

BEYOND NIGHTMARE AND HOPE: ENGINEERING ELECTORAL PROPORTIONALITY IN PRESIDENTIAL DEMOCRACIES

Yen-Tu Su*

I. INTRODUCTION

Electoral reform is often portrayed as a battle of virtue versus evil. To mobilize the public's passions and support, advocates from both sides of the policy debate endeavor to incorporate such rhetoric into their propaganda. In a sense, rhetoric simplifies the trade-offs of electoral engineering, which is often considered a key role of constitutional/political engineering. However, only a thin line separates eloquence and overstatement. How can we ensure that an institutional design or reform proposal is based on informed and reasonable judgment rather than bias and distortion? Given that institutional engineering remains more art than science,¹ it remains a significant challenge for electoral engineers to withstand the allure of reductionism.

The fierce debate on the merits of adopting certain forms of proportional representation (PR) in presidential democracies exemplifies the difficulties of electoral engineering. Some scholars firmly believe that proportional representation systems are incompatible with presidential systems. According to their warnings, using PR to elect members of assemblies generally results in crises of governability and, ultimately, a disastrous constitutional breakdown. But one person's nightmare is another's hope. Advocates of PR contend that only full and fair representation can promote true harmony in divided societies. They believe that proportional representation is desirable in its own right and should not be dismissed merely because of the increasing needs for coalition building in the post-election political process. A quick review of the current literature indicates that both sides of the policy debate emphasize different concerns of electoral engineering: one focuses on issues of governability and the other accentuates concerns for representativeness. The tension between governability and representativeness has

*. Visiting Researcher, Harvard Law School. LL.M. 2003, Harvard Law School; LL.M. 1998, National Taiwan University. This article derives from my LL.M. paper at Harvard Law School. I am deeply indebted to Professor Heather Gerken for her supervision and constant encouragement. I would also like to thank Professor Lani Guinier and the participants at the Visiting Scholars/Visiting Researchers Colloquium at Harvard Law School for their helpful comments. In addition, I am grateful to Paula Maute for her editing on an early draft of this Article. Geoff Ciereck, along with other members of the *Journal of Legislation*, including Chad Silker, Angela Petrucci, and Anna Smith, also provided valuable editorial assistance. All mistakes, of course, are my own.

1. See Pippa Norris, *Ballots Not Bullets: Testing Consociational Theories of Ethnic Conflict, Electoral Systems, and Democratization*, in *THE ARCHITECTURE OF DEMOCRACY: CONSTITUTIONAL DESIGN, CONFLICT MANAGEMENT, AND DEMOCRACY* 206, 213 (Andrew Reynolds ed., 2002) [hereinafter *THE ARCHITECTURE OF DEMOCRACY*].

long been identified as one of the most important issues in the electoral field.² But neither side of this debate takes the other side's concerns very seriously.

The cases of electoral reform in the United States and Taiwan further demonstrate some interesting contrasts. While proponents of electoral reform in the United States seek to change the dominant single-member districts (SMDs) into multi-member districts (MMDs), reformers in Taiwan want to abandon MMDs and use SMDs in district elections instead; while people in the United States hope to vitalize the static politics by increasing the proportionality of the congressional electoral system, reformers in Taiwan hope to decrease the electoral proportionality of legislative elections so as to enhance political stability and maintain social harmony. Likewise, the arguments against the proposed electoral reforms in these two countries present a symmetrical contrast as well: opponents of the PR movement in the United States worry that adopting the proposed semi-proportional electoral system would exacerbate the "balkanization" of American politics and threaten the political stability of American presidential democracy; some political scientists in Taiwan, on the other hand, contend that proportional representation is inherently meritorious and that the Mixed Member Proportional (MMP) system—as the German model exemplifies—is a better alternative for Taiwan's electoral reform.

In the midst of the theoretical and political debates, how can we evaluate and engineer the electoral proportionality of legislative elections in a presidential democracy? Is proportional representation incompatible with presidential systems? Or does the constitutional structure of dual democratic legitimacy invite us to combine two different types of representation in a presidential democracy? Do the concerns of political fairness or representativeness actually favor the principle of proportional representation? Or must we make the tough choice between different visions of democracy? This article reevaluates the current academic debate on the merits of proportional representation in presidential systems. My main thesis is that neither the Linzian nightmare of a resulting constitutional breakdown, nor the Guinierian hope of a consociational democracy should control our political judgment. Instead, in designing legislative electoral systems, electoral engineers must make inevitable trade-offs based on pragmatic considerations as well as philosophical reflections. Even though composing the sound bite of electoral reform is necessary for political mobilization, the deliberation of reform proposals should go beyond the competing rhetoric of the current debate.

This Article is organized as follows: Part II reviews the literature on constitutional engineering in general and electoral engineering in presidential democracies in particular. In addition, I examine the proposals of electoral reform in the United States and Taiwan. The case studies of the United States and Taiwan confirm that governability and representativeness are the two main concerns of those undertaking the difficult task of engineering electoral proportionality in presidential democracies. Part III examines the substantial controversies over the concerns of governability. By clarifying and reexamining the factual assumptions and value judgments inherent in the concerns of governability, I argue that neither the conventional thesis of the Linzian nightmare nor the minority opinion that expresses optimism in this regard is conclusive. Whether the con-

2. See Larry Diamond, *Three Paradoxes of Democracy*, in *THE GLOBAL RESURGENCE OF DEMOCRACY* 95, 100–03 (Larry Diamond & Marc F. Plattner eds., 1993); SAMUEL ISSACHAROFF ET AL., *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* 1160 (2d ed. 2002) [hereinafter *THE LAW OF DEMOCRACY*].

cerns of governability would counsel for or against the use of PR in presidential democracies is a question that requires our political judgment. Part IV reviews the grand debate over the relative desirability of proportional versus majoritarian representation. After confirming that political equality concerns are not decisive because competing visions of representative democracy still exist and are not entirely reconcilable, Part IV then analyzes the proportional and majoritarian visions of democracy, examining the concepts of representation and visions of politics associated with these two distinct visions. The indeterminacy of political philosophy and the emergence of hybrid systems in comparative politics further lead me to conclude that our concerns of representativeness should be liberated from the majoritarian-proportional dichotomy.

