

and an executive (the monarchy) independent of the legislature. Although the delegates sought to emulate the virtues of the British constitution, a monarchy was clearly out of the question; so they were stumped by the problem of the executive. Left with no relevant historical models, they wrestled over the question for almost two months before producing their solution.

Although the convention was an extraordinary assembly of constitutional talent, the passage of time has endowed the delegates with far greater foresight than the historical records reveal to us or that human fallibilities would seem to allow. As with many inventions, the originators of the American presidential system (or, better, presidential-congressional system) could not possibly foresee how their creation would evolve over the next two centuries. Nor could they foresee that parliamentary government was just about to develop as an alternative and more widely adopted solution.

Although by now parliamentary government is all but unthinkable among Americans, had their Constitutional Convention been held some thirty years later it is altogether possible that the delegates would have proposed a parliamentary system. For what they (and, for that matter, observers in Britain as well) did not understand was that the British constitutional system was itself undergoing rapid change. In short, it was evolving into a parliamentary system in which executive authority would effectively rest with the prime minister and cabinet, not with the monarch. And though nominally chosen by the monarch, the prime minister would in actuality be chosen by the majority in Parliament (in due time, the House of Commons) and would remain in office only with the support of a parliamentary majority. The prime minister in turn would choose the other members of the cabinet. This system was pretty much in place by about 1810.

As it turned out, in most of the older, stable democratic countries of today, where democratic institutions evolved during the

nineteenth and early twentieth centuries and endured, variants of parliamentary government, not presidential government, came to be the accepted constitutional arrangement.

*Electoral system?* How precisely are seats in the national legislature allocated in proportion to the preferences of the voters in elections? For example, will a party whose candidates get, say, 30 percent of the votes in an election gain close to 30 percent of the seats? Or might they win only 15 percent or so? Although the electoral system need not be specified in the “constitution” in a strict sense, as I suggested earlier it is useful to consider it a part of the constitutional system because of the way electoral systems interact with other parts of the constitution. More about this subject in the next chapter.

Although the list of alternatives could be extended even further, it is surely enough to show that constitutional arrangements among the older democracies vary widely. Moreover, the variations I have mentioned are rather general; if we were to move to a more concrete level of observation we would discover further important differences.

So, you might now conclude, the constitutions of democratic countries differ in important ways. But do variations make some constitutions *better*, or perhaps *more democratic*? Is there perhaps one best type of democratic constitution?

These questions raise yet another: How are we to appraise the relative desirability of different constitutions? Evidently we need some criteria.

#### HOW CONSTITUTIONS MAKE A DIFFERENCE

Constitutions might matter to a country’s democracy in many ways.

*Stability.* A constitution might help to provide *stability* for the basic democratic political institutions described in Chapter 8. It

could not only lay down a democratic framework of government but also insure all the necessary rights and guarantees that the basic political institutions require.

*Fundamental rights.* A constitution might protect majority and minority rights. Even though this criterion is implicitly included in the first, because of variations among democratic constitutions it is useful to give special attention to the basic rights and duties that provide guarantees for both majorities and minorities.

*Neutrality.* A constitution could maintain neutrality among the country's citizens. Having insured fundamental rights and duties, the constitutional arrangements could also insure that the process of making laws is designed neither to favor nor to penalize the views or the legitimate interests of any citizen or group of citizens.

*Accountability.* The constitution could be designed to enable citizens to hold political leaders accountable for their decisions, actions, and conduct within a "reasonable" interval of time.

*Fair representation.* What constitutes "fair representation" in a democracy is the subject of endless controversy, in part because it bears on the next two criteria.

*Informed consensus.* A constitution might help citizens and leaders to develop an informed consensus on laws and policies. It could do so by creating opportunities and incentives for political leaders to engage in negotiations, accommodation, and coalition building that would facilitate the conciliation of diverse interests. More about this in the chapters to come.

*Effective government.* By effectiveness I mean that a government acts to deal with what citizens understand to be the major issues and problems they confront and for which they believe government action is appropriate. Effective government is particularly important in times of great emergency brought on by war, the threat of war, acute international tension, severe economic hardship, and similar crises. But it is also relevant in more ordinary times, when major

issues head the agendas of citizens and leaders. To be sure, in the short run a nondemocratic government might sometimes meet this criterion better than a democratic government; though whether it would do so in the long run seems more doubtful. In any case, we are concerned with governments functioning within democratic limits. Within those limits, it seems reasonable to want a constitutional system that has procedures to discourage protracted deadlock, delay, or evasion in confronting major issues and encourage taking action to deal with them.

