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*Reflections*

# Restructuring the House of Representatives

## *A Proposal for Constitutional Reform*

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RANDALL G. HOLCOMBE

**T**he Constitution of the United States was designed to create a government of limited and enumerated powers with three branches that would check and balance each other. The legislative branch was divided into the House of Representatives, designed to represent the interests of the people, and the Senate, designed to represent the interests of the state governments. The Constitution makes no mention of political parties, and the Founders were especially wary of partisan influences. The Constitution has held up reasonably well for more than two centuries but deviates from the Founders' intentions in many respects. This paper focuses on a proposed restructuring of the House of Representatives to bring it more in line with the original intentions of the Constitution's designers—that is, to make it more closely reflect the interests of the people. The proposal for proportional voting by party for representatives explicitly recognizes the role that parties play in American politics and would allow the broader interests of the electorate to take precedence over local interests, which weigh heavily in the current system in that representatives are elected to represent narrow geographic areas.

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Randall G. Holcombe is DeVoe Moore Professor of Economics at Florida State University.

*The Independent Review*, v. 23, n. 4, Spring 2019, ISSN 1086–1653, Copyright © 2019, pp. 615–625.

## The Proposal

Voters would cast ballots for parties rather than for individual representatives, explicitly recognizing the significance of party identity in twenty-first century American politics. Parties would be represented in proportion to the share of votes they receive. For example, if a party receives 20 percent of the votes, that party would get 20 percent of the seats in the House of Representatives. If a party receives 35 percent of the votes, it would receive 35 percent of the seats. Parties would provide voters with a list of candidates who would be elected to the House of Representatives. If the party received enough votes to elect one representative, the first candidate on the list would be elected. If the party received enough votes to elect two, the first two would be elected, and so forth down the list. If the party received enough votes to elect fifty candidates, the first fifty would be elected and would become members of the House of Representatives.

Although this system may seem foreign (literally!) to American voters, it is similar to proportional voting systems used in parliamentary democracies around the world. One feature of this type of proportional voting is that it allows the possibility of more than two parties electing representatives. In the winner-take-all system of plurality voting now used in the United States, a party that gets 20 percent of the votes loses the election and is not represented. Under proportional voting, a party that gets 20 percent of the votes gets 20 percent of the seats, allowing for a multiplicity of parties in the acting government.<sup>1</sup> Another feature of this system of voting is that because voting would take place at the national level, the local nature of representation in the House of Representatives would be lessened.<sup>2</sup>

There would be some details to work out to operationalize proportional voting for candidates on party lists, but the details are a minor concern. The similar systems already used in many countries can serve as templates for design. This paper focuses on American constitutional design and the broader effects of making such a constitutional change in the way members of the House of Representatives are elected.

### *Limited Government and Separation of Powers*

The American Founders wrote the Constitution of the United States with the intention of creating a government constitutionally limited in power, with the power of each of its

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1. The idea that winner-take-all elections tend to produce two-party political systems, often referred to as “Duverger’s law,” is explained in Downs 1957 and Black 1958. William Riker (1982) gives a history of the concept.

2. Regional and local representation would still be possible. For example, one could imagine a California Party running candidates with the platform of representing the interests of residents of California. Even though some California voters might vote for such a party, the representation of California state interests would be lessened. As it now stands, California has fifty-three representatives in the House, proportional to the state’s population. Even if a California Party were to emerge, it would probably have fewer representatives pushing the state’s interests. Note, in this regard, however, that the House of Representatives currently has a form of proportional representation, but one in which states are represented in proportion to their populations rather than parties being represented in proportion to the votes they receive.

three branches checked and balanced by the others. The purpose of elections was to select those who would hold the limited powers of government, not to have the government carry out the will of the electorate. For that reason, the selection of those who held political power was deliberately designed to limit the democratic accountability of those who hold government power.