II. ELECTORAL SYSTEMS AND PROPOSALS OF REFORM IN PRESIDENTIAL DEMOCRACIES

The electoral system is not merely a part of a democratic country's constitutional arrangements; it is a *crucial* part of the constitutional institutions, for it provides the most important linkages between the people and their representative government.³ By filtering and channeling the voters' will into government, the electoral system can not only profoundly impact the prospects of social integration, but can also deeply affect governmental performance. Due to these two far-reaching effects, designs of electoral rules are often deemed "the most powerful instrument available for institutional engineering."⁴ Consequently, we can never fully analyze an electoral system if we treat it as an isolated institution without considering its political and social contexts.⁵

Examining electoral systems from the perspective of institutional engineering is a prevalent approach in constitutional politics studies. In the context of political decision-making, this approach probably has a relative advantage of coordinating a broader platform for normative consideration compared with the right-centered jurisprudence developed by constitutional lawyers. Before we enter the substantial debates of electoral engineering, however, we need to understand the basic presumptions of this approach and then transform the institutional phenomena, along with the policy discourses in real politics, into the engineer's source materials. This section aims to fulfill these objectives. First, I elaborate upon the mechanisms and significance of electoral rules in a given constitutional system, explaining why it is an appropriate approach to discuss electoral designs in the manner of institutional engineering. Later, I focus on the electoral designs and reform proposals in presidential democracies. After a general survey of the current electoral systems adopted by countries with presidential systems, I look into the electoral reform proposals in the United States and Taiwan respectively and comparatively. Based on these two case studies, I then confirm and outline the two basic concerns of electoral engineering.

3. Conceiving the electoral system as an important part of the constitutional system has long been proposed by many scholars of constitutional politics. See, e.g., GIOVANNI SARTORI, *COMPARATIVE CONSTITUTIONAL ENGINEERING: AN INQUIRY INTO STRUCTURES, INCENTIVES, AND OUTCOMES* (2d ed. 1997).

4. Norris, *supra* note 1, at 207.

5. See, e.g., ANDREW REYNOLDS & BEN REILLY, *THE INTERNATIONAL IDEA HANDBOOK OF ELECTORAL SYSTEM DESIGN* 122 (1997) [hereinafter *IDEA HANDBOOK OF ELECTORAL SYSTEM DESIGN*].

A. Electoral System and Constitutional Engineering

Designing an electoral system is a sub-project of constitutional/institutional engineering. For many scholars of comparative politics, it is even perceived as the key to designing or reforming the constitutional system.⁶ To fully appreciate the significance of electoral systems and electoral engineering, the basic concepts of "constitutional engineering" need to be outlined. Generally speaking, the theme of constitutional engineering involves a specific way of seeing politics and a normative-programmatic attitude toward institutional design: a constitutional engineer tends to perceive constitutional politics as an institutional phenomenon and tends to concentrate on the impacts of institutional arrangements on real politics. Although the process of institutional construction in the real world is inevitably entangled with bias, short-sighted calculations, and political compromises, a constitutional engineer would endeavor to pursue his or her normative ideals or programmatic objectives.⁷ Among the myriad institutional factors that affect a constitutional democracy, the constitutional framework of the executive-legislative relations, the party system, and the electoral system are probably the three major concerns of constitutional engineers.⁸ A further survey of these three factors and their correlations may help us understand the theses of constitutional engineering in general and electoral engineering in particular.

1. The Constitutional Framework of Executive-Legislative Relations

When scholars' interests in the institutional aspects of politics were revived in the mid-1980s, the vices and virtues of different regime types had been hotly debated in the field of comparative politics.⁹ What underlie the differentiations and categorizations of regime types are basically the different arrangements of the relationship between the executive and legislative branches.¹⁰ In a presidential system, the executive and legislative branches have a rigid separation of powers. In a parliamentary system, on the other hand, the executive branch is responsible to the parliament. Typological disputes still rage over the so-called semi-presidential system in which a popularly-elected president possesses considerable powers, but the executive function is largely performed by a premier-led cabinet that is responsible to the legislature.¹¹ Although in certain circum-

6. See Dieter Nohlen, *Electoral Systems and Electoral Reform in Latin America*, in INSTITUTIONAL DESIGN IN NEW DEMOCRACIES: EASTERN EUROPE AND LATIN AMERICA 44 (Arend Lijphart & Carlos H. Waisman eds., 1996).

7. For a general observation on the ideals and realities of constitutional engineering, see Donald L. Horowitz, *Constitutional Design: Proposals Versus Processes*, in THE ARCHITECTURE OF DEMOCRACY, *supra* note 1, at 15-36.

8. Of course, there are other important dimensions of constitutional engineering, such as the choice between federalism and unitarism, between unicameralism and bicameralism, and between different forms of judicial review. For a more detailed discussion, see generally AREND LIJPHART, PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES (1999) [hereinafter LIJPHART, PATTERNS OF DEMOCRACY].

9. The famous presidential-parliamentary debate may trace back to Professor Juan Linz's seminal critique of presidentialism in 1984, which was widely circulated before its formal publication a decade later. See generally Juan J. Linz, *Presidential or Parliamentary Democracy: Does It Make a Difference?*, in THE FAILURE OF PRESIDENTIAL DEMOCRACY, VOLUME I, COMPARATIVE PERSPECTIVES 3 (Juan J. Linz & Arturo Valenzuela eds., 1994) [hereinafter THE FAILURE OF PRESIDENTIAL DEMOCRACY].

10. See LIJPHART, PATTERNS OF DEMOCRACY, *supra* note 8, at 116.

11. For discussions of the semi-presidential systems, see Maurice Duverger, *A New Political System Model: Semi-Presidential Government*, 8 EUR. J. POL. RES. 165 (1980); Giovanni Sartori, *Neither Presiden-*

stances the distinctive characteristics of such hybrids require special consideration, most of the time hybrid systems are nonetheless categorized in terms of the presidential-parliamentary dichotomy, based on the roles and political strength of the presidents.¹²

The constitutional framework of the executive-legislative relations is of great importance not only because these two political branches are the central stage of “government formation” and policy making, but also because the framework defines the actual contour of a democracy. In the parliamentary system, only parliamentary representatives are directly elected by the people, and thus the political legitimacy of the executive branch is completely dependent on parliamentary confidence.¹³ On the other hand, in the presidential system, both the president and the assembly are popularly elected; the rigid separation of powers in this regime type, accordingly, is sustained by the arrangement of dual democratic legitimacy.¹⁴ In this regard, the presidential-parliamentary distinction also implies different tasks of the electoral system.