*Competent decisions.* Desirable as effective government may be, we would hardly admire a constitution that facilitates decisive and resolute action yet makes it hard for a government to draw on the best knowledge available for solving the urgent problems on the country's agenda. Decisive action is no substitute for wise policy.

*Transparency and comprehensibility.* By this pair of criteria I mean that the operation of the government is sufficiently open to public view and simple enough in its essentials that citizens can readily understand how and what it is doing. Thus it must not be so complexly constructed that citizens cannot understand what is going on and, because they do not understand their government, cannot readily hold their leaders accountable, particularly at elections.

*Resiliency.* A constitutional system need not be so rigidly constructed or so immutably fixed in writing and tradition that it cannot be adapted to novel situations.

*Legitimacy.* Meeting the previous ten criteria would surely go a long way toward providing a constitution with sufficient legitimacy and allegiance among citizens and political elites to insure its survival. Yet in a specific country certain constitutional arrangements could be more compatible than could others with widespread traditional norms of legitimacy. For example, paradoxical though it may seem to many republicans, maintaining a monarch as head of state

and yet adapting the monarchy to the requirements of polyarchy has conferred additional legitimacy on democratic constitutions in the Scandinavian countries, the Netherlands, Belgium, Japan, Spain, and Britain. In most democratic countries, by contrast, an attempt to blend a monarch as head of state would clash with widespread republican beliefs. Thus Alexander Hamilton's proposal at the Constitutional Convention in 1787 for an executive with life tenure—an "elective monarchy"—was rejected almost without debate. As another delegate, Elbridge Gerry remarked, "There were not 1/1000 part of our fellow citizens who are not agst. every approach towards monarchy."<sup>5</sup>

#### HOW MUCH OF A DIFFERENCE DO THE DIFFERENCES MAKE?

Do constitutional differences like these really matter?

To answer this question we need to add two more bodies of evidence to that of the twenty-two older democratic countries. One collection of experiences can be drawn from the "newer" democracies, countries in which the basic democratic institutions were established and maintained during the second half of the twentieth century. Another consists of the tragic but illuminating history of countries in which the democratic institutions were established at some point in the twentieth century but broke down and yielded, at least for a time, to an authoritarian regime.

Although these three immense sources of evidence are by no means fully reported or analyzed, I believe that they produce some important conclusions.

To begin with, each of the constitutional alternatives listed earlier has existed in at least one stable democracy. Consequently, it is perfectly reasonable, indeed logically necessary, to conclude that many different constitutional arrangements are compatible with

the basic political institutions of polyarchal democracy that were described in Chapter 8. The political institutions of polyarchal democracy can, it appears, take many specific forms.

Why is this so? Certain underlying conditions highly favorable to the stability of the basic democratic institutions (discussed in Chapter 12) have prevailed in all these older and highly stable democracies. Given these favorable conditions, constitutional variations like those I have described have no great effect on the *stability* of the basic democratic institutions. Judged solely by that criterion, the variations I've described don't appear to matter. Within broad limits, then, democratic countries have a wide choice of constitutions.

In contrast, where the underlying conditions are highly unfavorable, it is improbable that democracy could be preserved by *any* constitutional design.

With only slight exaggeration we might summarize the first two points like this:

If the underlying conditions are highly favorable, stability is likely with almost any constitution the country is likely to adopt. If the underlying conditions are highly unfavorable, *no* constitution will save democracy.

There is, however, a third and more intriguing possibility: in a country where the conditions are neither highly favorable nor highly unfavorable but mixed, so that democracy is chancy but by no means impossible, the choice of constitutional design might matter. In brief: if the underlying conditions are mixed in a country, and some are favorable but others are unfavorable, a *well-designed constitution might help democratic institutions to survive*, whereas a *badly designed constitution might contribute to the breakdown of democratic institutions*.

Finally, crucial as it is, stability isn't the only relevant criterion. If we were to judge constitutional arrangements by other criteria, they might have important consequences even in countries where condi-

tions are highly favorable to democratic stability. And they do. They shape the concrete political institutions of democratic countries: executives, legislatures, courts, party systems, local governments, and so on. The shape of these institutions might in turn have important consequences for the fairness of the representation in the legislature, or the effectiveness of the government, and as a result they might even affect the legitimacy of the government. In countries where the underlying conditions are mixed and the prospects for democratic stability are somewhat uncertain, these variations might prove to be exceptionally important.

Indeed, this does appear to be the case, for reasons we explore in the next chapter.

*Varieties III*

PARTIES AND ELECTORAL SYSTEMS

Probably no political institutions shape the political landscape of a democratic country more than its electoral system and its political parties. And none display a greater variety.

