts, Mill's deliberative democracy model has a realistic prospect of success.

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When federal legislators openly recommend obstructionism for its own sake as a partisan strategy, as was certainly the case with DeMint's call to arms (since the bill he wished to repudiate was originally a Republican health care initiative, before suffering the misfortune of being endorsed by a Democratic President), we know that American political institutions have become seriously dysfunctional. Indeed, the rhetoric and the visceral hostility continued unabated even after President Obama's reelection. Why? Vestigial racism is one hypothesis that has been offered to explain this phenomenon in the context of the Obama Presidency. But while the symptoms have been more dramatic in recent years, they did not suddenly emerge in the wake of President Obama's first election.

Kurt Vonnegut, referring to some of the principal players during the G.W. Bush Presidency, once suggested that our governmental dysfunctionality might be a matter of the sort of personality types attracted to higher office in political systems like ours: President Bush's collection of "upper-crust C-students who know no history or geography, plus not-so-closeted white supremacists, aka Christians, and plus, most frighteningly, psychopathic personalities, or PPs, the medical term for smart, personable people who have no consciences." The explanation is doubtless more complicated, not simply a case of Vonnegut's assertion that our Constitution harbors "a tragic flaw," the consequence that "only nut cases want to be president" (Vonnegut 2005, 99–102). Federal political office-holders are not *all* psychopaths.

Nonetheless, recent evidence does suggest that electorates, as currently constructed, are demonstrably bad at distinguishing between suitable and psychopathic candidates for public office. They often reward Vonnegut's "nut cases" for their public campaign behavior, and for misrepresentations of their performances while in office. To some extent, this can be attributed to ideological fervor of the hopelessly unreflective. But that can't explain majoritarian support for psychopathic personalities, since most voters are not ideologically driven. I suggest that our electoral system is a more pernicious—because more permanent—contributor to the erosion of effective government. Vestigial racism is (hopefully) more temporary, and the magnetic attraction of psychopathic personalities to public office merely contingent upon the root problem: their ability to succeed in single-member plurality systems.

We voters are, of course, often quite inattentive. We have our own lives to pursue, which makes misleading campaign tactics more effective, as does the escalating reliance on campaign money to fund televised propaganda. But the obfuscation and irrational voting behavior is significantly magnified, I will argue, by our single-member district plurality ('first past the post') electoral system for selecting candidates for legislative office, whereby all federal and state-level elections involve voting directly on one seat per election, determined by plurality victories, or sometimes by majority vote in two-candidate run-offs. We have, like Vonnegut, forgotten that constitutionally permissible alternatives are available, at least one of which, I contend, might ameliorate our current predicament.

The alternative I have in mind is proportional representation by single transferable vote (STV), which invites voters to rank candidates (ordinally) for multi-member district seats, and employs a vote-counting mechanism in which the surplus votes of each winning candidate (those which exceed the minimum number necessary to

secure a seat in the multi-member district<sup>1</sup>) are transferred to the next-ranked candidate on each of the “surplus” ballots. The net effect of the proportionate vote transfers is to elect the candidates who enjoy the highest collective rank orderings among the voters, across all political parties.<sup>2</sup>

This was the system advocated in 1861 by John Stuart Mill in *Considerations on Representative Government*, after first being introduced in England 4 years earlier in Thomas Hare’s *The Machinery of Representation*, and 2 years before that in Denmark by Carl Andrae.<sup>3</sup> There is a natural intuitive link between STV and Mill’s deliberative conception of representative democracy, in which the full expression of voter sentiment possesses inherent value. For STV is a more nuanced reflection of voter convictions than most other electoral systems. But whether STV more accurately reflects voter sentiment in an *appropriate* way, and whether Mill’s conception of deliberative democracy is normatively superior to other justifications that we might offer for representative democracy, are both contentious claims.

Comprehensive arguments on both points are beyond the scope of this chapter. I propose instead to offer an intuitive account of how STV compares with standard U.S. electoral practices on the question of more accurately reflecting voter sentiment. I will then turn to a defense of Mill’s model of deliberative democracy against one alternative currently in vogue: the pragmatic elitist theory of representative democracy offered in the last century by Schumpeter 1962, and defended in this one by Posner 2001, 2003.<sup>4</sup>

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<sup>1</sup>The most commonly used threshold formula, known as the Droop Quota, is calculated as follows:  $[(\# \text{ of votes})/(\# \text{ of seats} + 1)] + 1$ . Thus, in a 5-member district in which 12,000 valid ballots were cast, a candidate could secure 2,000 first-preference votes without being guaranteed a seat, because it is theoretically possible that five other candidates could also secure exactly 2,000 votes each, resulting in a six-candidate dead heat, necessitating a run-off. But if one of the candidates secured 2,001 votes, that candidate, having met the Droop Quota (barely), would be guaranteed a seat.