Determining which regime type is better for the consolidation and sustainable development of democracy is a controversial issue. While different preferences exist, most of the participants of this grand debate seem to agree that the impacts of a specific regime type on the performance of a democracy are neither straightforward nor determinative.¹⁵ After all, political actors operate the system, and their behavior is not solely shaped by institutional incentives. Though our inquiry is centered on the impacts of institutional design, it runs the risk of oversimplification if we fail to consider the profound impacts of the party system and electoral system on the function of the presidential or parliamentary system.¹⁶ For instance, a Westminster-style parliamentary system rarely involves coalitional governments, yet parliamentary regimes with multi-party system often contain them.¹⁷ Many scholars also contend that a presidential system would function better if the party system is moderately disciplined and less fragmented.¹⁸ Designing a constitutional framework for executive-legislative relations, therefore, is just a starting point, not the whole story of constitutional engineering.

2. The Party System

Modern democracies depend on party politics, but the roles of political parties and the structures of party competition vary from country to country. This simple fact of comparative politics indicates that a party system may be an important variable for the

tialism nor Parliamentarism, in *THE FAILURE OF PRESIDENTIAL DEMOCRACY* 106. Shugart and Carey use another term—“premier-presidentialism”—to characterize such a regime; they further identify a similar yet somewhat different hybrid type, the “president-parliamentary” system. See MATTHEW SOBERG SHUGART & JOHN M. CAREY, *PRESIDENTS AND ASSEMBLIES: CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS* 23–27 (1992) [hereinafter SHUGART & CAREY, *PRESIDENTS AND ASSEMBLIES*].

12. See LUPHART, *PATTERNS OF DEMOCRACY*, *supra* note 8, at 121–24.

13. Juan J. Linz, *The Perils of Presidentialism*, in *THE GLOBAL RESURGENCE OF DEMOCRACY* 108, 109 (Larry Diamond & Marc F. Plattner eds., 1993).

14. On the connection between ideas of “democratic legitimacy” and ideas of “separation of powers,” see Bruce Ackerman, *The New Separation of Powers*, 113 *HARV. L. REV.* 633, 642–44 (2000).

15. See Richard Gunther, *The Relative Merits (and Weaknesses) of Presidential, Parliamentary and Semi-Presidential Systems: The Background to Constitutional Reform*, 11 *J. SOC. SCI. & PHIL.* 61, 68 (1999).

16. *Id.* at 69.

17. See LUPHART, *PATTERNS OF DEMOCRACY*, *supra* note 8, at 10–11.

18. See, e.g., Scott Mainwaring & Matthew Shugart, *Juan Linz, Presidentialism and Democracy: A Critical Appraisal* (1993), available at <http://www.nd.edu/~kellogg/WPS/200.pdf> (last visited Apr. 7, 2004). This proposition will be discussed more thoroughly in Part III.

outcome or performance of a democracy. The term “party system” generally encompasses two aspects of party politics in a given country. The first is the effective number of parties; from this measure we can distinguish several types of party systems, ranging from a two-party system to a multi-party system without a dominant party.¹⁹ This numerical feature is of great importance because it has a significant impact on the logic or spirit of politics: the two-party system exemplifies the majoritarian vision of politics, whereas the multi-party system highlights the necessity of coalition building.²⁰ The effective number of parties also seems to influence the stability and even the survival of a democracy.²¹ Controlling the fragmentation of a party system thus becomes a salient task of constitutional engineering.

The second feature of the party system is the degree of party discipline or party cohesion. This feature may reflect the political strength of parties and indicate the roles played by parties in the election phase as well as the post-election phase of the political process. Significant correlations also exist between party discipline and the performance of a presidential or parliamentary system: it is often argued that a parliamentary system needs and should encourage the development of leadership and loyalty within parties.²² The presidential system, on the other hand, does not favor highly disciplined parties, especially during periods of divided government, but a moderate degree of party discipline is still recommended to maintain stable coalitions and avoid the excessive use of clientelism and patronage.²³

The party system that a country develops is largely contingent on her social cleavage and political culture, but several institutional arrangements seem to provide important incentives for the development of the party system as well. Since the famous Duverger’s Law (stating that single-member districts, along with the plurality method, tend to favor two-party systems) and Duverger’s Hypothesis (stating that PR and two-round systems encourage multipartism) came into being almost half a century ago, the electoral system has been deemed the most powerful leverage a constitutional engineer possesses in affecting the requisite number of parties.²⁴ The electoral system is also considered the major institutional determinant of party discipline.²⁵ Through the mediation of the party system, the electoral system further exerts great influence over the performance of the presidential and parliamentary systems. To complete the project of constitutional engineering, therefore, we must consider influences of the electoral system.

19. The “effective number of parties” is an index that considers the relative strengths of parties when calculating the number of parties in a party system. For the calculating formulas and the implications of this concept, see LIJPHART, PATTERNS OF DEMOCRACY, *supra* note 8, at 65–69.

20. *Id.* at 62–63.

21. “Balkanization” that results from multipartism is often considered a serious threat both to parliamentary and presidential systems. *See, e.g.*, Ackerman, *supra* note 14, at 653–57.

22. *See* THE FAILURE OF PRESIDENTIAL DEMOCRACY, *supra* note 9, at 62–64.

23. *See* Scott Mainwaring & Matthew Soberg Shugart, *Conclusion: Presidentialism and the Party System*, in PRESIDENTIALISM AND DEMOCRACY IN LATIN AMERICA 394, 418–21 (Scott Mainwaring & Matthew Soberg Shugart eds., 1997) [hereinafter Mainwaring & Shugart, *Conclusion*].

24. On the links between electoral system and party system, see LIJPHART, PATTERNS OF DEMOCRACY, *supra* note 8, at 165–70.

25. *See* Mainwaring & Shugart, *Conclusion*, *supra* note 23, at 421–29.