Indeed, the variations are so great that a citizen familiar only with his or her own country's electoral arrangements and party system may well find the political landscape of another democratic country incomprehensible, or, if understandable, unappealing. To a citizen of a country where only two major political parties contest elections, a country with a multiplicity of parties may look like political chaos. To a citizen in a multiparty country, having only two political parties to choose from may look like a political straitjacket. If either were to examine the other country's party system, they might find the differences even more confusing.

How can we account for these variations? Are some electoral or party systems more democratic than others or better in other respects?

Let's begin with the main variations in electoral systems.

ELECTORAL SYSTEMS

Electoral systems vary without end.<sup>1</sup> One reason they vary so much is that no electoral system can satisfy all the criteria by which you might reasonably wish to judge it. There are, as usual, trade-

offs. If we choose one system we achieve some values at the expense of others.

Why so? To provide a tolerably brief answer, let me reduce the baffling array of possibilities to just two.

*PR.* Among the older democracies the most common electoral system is one deliberately designed to produce a close correspondence between the proportion of the total votes cast for a party in elections and the proportion of seats the party gains in the legislature. For example, a party with 53 percent of the votes will win 53 percent of the seats. An arrangement like this is usually known as a system of *proportional representation*, or PR.

*FPTP.* If PR systems are designed to meet one test of fairness, you might suppose that all democratic countries would have adopted them. Yet some have not. They have chosen instead to maintain electoral arrangements that may greatly increase the proportion of seats won by the party with the largest number of votes. For example, a party with, say, 53 percent of the votes may win 60 percent of the seats. In the variant of this system employed in Great Britain and the United States, a single candidate is chosen from each district and the candidate with the most votes wins. Because of the analogy with a horse race, this is sometimes called a *first-past-the-post* system (in short, FPTP).

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### *Words About Words*

In the United States, such an arrangement is often referred to as a *plurality system* because the candidate with a plurality (not necessarily a majority) of votes is the winner. Political scientists often refer to it as a system of “single member districts with plurality elections,” a more literal but excessively cumbersome title. *First-past-the-post* is standard usage in Britain, and I’ll adopt it here.

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*PR versus FPTP.* As I pointed out earlier, debate continues over the question of what kind of electoral system best satisfies the requirement that elections should be both free and *fair*. But critics of FPTP contend that it generally fails the test of fair representation and sometimes fails it badly. For example, in the British parliamentary elections of 1997 the Labor Party gained 64 percent of the seats in Parliament—the largest majority in modern parliamentary history; yet it did so by winning only 44 percent of the votes cast. The Conservative Party, with 31 percent of the votes, won just 25 percent of the seats, and the unfortunate Liberal Democrats, who were supported by 17 percent of the voters, ended up with only 7 percent of the seats! (The candidates of other parties won a total of 7 percent of the votes and 4 percent of the seats.)

How do differences like these between the percentage of votes cast for a party and the percentage of the seats it wins come about? Imagine a tiny democratic system with only a thousand members, who are divided among ten equal districts from each of which the voters elect just one representative to the legislative body. Suppose that in our little democracy 510 voters (or 51 percent) vote for the Blue Party and 490 (or 49 percent) vote for the Purple Party. Now let us imagine (unlikely though it may be) that the support for each is perfectly uniform throughout our minidemocracy: each of the ten districts happens to contain 51 Blue voters and 49 Purple voters. How would the election turn out? The Blue Party wins in every district and thus gains 100 percent of the seats and a “majority” in parliament of ten to zero (table 2, example 1)! You could expand the size of the system to include a whole country and greatly increase the number of districts. The result would remain the same.

We can be reasonably certain that no democratic country would retain FPTP under these conditions. What prevents this bizarre—and completely undemocratic—outcome is that party support is *not*

TABLE 2.

*Hypothetical illustration of the First-Past-the-Post electoral system*

There are ten districts, each with one hundred voters, divided between the two parties (Blue and Purple) as shown.

EXAMPLE 1. Support for the parties is uniform

District	Votes for		Seats won by	
	Blue (number)	Purple (number)	Blue	Purple
1	51	49	1	0
2	51	49	1	0
3	51	49	1	0
4	51	49	1	0
5	51	49	1	0
6	51	49	1	0
7	51	49	1	0
8	51	49	1	0
9	51	49	1	0
10	51	49	1	0
Total	510	490	10	0

EXAMPLE 2. Support for the parties is not uniform

District	Votes for		Seats won by	
	Blue (number)	Purple (number)	Blue	Purple
1	55	45	1	0
2	60	40	1	0
3	40	60	0	1
4	45	55	0	1
5	52	48	1	0
6	51	49	1	0
7	53	47	1	0
8	45	55	0	1
9	46	54	0	1
10	55	45	1	0
Total	502	498	6	4

spread evenly across a country: in some districts the Blues may have 65 percent of the voters, whereas in others they have only 40 percent, say, and the Purples have the remaining 60 percent. The districts, that is, vary around the national average. For a hypothetical illustration, see table 2, example 2.