<sup>2</sup>In some STV systems, the surplus ballots are literally paper ballots that happen to be at the top of the pile of first-choice ballots for any candidate who meets or surpasses the Droop Quota: every ballot counted for that candidate after the Droop Quota has been met counts as an “extra” first-choice ballot for that candidate, to be transferred to the various second-choice candidates indicated, during the second round of ballot-counting. In computerized vote-counting systems, fractional portions of *all* of a winning candidate’s first-choice ballots could easily be used instead. I.e., the # of second-choice ballots for candidate *y*, among *all* those cast for winning candidate *x* as first choice, will be added to *y*’s first-choice ballots during the second round of counting, but discounted by the fraction:

$$\frac{\# \text{ of candidate } x \text{ 's ballots exceeding Droop quota}}{\text{total \# of first - choice ballots cast for candidate } x}$$

For detailed accounts of the mechanics of single transferable vote balloting and ballot counting, see Farrell 2011, Chapter 6, 119–152 or Amy 2000, Chapter 4 (in part), 95–106. For a specific historical example, see Sinnott 1999.

<sup>3</sup>Hare’s initial approach, the first scholarly publication on STV (Hare 1857), was to treat the entire country as a single multi-seat district. This was dropped later as unworkable.

<sup>4</sup>Posner acknowledges his debt to Schumpeter in the latter work.

## 7.1 STV and Electoral Alternatives: Alternate Voting and At-Large Voting

How do STV elections compare with their chief competitors among electoral systems? Historically grounded empirical data on STV is, unfortunately, rather thin. STV is currently used to elect the primary legislative bodies of Tasmania (since 1907), Ireland (since 1920), Malta (since 1921), the Australian Capital Territory, Canberra (since 1993), and Northern Ireland—the NI Assembly, not Westminster MPs (since the 1998 Good Friday Agreement). STV is also, nominally, the method of electing the Australian Senate. Of these, only the Republic of Ireland and Malta constitute national assemblies.

Apart from the Republic of Ireland and Northern Ireland, with a combined population of 6.4 million (1.8 million in Northern Ireland), STV jurisdictions are tiny. Malta has a population under 400,000, as does the Australian Capital Territory. And Tasmania has only half a million. Although Australia as a whole, at 23 million, is much larger, the Australian Senate does not initiate legislation. It does wield significant veto power on House-initiated legislation. More significantly, in 1983 Australian voters were given the option of voting a party ticket instead of rank-ordering all Senate candidates individually. Most Australian voters have opted for the former ever since, effectively transforming the Australian Senate elections into a closed list system.<sup>5</sup>

Comparison with single-member plurality systems, dominant in U.S. politics, will be examined in more detail in the discussion of the pragmatic elitist defense of democracy in 6.3. But as a preliminary step, we should understand the distinctions between STV and two other ‘plurality-majority’ electoral systems bearing superficial resemblances to STV. I’m referring here to *alternative vote* (AV) and *at-large* systems. Both are, in reality, just variations on single-member plurality voting.

AV is a mechanism for securing outright majorities rather than pluralities, by devising an instant run-off mechanism between the two strongest candidates, or by serially eliminating the weakest remaining candidates. AV shares STV’s use of ordinally ranked voting, but does so in single-member districts. It anticipates instant run-offs by inviting voters to select, in addition to a primary candidate, a rank ordering of one or more less favored additional candidates. If no candidate wins an absolute majority on the first round of balloting, second-preference votes are then added in, followed by third-preference votes, etc., until a single-candidate majority is achieved. But the end result is still a winner-takes-all single-member district system.