3. The Electoral System

There are different types of elections in democratic regimes (especially in presidential democracies where both the presidents and the legislatures are popularly elected), but studies of electoral systems usually focus on methods of electing legislatures.²⁶ There are also various dimensions of electoral rules, but their systematic characteristic is distinguished by the way they translate votes into seats.²⁷ The basic function of the electoral system, in a nutshell, is to determine which candidate(s) may win the seat(s) in an election. To perform this function, an electoral system at least has to specify (a) how many seats will be contested in a district (i.e., the concept of “district magnitude”) and (b) how to count the votes and convert them into seats (i.e., the concept of “electoral formulas”).²⁸

Based on the different arrangements of the vote-seat relationship, the literature identifies three major types of electoral systems.²⁹ The first type, the plurality-majority system, refers to electoral systems that combine “single-member district” (SMD) with “plurality rule” (first-past-the-post) or “majority formula.”³⁰ Under this kind of arrangement, only the candidates who are supported by the largest number of voters in their respective districts can become representatives, whereas those candidates who are supported by the minorities get nothing.³¹ In other words, the plurality-majority system exemplifies the principle of majority rule in the election phase of the political process.

The second type, the system of proportional representation (PR), combines “multi-member districts” with some special electoral formulas in order to assign seats in proportion to votes as accurately as possible.³² Compared to the winner-take-all effect of

26. In presidential democracies, the electoral formula for the presidency and the relative timing of elections for the two political branches are also important components of the electoral system. For a detailed discussion of these two determinants, see John M. Carey, *Constitutional Choices and the Performance of Presidential Regimes*, 11 J. SOC. SCI. & PHIL. 93, 94–106 (1999); MARK P. JONES, ELECTORAL LAWS AND THE SURVIVAL OF PRESIDENTIAL DEMOCRACIES 88–118 (1995).

27. See IDEA HANDBOOK OF ELECTORAL SYSTEM DESIGN, *supra* note 5, at 7; DAVID M. FARRELL, ELECTORAL SYSTEMS: A COMPARATIVE INTRODUCTION 4 (2001).

28. “District magnitude” and “electoral formula” are often considered the two major components of an electoral system because they have the strongest effects on the electoral proportionality, upon which the classification of the electoral systems is drawn. But it should be noted that there are other components of an electoral system. For example, the rules or mechanism of “electoral thresholds,” which refer to the minimum level of support a party or candidate needs to gain representation, may also exert significant influence on the function of the electoral system. For a more detailed introduction to the attributes of electoral system, see LUPHART, PATTERNS OF DEMOCRACY, *supra* note 8, at 144, 146.

29. See IDEA HANDBOOK OF ELECTORAL SYSTEM DESIGN, *supra* note 5, at 17–23; FARRELL, *supra* note 27, at 6–10. See generally DOUGLAS J. AMY, BEHIND THE BALLOT BOX: A CITIZEN’S GUIDE TO VOTING SYSTEMS (2000).

30. The First Past the Post (FPTP) system and the Two-Round System (TRS) represent the use of plurality rule and majority formula respectively. Under the FPTP, the winning candidate in each single-member district is the one who gains more votes than any other candidate. The Two-Round System, on the other hand, requires an absolute majority of votes for a candidate to win the election; a second round of voting is conducted, accordingly, if no candidate received majority support in the first round.

31. This is also the reason why it is often termed as the “winner-take-all” system.

32. List PR, Mixed Member Proportional (MMP), and Single Transferable Vote (STV) are the three forms of proportional representation. Under the List PR system, each party presents a slate of candidates for voters to cast their ballots, and parties receive seats in proportion to their share of the national vote. The MMP system combines a single-member district system with a List PR system; while half of the representatives are elected in district elections and the other half are elected by the List PR, the List PR seats will compensate for any disproportionality produced by the district elections. The STV system functions in multi-member districts where voters can rank their preferences and their votes will be reallocated according to their preferences until all seats for the constituency are filled.

the plurality-majority system, PR does not create legislative majority by significantly distorting the proportionality of vote-seat relations.³³ Hence, electoral minorities may be represented under PR as long as their votes can surpass the relatively lower “electoral threshold” inherent in PR.

The third type, the semi-proportional system, signifies the intermediate system that has no apparent disposition or propensity with respect to vote-seat proportionality.³⁴ Under this type of system, candidates of small parties still have a chance to win seats, but there still exist certain degrees of vote-seat disproportionality: the “seat-bonuses” are assigned either to large or small parties depending on many variables such as the district magnitude, electoral formula, geographical politics, and the strategies of political actors (including voters).³⁵

Two lines of argument may explain why electoral and constitutional engineering focus on the vote-seat proportionality. The first argument focuses on the normative implications of different electoral systems. Both Professors Lijphart and Powell assert that there are basically two visions/patterns of representative democracy from the perspective of comparative politics: one envisions the majoritarian ideal and promises that voters may control policymakers through elections, while the other emphasizes the values of proportional representation and seeks to promote consensual politics.³⁶ Though other constitutional arrangements should not be ignored, the electoral system often plays a leading role in reflecting or shaping the vision of democracy in a given country. Engineering electoral proportionality, therefore, not only focuses on how an electoral system should work, but also reflects the fundamental values and ideals that a democracy wants to pursue.

The significance of the electoral system can also be gauged in terms of its practical impact on politics and society. Although the famous Duverger’s Law and Duverger’s Hypothesis are controversial propositions of reductionism or determinism,³⁷ most political scientists agree that, in general, there is a strong negative relationship between the degree of electoral disproportionality and the effective number of parties in a legislature.³⁸ The intra-party cohesion or party discipline is also heavily influenced by the design of an electoral system.³⁹ For example, some electoral systems, such as the closed-list PR, would give party leaders plenary power to control the nomination of candidates and thus enhance the degree of party discipline.⁴⁰ On the other hand, in systems where

33. In other words, though PR cannot achieve full vote-seat proportionality, it seeks to minimize the degree of distortion. See FARRELL, *supra* note 27, at 12.

34. The most commonly used semi-proportional system are the parallel systems in which both PR lists and single-member districts are used, but the PR seats and the district seats are allocated separately—in other words, the List PR seats under the parallel systems do not compensate for the disproportional district elections. Cumulative Voting (CV), Limited Voting (LV) and Single Non-Transferable Vote (SNTV) are also semi-proportional systems. These three electoral formulas are used in conjunction with multi-member districts, the only difference among them is the number of votes each voter can cast.