The U.S. government was originally designed to be one-sixth democratic in the sense that one-half of one of the three branches was designed to be directly accountable to citizens. Direct voting occurred only for the selection of members of the House of Representatives. Members of the judicial branch of the federal government have always been appointed and thus insulated from democratic accountability. The president—the chief executive—was to be chosen by an electoral college. Holcombe (2002) describes the evolution of the Electoral College and explains that the Founders did not intend for citizens to vote for president (chap. 3). Members of the Electoral College vote for president and always have. The Constitution of the United States leaves it up to the states to decide how those electors are chosen, and nothing in the Constitution specifies (or prohibits) citizen voting for electors. Because this paper is about the House of Representatives, it refers readers to Holcombe (2002) for further discussion about the selection of the electors, noting only that there is nothing in the Constitution that gives citizens any right to vote for president.<sup>3</sup>

As originally specified in the Constitution, senators were chosen by their state legislatures. That remained the case until 1913, when the Seventeenth Amendment to the Constitution was ratified, mandating the direct election of senators. The logic behind having Senators chosen by state legislatures, as James Buchanan and Gordon Tullock (1962) explain it, is that the House and Senate would represent different constituencies. The House would represent the interests of the people—the voters who elected their representatives—whereas the Senate would represent the interests of the state governments in that senators were to be chosen by the state legislatures.

The logic behind having the House and Senate represent different constituencies is that this places a more stringent test on the passage of legislation. Legislation must be approved by both the House and the Senate, which means that passage requires that the proposed legislation meet the approval of the representatives of both the people and their state governments. The passage of the Seventeenth Amendment lowered this bar in that now both houses are elected by and represent the interests of the people.<sup>4</sup> One

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3. Early in the nation's history, many states had their legislatures choose the state's presidential electors. The last state to give up this system was South Carolina, which did not have popular voting for electors until after the Civil War.

4. An example of the practical importance of this lowering of the bar might be seen in the passage of the Affordable Care Act of 2010, popularly known as Obamacare (with President Barack Obama's approval). One issue was that the act imposed additional costs on state governments through the expansion of Medicaid. One can imagine that if the Senate still represented the interests of the state governments, the representatives of the state governments might have altered the legislation to avoid those costs being imposed on the states.

can see that the Seventeenth Amendment has compromised the separation of powers as originally designed by the Founders.

### *Factions and Parties*

The Founders wanted to design a constitution that limits the power of parties and factions. In *The Federalist* number 10, James Madison begins, “Among the numerous advantages promised by a well constructed union, none deserves to be more accurately developed, than its tendency to break and control the violence of faction. . . . [T]he public good is disregarded in the conflicts of rival parties” (Hamilton, Jay, and Madison 1864, 104). Although Madison’s concern about rival parties appears to weigh against this proposal to elect representatives by proportional voting from party lists, the reality is that his hope of avoiding factions and parties was never realized, not even from the earliest days of the republic. Political parties have been a feature of American government from its beginning, despite the fact that the Constitution never mentions them.

John Aldrich (1995), supporting Madison’s concerns, argues that political parties are institutions shaped by ambitious politicians to help them accomplish their career goals, such as having long careers in elected office and enhancing their power and prestige. That might be an argument for weakening party influence if political alliances that lead to factions were not inevitable in politics. Political outcomes always require the cooperation of others in a democratic setting, so the forming of alliances is necessary for political action. A majority must be formed to undertake political action within the House, and parties lower transaction costs and facilitate the political bargaining that political action requires.

David Rhode (1991) observes that party alignment, which weakened after World War II, saw a resurgence in the 1980s as a result in part of a reduction in the differences between northern and southern Democrats and in part from congressional reforms. Dissident party members became less influential, increasing consensus views within parties and reinforcing partisanship. Although one might hope for the Madisonian ideal in which factions are minimized, the nature of politics pushes politicians to work together, and parties are an institutional development that lowers the cost of forming majorities.

Factions and parties are a feature not just of American government but also of all democratic governments. So it is not a bad idea to recognize this fact of political life, and it does no disservice to the American political system to constitutionally recognize this feature of politics that already is completely accepted in practice. Party affiliation is one of the most powerful determinants of the way that voters cast their votes, so it would not drastically change voters’ motivations if they voted directly for parties rather than voting for candidates from their preferred parties.