At-large voting does the opposite: it shares STV’s multi-member districts, but retains the binary cardinal voting of single-member plurality elections. Voters are *allowed* as many *unranked* votes (for distinct candidates) as there are seats to be filled, effectively assigning each candidate ‘one’ (“approve”) or ‘zero’ (“disapprove”—refrain

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<sup>5</sup>On this last point, see Farrell 2011, 140–141. Closed list systems, as a proportional representation alternative to STV, are discussed in 6.2.

from voting for a candidate). In the at-large case voting again fails to reflect relative strength of electoral sentiment. Representation is still an all-or-nothing affair, as it is in single-member districts. That is why at-large voting has been particularly popular at the local level in racially and politically polarized communities in the southern U.S., as an effective method for sustaining majoritarian dominance throughout an at-large district. In an at-large county council election, for example, conducted in a racially divisive polity that is two-thirds white, one-third African-American, identity politics voting behavior might routinely result in an entirely white, entirely Republican county council, despite significant African-American and Democratic Party minorities in the county, simply because white Republican voters, using a single ticket voting strategy, overwhelm both groups of minority voters at polling places. (And the reverse form of under-representation would apply in predominantly, but not exclusively, Democratic at-large districts.)

STV systems are designed to achieve the opposite effect: insure adequate representation of otherwise disenfranchised minorities. Consider an STV scenario in which the political spectrum equivalent of U.S. Republicans field five candidates for a five-seat district, and the “Democrats” stick with two. Even with strong party loyalties, the “Republicans” will not fare better under STV voting by fielding an “excessive” number of candidates, unless the candidate slate ranges across the political spectrum supported by significant numbers of voters (as both Maltese and Tasmanian parties in fact tend to do, at least to a more significant degree than either Republicans or Democrats here in the U.S.). Even then, in a polity like Malta, party loyalty tends to undermine this strategy. In a hypothetical five-member district consisting of three-fifths “Republican” voters and two-fifths “Democratic” voters, three-fifths of the vote will now be split five ways because of first-choice variations among the “Republican” voters, so the two “Democrats” will probably reach the quota for election on the first or second count, and three of the “Republicans” will probably meet it only after the vote transfers resulting from several counts sort out which three of the five “Republicans” enjoy stronger overall voter preference. If there is a viable third (or even fourth or fifth) party, the dominant party runs a serious risk of losing one or more seats it might otherwise win, by fielding too many candidates for existing voter support to carry through to election.

It was precisely this feature of STV voting which made it so attractive a system to install at the inception of the Irish Free State in 1921: to protect minority Protestant and Unionist concerns in the South and, initially at least, minority Catholic and Nationalist interests in Northern Ireland. Conversely, upon creation of the Irish Free State, as per prior agreement on self-determination, the six counties of Northern Ireland promptly disassociated themselves from the new polity—not only from the political entity that eventually became the Republic of Ireland, but also from its electoral mechanism. Now majority Protestant, they reverted to a single-member plurality electoral system for local self-government, thus protecting majority Unionist interests at the expense of the minority Nationalists, a politically short-sighted arrangement which remained in effect until the 1998 Good Friday Agreement.<sup>6</sup>

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<sup>6</sup>See Farrell 2011, 119–125, for the Irish case.

Malta's adaption of STV appears to have been more of an accident of historical parallels. No significant minority interests needed to be addressed in Malta's homogeneous electorate. But like Ireland, Malta had been agitating for self-rule since the late nineteenth century, a movement that (also like Ireland), produced violent opposition to British authority after World War I. In ceding internal self-rule to Malta in 1921, the British simply imposed STV, apparently concluding that an electoral system good enough for the Irish Free State (being established simultaneously) was good enough for Malta (another Catholic country historically subject to Protestant rule from Westminster). Over time, the Maltese became accustomed to STV, and voluntarily reaffirmed their electoral system in later constitutions (Proctor 1980).

STV systems are also designed with the intent to yield representative bodies that more accurately reflect voter sentiment on policy issues generally, regardless of the party, religious, or ethnic affiliations of those voters. The usual argument against STV, and against all proportional electoral systems, is that such nuanced reflection of the range of voter sentiment also has the dilatory effect of encouraging more fragmentation of government through party proliferation: more effective representation of diverse political perspectives at the expense of less stable government, a virtue supposedly more prominent in single-member plurality systems.

Although the body of evidence of longstanding continuous usage of STV is small—two island countries and one island province—there is simply no data to support this negative claim. Throughout its history of STV usage, Malta has remained a pure two-party system. Sporadic third party movements have foundered on the party loyalty of Maltese voters, who behave at the ballot box as if they vote in an open list system (in which multi-member district seats are filled by voting for one candidate in a party slate), plus the opportunity to rank order as many as five candidates within that party vote (if five party candidates have been fielded<sup>7</sup>). Maltese voters have the option to split their ticket, but most do not choose to exercise that option.<sup>8</sup> There is somewhat more ticket-splitting in Tasmania, but it too has remained predominantly a two-party system. Third party movements in Tasmania are simply co-opted by the two larger parties, through the expedient of fielding individual party candidates who advocate policy views similar to those motivating third-party insurrections in the first place (Hughes 2000, 159–160).