35. “Seat bonus” is a buzzword that refers to a party’s advantage of overrepresentation resulting from the disproportionality of the electoral system. See Gary W. Cox & Emerson Niu, *Seat Bonuses under the Single Nontransferable Vote System: Evidence from Japan and Taiwan*, 26 COMP. POL. 221 (1994).

36. See LIJPHART, PATTERNS OF DEMOCRACY, *supra* note 8, at 1–8; G. BINGHAM POWELL, JR., ELECTIONS AS INSTRUMENTS OF DEMOCRACY: MAJORITARIAN AND PROPORTIONAL VISIONS 4–7 (2000) [hereinafter POWELL, ELECTIONS AS INSTRUMENTS OF DEMOCRACY].

37. For a detailed discussion of Duverger’s propositions and their critics, see GARY W. COX, MAKING VOTES COUNT: STRATEGIC COORDINATION IN THE WORLD’S ELECTORAL SYSTEMS 14–33 (1997).

38. See LIJPHART, PATTERNS OF DEMOCRACY, *supra* note 8, at 168; FARRELL, *supra* note 27, at 162.

39. See IDEA HANDBOOK OF ELECTORAL SYSTEM DESIGN, *supra* note 5, at 8.

40. Mainwaring & Shugart, *Conclusion*, *supra* note 23, at 422–23.

candidates rely on their personal efforts rather than party approbation to win elections, parties tend to be less disciplined and even more fractionalized.⁴¹ These salient effects upon the logic and climate of real politics have great influence on the long-term prospect of political integration, which is a fundamental objective of political order that often raises grave concerns in divided societies. Political scientists contest the type of electoral systems that would better serve divided societies in terms of “conflict management.”⁴² It seems that different electoral systems would incorporate different strategies of conflict management, and no single system is probably superior to others in a variety of social contexts.⁴³

B. *Electoral Reform in Presidential Democracies*

With the background knowledge outlined above, we can now see the dynamics of electoral design or electoral reform through the lens of constitutional engineering. The next step is to take a closer look at the electoral systems and proposals of reform in presidential democracies.⁴⁴ An overview of the current electoral systems in a sample of presidential democracies could inform us that even in similar contexts of constitutional frameworks, the arrangements of electoral system still vary from country to country. Nonetheless, a comparative analysis of the dynamics of electoral reform may reveal similar considerations of electoral engineering in presidential democracies. This inquiry looks into the ongoing movements of electoral reform in the United States and Taiwan. The selection of these two cases anticipates that they represent an established and transitional democracy respectively, and that they might shed some new light on the current discussions on the experiences of presidential regimes in Latin America and Eastern Europe. Apart from brief descriptions of the relevant political agenda in real politics, this inquiry focuses on the rationales of the reform proposals. Accordingly, the problems of the current systems and the proposed solutions are mainly illustrated from the electoral reformers' perspectives.

1. Electoral Systems in Presidential Democracies: An Overview

Some scholars of comparative politics believe that presidential regimes share a common style of constitutional politics. Professor Linz argues that presidentialism “introduces a strong element of zero-sum game into democratic politics with rules that tend toward a ‘winner-take-all’ outcome.”⁴⁵ Professor Lijphart similarly contends that “presidential systems tend to be inherently majoritarian.”⁴⁶ With respect to the impacts of presidential elections and presidential cabinets on the political culture, these observations are probably right. But it would be a huge mistake to assume that in presidential

41. *Id.* at 426–27.

42. For an overview of this debate, see Benjamin Reilly, *Electoral Systems for Divided Societies*, 13 J. DEM. 156, 156–59 (2002).

43. *See id.* at 168–69.

44. This Article uses “presidential democracies” or “presidential regimes” as a general term referring to countries whose presidents are popularly elected and possess substantial powers. In addition to typical presidential systems, semi-presidential systems in certain countries are also within the purview of these terms.

45. THE FAILURE OF PRESIDENTIAL DEMOCRACY, *supra* note 9, at 18.

46. LIJPHART, PATTERNS OF DEMOCRACY, *supra* note 8, at 161.

democracies the electoral systems for the assemblies are invariably majoritarian-oriented.

In fact, presidential democracies have various types of legislative electoral systems. The United States and the French Fifth Republic (except the list-PR election in 1986) elect their legislatures under plurality-majority systems. These two countries are exceptions from the perspective of comparative politics, since most presidential democracies use non-majoritarian electoral systems to elect their legislatures. For instance, the Philippines, Russia, South Korea, and Taiwan now all use semi-proportional systems; with the exception of Chile and Mexico, presidential democracies in Latin America elect their representatives via systems of proportional representation. While plurality-majority systems are often deemed as the “ideal” or “default” electoral systems for presidential democracies, it is apparent that, in reality, non-majoritarian electoral systems are the mainstream.

The disparities of the electoral systems in different presidential democracies stem from various historical and political factors. Many countries adopted their current electoral systems deliberately. For example, France devised its “two-round system” in the hope of transforming its fragmented party system into a more stable, two-bloc system.⁴⁷ But few engineers have enjoyed the privilege of carrying out their original designs; political compromises are often inevitable.⁴⁸ Furthermore, the electoral systems in several countries are better viewed as historical contingencies of which the perceptions shaped by colonial experiences are often extended to post-colonial periods without conscious reconsideration.⁴⁹ The present electoral systems of the United States and Taiwan, for example, were largely shaped by British and Japanese traditions, respectively.⁵⁰ Proponents of electoral reform in such nations may find it difficult to persuade people to change an electoral system that has long been taken for granted, even though they have a strong argument in urging the public to make a deliberate choice between the current system and other promising alternatives.⁵¹

2. The Case of the United States

Since 1842, when the U.S. Congress began to exercise its power to regulate elections for senators and representatives, single-member districts have become the fundamental element of the congressional electoral system in the United States.⁵² The long-

47. See Ezra N. Suleiman, *Presidentialism and Political Stability in France*, in *THE FAILURE OF PRESIDENTIAL DEMOCRACY*, *supra* note 9, at 146–48.