Party affiliation seems, if anything, to be an increasingly important criterion for American voters. Michael Lewis-Beck and his colleagues (2008) report that about 20

percent of voters were ideologues in 2000, compared with about 12 percent in the 1950s, and that ideological attachments tend to be long-lasting. In an empirical study, Benjamin Highton and Cindy Kam (2011) find that although voters' orientations on issues affect their party affiliations, party affiliation also affects their orientations on issues. Ted Brader and Joshua Tucker (2012) offer further empirical support that party cues affect partisan voters' policy opinions in other countries' proportional voting systems, so this is not just an American phenomenon. The proposal made in this paper would constitutionally recognize the party-line voting that already is the reality in American politics.

### *Single-Member Districts*

The Constitution specifies the number of representatives allocated to each state and gives citizens the right to elect them. It specifies the qualifications of voters but does not specify the manner in which representatives are to be elected. In the twenty-first century, all representatives are elected from single-member districts, but this has not always been the case. Representatives have sometimes been elected at-large to represent the whole state (even in states with multiple representatives) and sometimes been elected in multimember districts.

Nothing in the Constitution says that representatives should be elected from single-member districts, but the political class prefers it this way because it means that incumbent legislators do not have to compete with other incumbents for reelection.<sup>5</sup> Once elected, representatives have monopolies within their districts in that constituents have only one representative who is accountable to them and therefore whom they can approach with the hope of getting assistance if they need it.

As is well known, single-member districts mean that representatives have a very narrow geographic focus and make substantial efforts to provide geographically concentrated benefits to their constituents. If representatives were elected by party nationwide, this geographic focus on benefits to local constituents would be greatly reduced. It would not be eliminated because the Senate would still be represented by state, but it would be reduced.

If single-member districts do not provide enough electoral protection to representatives, gerrymandering of those districts adds to electoral protection, which Edward Foley says "threatens to undermine American democracy" (2017, 656). Gerrymandering is the strategic drawing of district boundaries for the purpose of reelecting incumbents.<sup>6</sup> In 2016, 97 percent of incumbents running for reelection to

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5. The exception to this lack of competition in reelection is when a state loses representatives as a result of reapportionment of the House every ten years after a census. W. Mark Crain (1977) explains why single-member districts are designed for the benefit of incumbents.

6. The accusation is often (accurately) made that a party in control gerrymanders districts to increase the number of that party's members who are elected. This is true as far as it goes, but creating more safe districts for the party in control also means that the remaining districts will be safer for members of the other party.

the House won their elections; in 2014, 95 percent of incumbents were reelected; in 2010, only 85 percent were reelected, the lowest reelection rate since 85 percent were reelected in 1970. Except for 2010, reelection rates in the House have been 90 percent or greater since 1974.<sup>7</sup> Reelection rates for the Senate, although high, are not nearly as high as in the House mainly because senators are elected statewide, so there is no possibility to gerrymander their districts. John Friedman and Richard Holden (2009) find that gerrymandering has had less of an effect on election outcomes in recent elections when compared to elections from a half-century earlier. The problem is not getting worse, but gerrymandering remains a factor that produces high reelection rates.

Proportional voting by party would eliminate the issues created by single-member districts. The biggest issue is pork-barrel projects that impose costs on everybody for the benefit of those within one congressional district. Monopoly representation (each voter has only one representative) and gerrymandering are real issues, but national party-ticket voting would reduce the incentives for government policies that produce localized benefits and nationalized costs.

### *The Two-Party System*

Although the Constitution says nothing about political parties, a winner-take-all system of plurality voting tends to lead to two parties because voter preferences tend to be aligned on a left-to-right continuum, and additional parties make existing parties unviable in electoral competition. With two parties, each party aims its platform at what it perceives as the median voter on that left-to-right continuum. The party that captures the median vote will also win all the votes to one side of the median and will win the election. A third party will have to establish itself on one side of the median and will divide its votes with the existing party on that side of the median. Both of those parties will become unviable, and, under the assumption that parties exist to win elections, one of those parties will have to fold, or the two parties will have to combine in order to win votes.<sup>8</sup> The United States has a two-party system because of the use of plurality voting in elections.