Ireland, with (perhaps unsurprisingly) a more contrarian political culture, high emphasis on constituent services and on local retail politics, exhibits significant incidence of cross-party voting for individual candidates, including third-party voting (Farrell 2011, 135–136). Governments in Ireland, including occasional coalition governments, have nonetheless been as stable as governments in most European countries, and party proliferation has been modest. Effective political power has remained largely in the hands of two major center-right parties, and one smaller

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<sup>7</sup>Each Maltese legislative district has five seats.

<sup>8</sup>That is, they can use ordinally-ranked voting to favor some candidates from the rival party, but they typically vote only for a subset of the preferred party slate. (Both parties frequently offer slates in excess of the five-seat districts being contested.) See Hirczy de Miño and Lane 2000.

center-left party.<sup>9</sup> The chief lesson to be learned here is that, in the case of STV at least, and probably in other proportional representation systems as well, government formation depends far more on the local political culture than it does on the electoral system. The same cannot be said of plurality systems, which clearly do favor two-party structures through their all-or-nothing electoral outcomes.<sup>10</sup>

## 7.2 STV and Electoral Alternatives: Closed and Open List Proportional Systems

Apart from questions of comparing the relative merits of STV and plurality-majority systems, there is also the question: does STV constitute a more effective system for representation of divergent voter sentiment than other proportional representation systems? The two major proportional competitors to STV, at least in terms of number of countries and total number of voters using them, are the closed and open list systems, both far more common than STV.<sup>11</sup> Unlike STV, both of these emphasize party affiliation over individual candidates. Closed lists, the original system of party list voting, do not allow any candidate selection. Voters simply vote for a party list, with the candidates ordered for election by the party. The number of party candidates occupying contested seats in the multi-member district will then be determined by the party's proportional share of the total vote cast, starting with the first candidate listed. Open list systems allow voters to play a role in ranking the candidates on the party's slate, typically by voting for one specific candidate on one party's list.

Our core question is whether STV is more representative of voter sentiment than either list system. In terms of the basic structure, the answer is clearly 'yes': STV invites more nuanced ordinal voting among multiple candidates as individuals. Political theorists sometimes argue, however, that the answer is 'no', because actual list systems typically do better in measurements of proportional representation of minority factions than the handful of actual STV systems that exist. But that is only because of the historical accident that actual STV systems have relatively small district *size* (the number of seats in a district, which is three to five in existing STV systems) compared to list systems (frequently districts of ten or more seats). Minimum representational vote thresholds are inversely related to district size. In

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<sup>9</sup> *Fianna Fáil*, *Fine Gael*, and *Labour*, respectively. *Labour* has been the only really significant third party, although others have, from time to time, sustained enough voter support to win a few seats. See Farrell 2011, 143–146, and Gallagher 2000.

<sup>10</sup> See Amy 2000, 18, 32, and Farrell 2011, Appendix Table A.2, 234–237. In Farrell's table there are two notable exceptions to two-party rule among single-member plurality nations: Canada, with an effective number of parliamentary parties average of 3, and India, the world's largest democracy, with a 5.77 average.

<sup>11</sup> See Farrell 2011, Figure 1.1, and accompanying discussion, 7–9. See also Farrell, Appendix Table A.1, 231–233.



electorates that contain, say, four or five significant political minorities, some of those minorities are likely to secure no direct representation in a five-seat district, but all of them will do so in a ten-seat district.<sup>12</sup>

So an STV system incorporating larger district size *could* be just as effective as a list system in achieving parliamentary representation for minority views, and certainly more effective at serving voter expression on the ballot. There is an inherent limit to this strategy, however. STV demands much more from voters. They have to sort through multiple candidates representing multiple party platforms, and somehow come up with at least a partial rank ordering. Too many choices can overwhelm voters with limited time to devote attention to election campaigns. List systems, by contrast, are dead simple—asking voters to make just one choice, for a single party or a single candidate. Hence the ease with which they can move to large multi-member districts.

So there is a trade-off here, although we might hope that greater voter choice attendant STV systems will ultimately produce more sophisticated voters and more rational election campaigns, particularly when compared with single-member plurality systems like ours.<sup>13</sup> But to make that case, we have to turn now to our second question, concerning rival defenses of representative democracy as the best means of government. More specifically, Mill's account of deliberative democracy and Posner's account of pragmatic elitism are both attempts to answer the question: what is representative democracy *for*? I contend that Posner's answer to this question is plausible (to the extent that it is) only because he assumes a single-member plurality voting system.