48. For example, the adoption of a parallel system that combines PR and SMDs is often regarded as a result of political compromise between parties and politicians who have different preferences. See Olga Shvetsova, *Institutions and Coalition Building in Post-Communist Transitions*, in *THE ARCHITECTURE OF DEMOCRACY*, *supra* note 1, at 64–65.

49. See Horowitz, *supra* note 7, at 31–32.

50. On the historical development of the American electoral systems, see, e.g., Richard H. Pildes & Kristen A. Donoghue, *Cumulative Voting in the United States*, 1995 U. CHI. LEGAL F. 241, 258–59 (arguing that “no deliberative choice between territorial districts and alternative voting systems was made when the American commitment to the former was established.”) On the Japanese influence over Taiwan’s current electoral system, see YEH-LIH WANG, BI JIAO XUAN JU ZHI DU [COMPARATIVE ELECTORAL SYSTEMS] 124–28 (1998).

51. Electoral reform in established democracies seems to be more difficult than that which occurred in transitional democracies. Many political scientists argue that electoral reform is very uncommon in established democracies because people tend to prefer the status quo regardless of its faults. See, e.g., FARRELL, *supra* note 27, at 179.

52. On the history of the congressional electoral system in the United States, see generally *THE LAW OF*

term practice of the winner-take-all system has profoundly influenced the emergence and persistence of the American two-party system, which is often considered an important contributor to a stable democracy and effective government in this country.⁵³ The territorial districting under this system also facilitates politics of constituency service, assuring that political accountability is not just an empty promise of representative democracy.⁵⁴ However, majoritarian representation is not the only answer to democracy and electoral justice, nor is it necessarily better than other visions of democracy and political equality. After all, a system that benefits some people may be detrimental for others. From the dissenters' viewpoint, the architecture of single-member districts is, among other things, liable for the following flaws of American democracy:

(1) *Representational deficit*: The very logic of the single-member districts indicates that a significant portion (sometimes even the majority) of the voters cannot be represented by people they voted for. This is not a problem for a homogeneous society where people living in an electoral district have the same interests or share similar values, nor is it a serious challenge for a plural society where voting majorities shift from time to time.⁵⁵ However, the United States has developed into a heterogeneous society where polarized voting often dominates the election results. Various minority groups thus often complain that their interests are overlooked by the government because they are "permanent losers" under the current electoral system.⁵⁶ Professors Guinier and Torres mark this problem by the term "representational synecdoche"—"the part substituted for the whole"—because only the pluralities or majorities have their say in the electoral process.⁵⁷ From a similar viewpoint of interest representation, the problem can also be characterized as "representational deficit," because the current winner-take-all system simply fails to channel diverse interests into the formal political process. Regardless of the terminology, this problem can result in a serious crisis in political legitimacy and social integration, for the excluded minorities might lose faith in the fairness of the political process and ultimately reject "the tyranny of the majority."⁵⁸

(2) *Nightmares of gerrymandering*: Given that people with different interests or values do not choose their residence randomly, districting or redistricting is inherently a thorny task for plurality-majority systems.⁵⁹ It is a more serious problem in the United States, because most of the states leave the task of drawing district maps to politicians, allowing representatives to choose their constituents. Systematic manipulation is inevi-

DEMOCRACY, *supra* note 2, at 1156–59.

53. See, e.g., Davis v. Bandemer, 478 U.S. 109, 144–45 (1986) (O'Connor J., concurring) (noting that "the emergence of a strong and stable two-party system in this country has contributed enormously to sound and effective government"); RICHARD A. POSNER, LAW, PRAGMATISM, AND DEMOCRACY 174–77 (2003) (arguing that a two-party system tends to reduce the intensity of ideological conflict and thus promote political stability).

54. On the theory that territorial districting can promote accountability, see Samuel Issacharoff, *Supreme Court Destabilization of Single-Member Districts*, 1995 U. CHI. LEGAL F. 205, 229–30 (1995).

55. Under these two social contexts, the fear of majority tyranny can be alleviated by the realization of "adequate representation" or "virtual representation." See LANI GUINIER, THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY 77–78 (1994) [hereinafter GUINIER, THE TYRANNY OF THE MAJORITY].

56. The under-representation of racial minorities is the most salient example in this respect, but other minority groups are also similarly situated. See LANI GUINIER & GERALD TORRES, THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY 171–72 (2002) [hereinafter GUINIER & TORRES, THE MINER'S CANARY].

57. *Id.* at 169.

58. See GUINIER, THE TYRANNY OF THE MAJORITY, *supra* note 55, at 9–12.

59. See AMY, *supra* note 29, at 37.

table under this scheme, and it often threatens the fairness of political competition. Although the U.S. Supreme Court strives to tackle the harms of gerrymandering, its inconsistent jurisprudence since it entered the political thicket forty years ago only aggravates the grievous concerns of electoral justice.⁶⁰ In a society where race is intertwined with politics, it is difficult to understand why politicians cannot create a majority-minority district for the sake of enhancing minority representation, but are allowed to do so if the main purpose is to protect incumbents.⁶¹

(3) *Inert politics*: In the beginning of their influential article, Professors Issacharoff and Pildes report that “democratic politics today in the United States is widely perceived as unimaginative, frozen, devoid of genuine significance, and personality-rather-than-issue driven.”⁶² This negative description is largely supported by the especially low voter turnout in the United States, a worrisome phenomenon that may worsen the socio-economic inequality and endanger democracy.⁶³ Not surprisingly, the winner-take-all electoral system is an important institutional factor in this problem. Studies of comparative politics clearly indicate that the plurality-majority systems are often associated with low voter turnout,⁶⁴ and students of electoral engineering do not consider this correlation a statistical coincidence.⁶⁵ Professor Amy, for example, suggests that under the winner-take-all system voters are more prone to abstain, either because they know their votes will be “wasted,” or because they think that sincere voting carries little impact on the election results (which are often predetermined in safe districts).⁶⁶ Based on such allegations, Professors Guinier and Torres further conclude that “our winner-take-all elections have recreated a political hierarchy that diminishes the people’s role in determining their own destiny and privileges institutional order over widespread and ongoing public participation.”⁶⁷

For proponents of electoral reform, increasing electoral proportionality is the key to addressing these problems. By moving toward proportional representation, the U.S. House of Representatives can be more representative and more responsive to diverse interests. The congressional elections under the proposed system can also be more competitive, more issue-oriented, and less dependent on the way districts are drawn.⁶⁸ However, “proportional representation” in this context is merely a vague concept that highlights the general orientation of electoral reform.