If representatives were elected by proportional voting from a party ticket, the system would allow multiple parties. Presently, a party that gets 20 percent of the votes loses the election and gets nothing. With proportional voting, a party that gets 20 percent of the votes would get 20 percent of the seats. This opens up the possibility for multiple parties to elect representatives. Countries that use proportional voting have many political parties, not just two, as in the United States.<sup>9</sup> This explains why.

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7. See Center for Responsive Politics 2018 for a history of congressional reelection rates.

8. This is explained in more detail in Holcombe 2016, chapter 2. See also Holcombe 1989 for additional background on the idea. The classic book by Anthony Downs, *An Economic Theory of Democracy* (1957), clearly explains this idea.

Pippa Norris reports that New Zealand, which had a winner-take-all electoral system for more than a century and a two-party system as a result, switched to a mixed-member system in which some representatives were elected by proportional voting: thirty-four parties contested for seats in 1996, and representatives from six parties were elected (1997, 298). Proportional voting would make more parties viable, but it would likely have a minimal impact on public policy. Seok-ju Cho (2014) concludes that even with multiple parties, policy outcomes under proportional voting are likely to be very similar to those produced under the current plurality voting system. Democratic decision making means that even if there is a greater dispersion of political views in the legislature, the median legislator's views are likely to be close to the median voter's. Cho's conclusion may be disappointing to those who hold out hope that proportional voting might increase representation of minority views but reassuring to those who might be concerned that this proposed change would have a major impact on public policy.

### *Party-Line Voting*

One feature of legislatures selected by proportional voting for candidates from party lists is that because the parties themselves choose the people who will be on the party's ticket, representatives, once elected, must vote the party line or run a high probability of being dropped from the party list at the next election. Although party-line voting often occurs in the House of Representatives now, it would be more strictly enforced under this proposal for proportional voting.

Party-line voting may not be undesirable for voters. Voters cannot monitor all of the votes taken by their representatives and so may have a difficult time accurately evaluating whether their representatives are voting in ways that represent their views. With party-line voting, constituents have an easier time monitoring their representatives because the representatives will vote the party line, so constituents only need to identify the degree to which the party represents their interests. And because proportional voting would enable more parties, there would be a greater chance that individual voters will be able to find a party more closely aligned with their interests than they do under a two-party system.

Although in the proposed system voters would vote for parties rather than for individual representatives, Audrey André and her colleagues (2015) conclude that those on party lists retain an incentive to campaign for their parties and to gain personal recognition and support. Aside from the fact that gaining support for themselves can help the party, the party leadership will want to promote more popular candidates up the list, which improves the prospects for those candidates remaining as representatives over the longer term. If a party won fifty seats, for example, those in the top fifty on the

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9. There are more than two parties in the United States if minor parties are included, but those minor parties never become competitive with the two major parties, and Duverger's law explains why.

party list would be elected, whereas those lower on the list would not. The incentive to move up on the list gives party members the incentive to cultivate personal reputations that enhance the party's popularity.

### **Is This Proposal Politically Feasible?**

The high reelection rates that currently exist in the House of Representatives suggest that most incumbents would likely be opposed to this proposal. They will almost surely be reelected under the current system, and a party-list system would mean that representatives would lose some of their independence because parties would choose their candidates and could better enforce party discipline.

This proposal would affect different representatives differently, however. With proportional voting, those at the top of party lists would find their positions even more secure than under the current system—surely the major parties will elect some representatives—but those farther down the list would be less secure. High reelection rates under the current system would mean that those at the top of the list would receive only a little additional security, whereas those farther down would be less secure. Furthermore, because party leaders would expect to be at the top of the list, they would retain much of their ability to steer public policy—maybe even more because they would have greater control over those outside the leadership—whereas those lower down on the list would have diminished power. Some incumbents would benefit from proportional voting from party lists, but many would find their influence weakened and the security of their seats diminished. Many in the political class would surely raise objections to this possibility.