### 7.3 Deliberative Democracy vs. Pragmatic Elitism

First, a brief sketch of the difference between these two theories: both reject Rousseau's concept of the *general will*, in the sense that neither Mill nor Posner (nor Schumpeter) advocate direct democracy in which the electorate engages in legislative action, because most voters are too unreliably focused on their narrow self-interest to be entrusted with that authority. Both Mill and his competitors believe that legislation should be conducted instead by educated elites: *elected* representatives of the

<sup>12</sup>On this point, see Farrell and McAllister 2000, at 21–22 & 28–32.

<sup>13</sup>Whether this is also true when the competitor is a proportional representation system, or a mixed system involving proportional representation, is a question beyond the scope of this chapter. (Dummett 1997) in particular proposed a novel and rather complex system involving a mixture of STV and *Borda counts*, a concept not discussed here. His assessment of conventional STV systems is colored though by his oddly visceral hostility: “STV occupies an extraordinary position among electoral systems, in that it is the object of a cult. A large body of electoral reformers are committed to STV as to a religious faith.” (Dummett, 90–91) Dummett's mixed STV/Borda count alternative, which has never been used anywhere, has its own problems, having to do with the issue of accurately identifying political minorities. I'm offering STV as the best option among at least the existing systems, but I am here far from making that case in any comprehensive way.



people, yes, but better informed than the people themselves. Mill, however, also believes in the possibility of instilling a measure of civic virtue in the masses, through their engagement with the machinery of participatory democracy. As they encounter views different from their own in their exposure to public political discourse, participatory democracy assumes an educative function:

The private citizen... is called upon, while so engaged, to weigh interests not his own; to be guided, in case of conflicting claims, by another rule than his private partialities; to apply, at every turn, principles and maxims which have for their reason of existence the common good: and he usually finds associated with him in the same work minds more familiarized than his own with these ideas and operations, whose study it will be to supply reasons to his understanding, and stimulation to his feeling for the general interest. He is made to feel himself one of the public, and whatever is for their benefit to be for his benefit (Mill 1861, 70).

Posner and Schumpeter do not share Mill's optimism. They subscribe rather to John Adams' cynicism about the citizenry, an older, deeper suspicion of deliberative democracy:

If you give more than a share of the sovereignty to the democrats, that is, if you give them command or preponderance in the legislature, they will vote all property out of the hands of you aristocrats, and if they let you escape with your lives, it will be more humanity... than any triumphant democracy displayed since the creation (Hofstadter 1948, 17).

For Posner and Schumpeter, as for Adams, it is important to contain the level of mass participation in the machinery of government, but not to eliminate it entirely. Posner does not want to "simply restrict the franchise to a well-educated *cognoscenti*," because the educated elite is just as likely to be devoid of mythic civic virtue, just as likely to vote its own interests, as the unwashed masses are to vote theirs (Posner 2001, 42). For Posner and Schumpeter, but *not* for Adams or most of his fellow-eighteenth-century "revolutionaries", *universal* citizen suffrage serves as a useful check on excesses of governing elites:

Representative democracy is a pragmatic institution rather than the instantiation of a theorist's ideal state. Voting is a method of control, not of administration. The people do not rule in a representative democracy; they control the rulers, their delegates. For voting to perform its function of control, voters must have some minimum of political sophistication, along with a measure of independence from other people. Voting is central to the orderly succession of democratic "rulers"... American democracy is structured, formal, practical, realistic... It is not stary-eyed, carnivalesque, or insurrectionary. It is not pure or participatory democracy, and it does not consider political chaos a price worth paying to actualize the popular will. Its spirit is closer to that of Burke than to that of Rousseau (Posner 2001, 28–29).

In Posner's view, the practice of voting for those who govern, and delegating most other communal powers to those elected representatives, is simply a more effective solution to the problem of orderly succession than hereditary monarchy, the most common traditional way of addressing the succession problem. The latter offers neither quality control in selection, nor the possibility of peaceful transition when the leadership product is unacceptably substandard. Representative democracy offers both: quality control through the campaign and election process, and periodic performance review through the practice of regularly scheduled new elections (Posner 2001, 23–24; 2003, 14, and Chaps. 4 and 5, generally).