Some proponents of electoral reform in the United States do argue for the establishment of a List PR or the Mixed Member Proportional (MMP) system, the two lead-

60. For a thorough critique of the harms of gerrymandering and the Court’s problematic jurisprudence, see Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 HARV. L. REV. 593 (2002).

61. For an analysis and critique of the U.S. Supreme Court’s “politics, but not race” approach, see *id.* at 630–38.

62. Samuel Issacharoff & Richard H. Pildes, *Politics as Markets: Partisan Lockups of the Democratic Process*, 50 STAN. L. REV. 643, 644 (1998).

63. See Arend Lijphart, *Unequal Participation: Democracy’s Unresolved Dilemma*, 91 AM. POL. SCI. REV. 1 (1997); MARTIN P. WATTENBERG, *WHERE HAVE ALL THE VOTERS GONE?* (2002).

64. See World Policy Institute, *Voter Turnout Comparisons*, available at <http://www.worldpolicy.org/globalrights/democracy/turnout.html>.

65. For the impact of the electoral system on voter turnout, see Andreas Ladner & Henry Milner, *Do Voters Turn out More under Proportional than Majoritarian Systems? The Evidence from Swiss Communal Elections*, 18 ELECTORAL STUD. 235 (1999).

66. See AMY, *supra* note 29, at 39–40.

67. GUINIER & TORRES, *supra* note 56, at 172.

68. On the arguments for proportional representation, see also ROBERT RICHIE & STEVEN HILL, *WHOSE VOTE COUNTS?* 9–18 (2001).

ing paradigms of proportional representation in Western democracies.⁶⁹ But these two options are often ruled out by their colleagues, partly because the required changes are too radical, and partly because Americans do not like political parties.⁷⁰ To satisfy the demand of practicability or other instrumental considerations, many reformers in turn propose Multi-Member Districts (MMD) in conjunction with electoral formulas like Cumulative Voting (CV), Limited Voting (LV), and Single Transferable Vote (STV).⁷¹ As noted above, CV and LV are better labeled as semi-proportional systems since they cannot achieve proportional results consistently.⁷² The STV system, by contrast, is more likely to deliver a high degree of electoral proportionality in a nonpartisan setting, but its complexity also limits its popularity to a small circle of electoral engineers. Another often discussed alternative is the Instant Runoff Voting (IRV), a form of preference voting held in single-member districts.⁷³ Since IRV does not alter the winner-take-all effect of the single-member districts, PR advocates often decline to endorse it as an acceptable substitute.⁷⁴

During the recent Congressional sessions, some relevant bills were introduced in the House. For instance, both the Voter Choice Act⁷⁵ (sponsored by Rep. Cynthia A. McKinney) and the States' Choice of Voting Systems Act⁷⁶ (introduced by Rep. Melvin L. Watt) seek to loosen the rigid requirement of single-member districts, permitting states to create multi-member districts for congressional elections. In 2001, several representatives also sponsored a bill (the Federal Elections Review Commission Act)⁷⁷ that would establish a special commission to study issues of electoral reform, including the impacts of the winner-take-all system and the feasibility of proportional representation. Despite the activists' enthusiasm, however, changing the congressional electoral system is still a minor issue on the American political agenda. The controversy of the 2000 presidential election prompted a movement for electoral reform, but the constitutional moment of the structural reform is yet to occur.

69. See *id.* at 28 (preferring an open party list system in three-seat districts). It should also be noted that Professor Guinier, while being famous for her advocacy of Cumulative Voting, speaks in favor of the List PR and MMP. See Lani Guinier, *And to the C Students: The Lessons of Bush v. Gore*, in *A BADLY FLAWED ELECTION: DEBATING BUSH V. GORE, THE SUPREME COURT, AND AMERICAN DEMOCRACY* 231, 258–59 (Ronald Dworkin ed., 2002) [hereinafter Guinier, *The Lessons of Bush v. Gore*].

70. Professor Briffault notes that List PR “presumes a degree of party cohesion and partisanship alien to the American experience.” Richard Briffault, *Lani Guinier and the Dilemmas of American Democracy*, 95 COLUM. L. REV. 418, 435 (1995) (book review). Professor McKaskle also argues that Party-List (List PR) system is not a viable alternative mainly because “[t]he electorate of the United States is hugely distrustful of party organizations.” Paul L. McKaskle, *Of Wasted Votes and No Influence: An Essay on Voting Systems in the United States*, 35 HOUS. L. REV. 1119, 1158 (1998). In addition, Professor Williams argues that List PR would do little to enhance the fairness of group representation in the United States, for the parties under this system usually reflect ideological differences rather than different group identities such as gender and race. MELISSA S. WILLIAMS, *VOICE, TRUST, AND MEMORY: MARGINALIZED GROUPS AND THE FAILINGS OF LIBERAL REPRESENTATION* 219–20 (1998) [hereinafter WILLIAMS, *VOICE, TRUST, AND MEMORY*].

71. For a comprehensive introduction to these alternative proposals, see *THE LAW OF DEMOCRACY*, *supra* note 2, at 722–65 (1998).

72. See AMY, *supra* note 29, at 112.

73. See RICHIE & HILL, *supra* note 68, at 24–26.

74. See Douglas J. Amy, *Instant Runoff Voting: No Substitute for Proportional Representation*, available at <http://www.mtholyoke.edu/acad/polit/damy/articles/irv.htm>.

75. H.R. 1189, 107th Cong. (2001).

76. H.R. 1173, 106th Cong. (1999).

77. H.R. 57, 107th Cong. (2001).

3. The Case of Taiwan

In many aspects, Taiwan is a typical case of the third wave of democratization. The democratic transition in Taiwan can be traced back to 1986, when the anti-authoritarian Democratic Progressive Party (DPP) was formed, but the authoritarian regime controlled by the old Koumintang (KMT) was not transformed into a democratically legitimate government until 1992, when all members of the Legislature were finally elected by the people in Taiwan.⁷⁸ From 1992 until 2003, Taiwan underwent two popular presidential elections, four legislative elections, and two elections for the once permanent National Assembly.⁷⁹ As a result of free elections, the KMT's one-party dominance was gradually replaced by multi-party competition. The first regime turnover, nonetheless, did not take place until the DPP won the presidency in 2000.