The Republican and Democratic parties, as organizations, would likely be opposed to this proposal because it would threaten the lock they have on the political process by facilitating the election of members of other parties. This may be a good reason for nonpartisan individuals to favor the proposal. And although the party apparatus might oppose the proposal, as noted earlier, some of the more powerful individual party members might find it attractive. Also, because there are significant ideological differences among members of the same party, some of those who currently affiliate with the two major parties might welcome the opportunity to form new parties. As the system stands now, to join a third party amounts to political suicide.

A constitutional amendment would require the approval of two-thirds of the House, two-thirds of the Senate, and three-quarters of the states to be ratified. Although these three groups might be influenced by popular opinion, the feasibility of such an amendment would ultimately depend on how these groups view it. One can think of good reasons why those who have the final say might be opposed, but popular opinion can make a difference. The Nineteenth Amendment, giving women the right to vote, was approved even though it diluted the voting power of men and, as John Lott and Lawrence Kenny (1999) argue, altered public policy to conform more to women's views. The first step in any constitutional reform must be to suggest such reform as an alternative to the status quo.

## Conclusion

Voters already vote along party lines, and political parties are a fact of American political life, even though the U.S. Constitution does not recognize parties. The proposal described in this paper would recognize explicitly what is already a major factor in politics and allow voters to vote directly for parties rather than indirectly for representatives who run first and foremost as party members.

There are three big differences between this proposed system and the current arrangement. First, proportional voting would create the opportunity for additional political parties. Rather than just being given the choice of one of two parties, voters would be more likely to find a party that more closely corresponds with their own political views. Second, voting in the House of Representatives would be even more likely to occur along party lines. Today, most representatives vote with their party, so this is not a big change in that sense, but it would change the nature of representation so that it would be explicitly along party lines rather than according to citizens being represented by individual representatives.

Third, representatives would no longer be representing narrow geographic constituencies. The incentive to bring home special-interest projects for their districts would disappear because representatives would no longer have geographic districts. When the nation was founded, citizens were less mobile, and there were more differences from state to state. In the twenty-first century, when representation is de facto already by party, removing the geographic special-interest component in the House of Representatives would be desirable.

Voters are often not well informed about political candidates. They are rationally ignorant because they know that their single vote will not change the outcome of an election.<sup>10</sup> Voters are more likely to be informed about differences in party platforms than they are about differences in individual candidates, so party voting also has the advantage of allowing voters to cast more informed ballots.

The original design of the legislative branch divided it into two houses representing different constituencies, with the House of Representatives representing the people and the Senate representing the interests of the state governments. That division was eliminated by the passage of the Seventeenth Amendment in 1913. The proposal described here would restore that division to a degree because senators would continue to represent the interests of voters in their states, and representatives would be elected nationwide to represent different parties' platforms.

Parties are already a major part of American politics even though they are not recognized by the Constitution. The Founders had good reason to hope that government would not be influenced by party politics, but the reality is that it is.

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10. This is yet another insight developed by Downs (1957). Geoffrey Brennan and Loren Lomasky (1993) explain that because voters realize that their one vote will not affect the outcome of an election, they often will vote for options that do not align with their interests or even, as Bryan Caplan (2007) explains, will vote irrationally.

Proportional voting for representatives from party tickets is a way to channel that influence in a more productive way.

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**Acknowledgments:** I am grateful to Sooyoun Hwang for discussions that led to the writing of this paper and to two anonymous referees for helpful comments. Any shortcomings remain mine.

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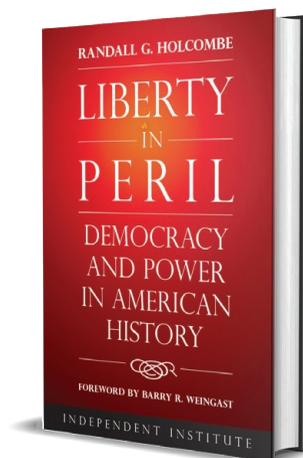
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