Mill, in contrast, believes the masses, as the best guardians of their own interests, actually have something to contribute to policy deliberations through their voting practices—especially when their own views of those interests are enlarged and refined by their participation in civic discourse. Posner (and Schumpeter) think democratic voting practices have nothing to do with discerning the will of the people, even in this attenuated sense of conveying their collective informed self-interest on particular policy questions.

Posner and Schumpeter may be right about the intended structure of our democracy, *in its present form*. But it now appears that they are wrong about the wisdom of that structure: our single-member district plurality approach to elections is now used, quite effectively, to insulate the governing elite from the electorate. It achieves this outcome by affording legislative bodies the opportunity to create safe party districts at both federal and state levels, by means of district gerrymandering. To a lesser degree, the Electoral College has served the same function in Presidential races by creating safe Presidential “districts” (individual states).

On one level of analysis, the end result appears to bear out the hypothesis of pragmatic elitists: the electoral masses appear to be incorrigibly self-interested in very short-sighted ways—witness the current success of the Tea Party movement in taking over the Republican Party. Voters also often appear to be incorrigibly ignorant—witness the result of the 2010 South Carolina Democratic primary for the U.S. Senate. In that primary, Alvin Greene, an unemployed African-American army veteran, an inarticulate young man of limited intellectual scope and no prior political experience living with his father in rural South Carolina, after having been involuntarily discharged from both the Air Force and the Army, and currently facing federal pornography charges, managed to defeat a career public service opponent by 30,000 votes. He achieved this with no campaign—not even a campaign website. After the primary, he was somewhat belatedly recognized to be transparently unfit to serve in the U.S. Senate, and was then overwhelmed by incumbent Republican Jim DeMint in the general election (Hutchins and Axe 2012).

Posner, Schumpeter, and Adams assume that voter incompetence and myopia are simply the natural state of the general populace, dictating the necessity of severely limiting the scope of their participation in the machinery of government. But what if the causal arrow runs in the other direction? What if voter incompetence and myopia are not evidence of immutable voter incorrigibility, but artifacts of the electoral system we now have in place? Perhaps, in so severely limiting their conception of participatory democracy—it only comes in the one flavor, single-member district plurality systems—Posner and his fellow-travelers have simply embarked on a voyage of self-fulfilling prophecy which is just now bearing its richest fruit, the outcome of which they then mistakenly regard as “natural” to the human condition. Perhaps the reality of the human condition is Mill’s reality, not Posner’s: electorates *are* politically educable, given both sufficiently enlightened tutors among the political elite and a sufficient stake in the political system to make the education worth their time and attention. Moreover, through this process, they will have genuinely useful information to impart to the governing elite who craft and implement legislation.

Traditional older-generation Republicans are now being eaten by their young (the Tea Party) because of the rhetoric in which they have been engaged ever since the Reagan “revolution”, beginning with Reagan’s campaign slogan directed against incumbent Jimmy Carter: “Are you better off now than four years ago?” This unvarnished appeal to unfiltered self-interest was striking in its contrast to John Kennedy’s “starry-eyed” and perhaps even “carnavalesque” slogan two decades earlier: “Ask not what your country can do for you, but what you can do for your country.” Of course Reagan’s slogan did speak to a long-standing libertarian tradition of mistrust of government embedded in our culture (as discussed by Richard Parker in his contribution to this volume). But political rhetoric can have serious consequences with respect to the direction and momentum of public expectations. In this regard, Reagan’s rhetoric provided the early framework for the future legitimization of the Tea Party movement, rhetoric which has been nourished and sustained because it spoke to relatively homogeneous constituencies in safe Republican districts.

In consequence, the ranks of socially and economically extremist factions have swollen to the point at which, in the 2012 Presidential primary campaigns, even relatively moderate Republicans felt compelled to engage in extremist rhetoric in order to secure the nomination. This phenomenon has validated Tea Party self-confidence still further, all of which suggests that Mill was right about at least one thing: his conviction that the masses were educable by the elite. But that doesn’t preclude the precise form of the education being quite destructive, whenever the pedagogical strategy crafted by the elite is itself socially corrosive.