It is obvious, then, that in order for FPTP to result in acceptably fair representation, party support must *not* be distributed evenly across a country. Conversely, the more evenly voting support is distributed, the greater the divergence between votes and seats will be. Thus if regional differences decline in a country, as appears to have been the case in Britain in 1997, the distortion caused by FPTP grows.

If that is so, then why don't democratic countries with FPTP systems switch to PR? For one thing, we can't ignore the heavy weight of history and tradition in countries like Britain and the United States, where this system has prevailed from the beginnings of representative government. The United States provides a prime example. The American system of FPTP can result in depriving a substantial minority of African Americans of fair representation in state legislatures and the national House of Representatives. To make sure that African-American voters can gain at least some representatives in their state legislature or Congress, legislatures and judges have sometimes deliberately drawn district boundaries so as to form an area with an African-American majority. The shape of the resulting district occasionally bears no relation to geography, economy, or history. Under a PR system, if African Americans chose to vote for African-American candidates, they would be represented in proportion to their numbers: in a state where, say, 20 percent of the voters were black, they could be sure of filling about 20 percent of the seats with African Americans, if that were their choice.

But if this is so, why hasn't PR been adopted as a solution? Mainly because hostility to PR is so widespread in the United States that

neither legislatures nor judges give it serious consideration as a possible alternative to racial gerrymandering.

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### *Words About Words*

*Gerrymandering*, or carving out electoral districts to obtain strictly political ends, is an old practice in the United States. It takes its name from Elbridge Gerry, whom we encountered earlier as a delegate to the American Constitutional Convention. Elected governor of Massachusetts, in 1812 Gerry brought about a redrawing of district boundaries for representatives to the state legislature that helped Democrats to maintain a majority. When someone noticed that one district bore the shape of a salamander, a critic remarked that it looked more like a “Gerrymander.” The term *gerrymander*, including the verb form *to gerrymander*, subsequently entered into the American vocabulary.

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Historical prejudices in favor of FPTP are buttressed, however, by more reasonable arguments. In the view of its supporters, the tendency of FPTP systems to amplify the legislative majority of the winning party has two desirable consequences.

*Two-party versus multiparty systems.* FPTP is often defended precisely because it does handicap third parties, and by doing so it helps to produce a two-party system. The usual outcome of PR, in contrast, is a multiparty system. Particularly in the English-speaking democracies, two-party systems are much admired and multiparty systems are correspondingly disliked and denigrated. Which is better?

An enormous debate whirls around the relative virtues of two-party and multiparty systems. Generally speaking, the advantages of each mirror their disadvantages. For example, one advantage of a two-party system is that it places a smaller burden on voters by

simplifying their options to two. But from the point of view of an advocate of PR, this drastic reduction of the alternatives available seriously impairs voters' freedom of choice. Elections may be perfectly free, they would say, but because they deny representation to minorities they certainly aren't fair.

*Effective government.* Advocates of two-party systems also support FPTP because it has a further consequence. By amplifying the legislative majority of the winning party, FPTP makes it harder for the minority party to form a coalition able to prevent the majority party from carrying out its program—or, as the leaders of the majority would claim, their “popular mandate.” With an amplified majority of party members in the legislature, party leaders will usually have enough votes to spare even if some of their party members defect to the opposition. Thus, it is argued, FPTP helps governments to meet the criterion of effectiveness. By contrast, in some countries PR has helped to produce so many competing and conflicting parties and alliances in the parliament that majority coalitions are extremely difficult to form and highly unstable. As a result, the effectiveness of the government is greatly reduced. Italy is often cited as an example.

What the advocates of FPTP often ignore, however, is that in some countries with PR systems extensive reform programs have been enacted by stable parliamentary majorities consisting often of a coalition of two or three parties. Indeed, several democracies with PR systems, such as the Netherlands and the Scandinavian countries, are veritable models of pragmatic reform combined with stability.

#### SOME BASIC OPTIONS FOR DEMOCRATIC CONSTITUTIONS

We can now see why the task of designing a new constitution or redesigning an existing one should not be taken lightly. The task is as difficult and complex as designing a crewed rocket ship for prob-