Similarly, the 2010 SC Senate Democratic primary indicates how Mill is also right about the need for substantive electoral participation as part of the educational process. Only 170,000 voters participated in that primary, while more than 860,000 SC voters supported Obama in 2008. The contrast can be explained in terms of the SC electorate’s knowledge that, regardless of the identities of the Democratic Senate candidates, participation in that primary, and in the general Senate election, would not secure representation of their views in our single-member districts. Because of the proliferation of gerrymandered safe Congressional districts, and of reliably red and blue states in Senatorial and Presidential winner-takes-all elections, many potential voters simply don’t bother going to the polls, thus magnifying the influence of inattentive voters, and fostering a different kind of more broad-based political alienation, reflected in low U.S. voter turnout generally.<sup>14</sup>

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<sup>14</sup>Voter participation is routinely higher in proportional representation systems (75–90 % average voter turnout during the last two decades), with Malta topping the list at 95–98 % of the voting age population. (See Amy 2000, 39; Hirczy de Miño & Lane, 190). Tasmanian electoral turnout during the same period falls in the 80–90 % range, although voting in Australia is nominally compulsory. (Appendix B, Tasmanian Election Commission’s 2007–2010 House Assembly Election Report, <http://tec.tas.gov.au/pages/HouseMain.html>.) Among STV constituencies, Ireland has been less impressive over the past two decades, ranging between 64 and 74 % of the voting age population (generally better than neighboring U.K.). But the U.S., together with other single-member plurality systems (see Amy, 39), has been even less impressive, occupying the 47–57 % range during Presidential year elections, and consistently below 40 % during intervening Congressional elections.

Posner offers a thin explanation for this phenomenon, comparing voting with rooting for a football team. It is, on his analysis, a form of consumption, a source of entertainment, with the added psychic benefit of imbuing voters with a sense of place through their exercise of solidarity with a like-minded group. Absent more engaging reasons to exercise the franchise, any hurdles placed in the way of voting will depress turnout significantly. Posner contends that low U.S. voter turnout can be attributed largely to two minor inconveniences: the fact that voting is scheduled on a regular workday, and the inconvenience of having to re-register every time you move from one voting jurisdiction to another (Posner 2001, 14–15).

A more plausible explanation would blame the structure of our electoral system. As various advocates of proportional representation systems have argued, it seems more likely that voters whose views go consistently unrepresented in winner-take-all districts will become increasingly discouraged by their lack of representation, and opt out of the process entirely. This is known as the *wasted vote* phenomenon. Similarly, Posner's football analogy for describing voter sentiment and practice is plausible only because, *with this kind of system*, there is little else for voters to do. Candidates rarely engage in serious policy debates because irresponsible sloganeering and mudslinging are more effective in single-member districts populated with dominant political majorities. The loop between sycophantic candidates and unreflective constituencies becomes self-perpetuating.

## 7.4 Electoral System Reform: The Art of the Possible in a Single-Member System

How might an STV system work in the U.S., and how might it serve to confirm Mill's views about the potential for an enlarged capacity for political sophistication among the general run of voters? It is important to bear in mind that voters are comfortable with what is customary for them. There is in fact virtually no discussion of electoral *system* reform in the U.S. There are therefore limits to how far we might reasonably expect American voters to move in this direction. List systems, for example, in which you vote primarily (or exclusively) for a party rather than an individual may seem too radical a shift to proportional representation for U.S. voters, who are accustomed to voting for individuals rather than parties under our single-member plurality voting scheme. Even the rank-ordered voting in multi-member districts required by STV would take some adjustment. But it does at least bear superficial resemblance to at large districts, with which most U.S. voters have some familiarity at the local level.

In our federal system, without radical modifications, STV could have a direct effect only in the House of Representatives. The Presidency is, by its nature, a national single-member district. Similarly, each state's two Senate seats are also

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(Data from the International Institute for Democracy and Electoral Assistance [IDEA], at: [http://www.idea.int/vt/survey/voter\\_turnout1.cfm](http://www.idea.int/vt/survey/voter_turnout1.cfm).)

single-member districts. Changing the voting system for either of those offices would require Constitutional Amendment, in a political climate currently so polarized that it is hard to imagine any Constitutional Amendment securing approval, apart from elimination of the Electoral College. That alone would yield more effective voter participation in Presidential elections by making popular vote counts more meaningful in non-swing states. Moreover, it is achievable by non-constitutional means: mutual agreement among state legislatures to circumvent the Electoral College, either by appointing electors in a way designed to mirror popular vote distributions statewide, or by appointing electors to vote for whichever candidate has won a plurality of votes nationally. (The second strategy has gained some momentum, conditional on other states doing the same.)

But even greater levels of participation can be achieved by replacing, where practically feasible, our single-member legislative districts with multi-member districts, both in Congress and at the state level. At the federal level, this can be done without any Constitutional Amendment, since Congressional apportionment is defined in Article 1 as being allocated “among the several States” and §2 of the Fourteenth Amendment is again framed in terms of *state* populations, not in terms of maintaining comparably populated single-member districts: “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.”<sup>15</sup>

Unless the U.S. Supreme Court were to ignore that “plain language” for partisan reasons, there is no *constitutional* barrier to such redistricting, only a *statutory* barrier. The practice of delegating the districting authority to the individual states (usually, but not always state legislatures<sup>16</sup>) was established by federal statute in language that requires single-member districts:

In each State entitled... to more than one Representative... there shall be established by law *a number of districts equal to the number of Representatives* to which such State is so entitled, and *Representatives shall be elected only from districts so established, no district to elect more than one Representative...* [2USC2c; italics mine].

So requiring, or even permitting, multi-member districts *would* necessitate an act of Congress, and there are of course political barriers to that, given the career interests of Congressional incumbents. But that intransigence could be modified in time by the pressure of popular sentiment, if the currently extreme level of partisan gridlock continues for the foreseeable future.

If we eventually come to seriously contemplate such change, how might the redistricted landscape look? Such multi-member districts should be set at sizes of four to eight legislative seats. Fewer result in inadequate representation of minority political views, minority ethnic groups, etc. More yield ballots too cumbersome for voters to process. A large state like Texas, for example, which

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<sup>15</sup>Here the Fourteenth Amendment superseded the corresponding passage of Article 1, §2.3 of the Constitution, by eliminating the references to “free persons” and three-fifths of “other persons.”

<sup>16</sup>Six states (AZ, CA, HI, ID, NJ, WA) implement redistricting by means of independent bipartisan commissions. This trend may be on the rise, but the extent to which it has successfully eliminated partisan redistricting is unclear.

now contains 36 U.S. Congressional districts, could be subdivided into three predominantly urban multi-member districts (Dallas/Ft. Worth 8, Houston 7, San Antonio/Austin 5) and three predominantly rural ones (East Texas 7, El Paso/West Texas 5, and South Texas 4).

A small state like South Carolina would more sensibly be treated as a single multi-member district (consisting of seven Congressional seats), both because the range of demographic variation in different geographic regions is relatively modest compared to a state like Texas (e.g., there are no large urban centers in South Carolina), and because small multi-member districts would not insure effective proportional representation of significant political minorities. With respect to ethnicity, for example, South Carolina is 28 % black and 60 % non-Hispanic white, according to 2011 U.S. census estimates. Until very recently, South Carolina had only one African-American Congressman (Jim Clyburn, in a “safe” gerrymandered majority-black district created in 1992). Tim Scott, a conservative black Republican, was elected in 2010 in the First District, a coastal district which is, thanks to careful redistricting, only 21 % black. He was reelected in 2012. But while the resulting racial mix in the SC Congressional delegation was roughly ethnically proportional in regard to the State’s racial demographic, that situation was unlikely to survive Scott’s Congressional career, given South Carolina’s past history under our single-member plurality system. Indeed it has not. Following Jim DeMint’s resignation from the Senate to lead the Heritage Foundation just 2 years after his reelection, Scott was appointed by SC Governor Nikki Haley to replace him, and the resulting vacancy filled by a white Republican (former Governor Mark Sanford, resuming his old Congressional seat through special election early in 2013). There are currently no women in the SC Congressional delegation and, less surprisingly, no Hispanics (5.3 % of the SC population). Political party strength is even more glaringly disproportionate than ethnic representation. To judge by the results of the last three Presidential elections, the political split is roughly 56 % Republican, 42 % Democratic, yet the Congressional apportionment is 6–1 Republican. If we were to switch to STV proportional voting, a 5–2 White/African American division would probably be more stable (since the days of racial voting blocks are far from over in South Carolina), and the political split would probably moderate to 4–3 Republican.

The point of these reforms would be to encourage more meaningful participation in elections, both because there would be better prospects for representation of the views of minority voting blocks, and because the more nuanced responses of the electorate would better inform the resulting legislative bodies about citizens’ needs, concerns, and desires. Campaign discourse would also be likely to become more informed, less rabid, as candidates realize that they now have to reach out to newly enfranchised voters who they do not want to alienate by saying outrageous things about fundamentally like-minded opponents to whom some potential supporters may also be attracted. In this kind of political atmosphere, it might well be reasonable to embrace Mill’s greater optimism about the potential for significant political education through political participation at the ballot box.

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