Taiwan's democratization occurred rather peacefully and incrementally compared to other new democracies,⁸⁰ but this unique pattern of constitutional change also carries restrictions on the achievements of constitutional engineering. Like many new democracies in Eastern Europe, Taiwan established a semi-presidential system through a series of constitutional amendments in the 1990's. The written Constitution, unfortunately, fails to provide meaningful guidance and adequate mechanisms for the presidential system that works in real politics.⁸¹ Like many new democracies in Eastern Europe, Taiwan also adopted a mixed electoral system for its parliamentary elections. The electoral engineering in the early 1990s, unfortunately again, did not consider the consequences of the electoral system seriously, nor did it foresee the subsequent changes in the party system. Today, Taiwan still faces serious challenges in consolidating its democracy, many of which resulted from its problematic institutional design.

The current electoral system for Taiwan's Legislature is an unusual form of a "Parallel System," which normally combines List PR and single-member districts as two separate mechanisms for seat allocation in a single election.⁸² While Parallel Systems were popular designs in the 1990s, Taiwan's electoral system is quite unusual in two respects. First, the district elections are basically held in multi-member districts (MMD) under the formula of Single Non-Transferable Voting (SNTV).⁸³ Under this system,

78. For a concise overview of Taiwan's constitutional and legal development, see Tay-sheng Wang, *The Legal Development of Taiwan in the 20th Century: Toward a Liberal and Democratic Country*, 11 PAC. RIM L. & POL'Y J. 531 (2002).

79. The National Assembly was once a representative body responsible for amending the Constitution and confirming presidential nominations to the Constitutional Court and other two independent constitutional organs. Following the Constitutional Amendments of 2000, however, the National Assembly transformed from a permanent establishment into an ad hoc constitutional convention.

80. Two relevant facts mark the uniqueness of Taiwan's transitional experience. First, the KMT successfully retained its political power until the 2000 presidential election. In other words, Taiwan did not follow the typical path of transitional democracies, in which a regime turnover usually occurs at the outset of democratization. Second, instead of enacting a new constitution, KMT chose to amend the problematic ROC Constitution incrementally. Throughout the 1990s, Taiwan amended the Constitution six times.

81. Many scholars regard Taiwan as a presidential democracy mainly because (1) the popularly elected President is the actual leader of the executive branch, and (2) the parliamentary mechanism of the "vote of no-confidence" is almost a "mission impossible" under the conditions of Taiwan's electoral politics. See, e.g., Jih-wen Lin, *Institutionalized Uncertainty and Governing Crises in the Post-Hegemonic Taiwan* (2002), available at http://www.inpr.org.tw/inprc/recent/0607_1.pdf.

82. See IDEA HANDBOOK OF ELECTORAL SYSTEM DESIGN, *supra* note 5, at 55; Shvetsova, *supra* note 48, at 64.

83. This part of the electoral system shows affinity for Japan's old electoral system used before 1996, though Taiwan's district magnitude—ranging from one to thirteen, with an average of seven—is quite different from its Japanese predecessor. See Andrew J. Nathan, *The Legislative Yuan Elections in Taiwan: Conse-*

there are multiple seats in each district, but every voter retains only one vote. The winning candidates in each district are those who receive the most votes.⁸⁴ Second, although there is a separate List PR system for 49 out of 225 seats of the Legislature,⁸⁵ there is no separate ballot for political parties. Like a tying arrangement, these seats are allocated to parties in proportion to the votes their candidates received in district elections, but only parties whose district candidates obtained more than 5% of the vote can participate in the allocation of these PR seats.

To a great extent, this unique combination affirmed the path-dependent theory of institutional evolution. Over the last twelve years, major parties, as well as voters, also learned strategies that helped the system to generate rather proportionate outcomes.⁸⁶ Nonetheless, few people like this system, and almost all parties promise to reform it. The electoral system is accused of being the principal or accomplice of the following wrongs that occurred in Taiwan:

(1) *Governing crises*: Major parties in Taiwan suffer from factionalism because party cohesiveness and discipline are hard to maintain under the SNTV-MMD system.⁸⁷ Due to the loose party discipline and the flawed bylaws of the legislature, the legislative process is often paralyzed by individual representatives, even when the party leaders have reached agreement on an issue. Before the regime turnover in 2000, the KMT government relied on clientelism to implement its legislative agendas, but this strategy exacerbated the vicious circle of money politics and ultimately contributed to the fall of the KMT government in 2000. The current ruling party, the DPP, finds it less difficult to maintain party discipline because it is more cohesive than the KMT in terms of political ideology. However, it still fails to control the legislative agenda because it does not hold a majority of the seats in the legislature.

With the dissolution of the KMT's hegemony, the 2001 legislative election further vindicated a well-known prophesy of another governing crisis under the SNTV-MMD system: a fragmented legislature.⁸⁸ Since the DPP, along with its ally the Taiwan Solidarity Union (TSU), lacks a legislative majority, and since the opposition coalition formed by the KMT and its allies are eager to do anything to obstruct the presidential

quences of the Electoral System, 33 *ASIAN SURV.* 424, 425 (1993).

84. See IDEA HANDBOOK OF ELECTORAL SYSTEM DESIGN, *supra* note 5, at 51–52; COX, *supra* note 37, at 100–01.

85. These 49 seats are further divided into two sub-groups: 41 of them are “National At-Large Representatives” and the remaining eight seats are “Representatives of the Overseas Chinese.” They are meant to provide some symbolic representation for the extraterritorial Chinese so as to disguise the birth of Taiwan’s sovereignty as the inevitable result of its democratization.

86. The outcomes of Taiwan’s semi-proportional system are rather proportional because major parties have learned to control their nominations in multi-member districts; they further encourage and coordinate their supporters to vote strategically so as to avoid the votes being wasted in the election. For discussions of electoral strategies under the Taiwanese SNTV-MMD system, see Nathan, *supra* note 83, at 428–37; Eric P. Moon, *Single Non-Transferable Vote Methods in Taiwan in 1996: Effects of an Electoral System*, 37 *ASIAN SURV.* 652, 656–67 (1997).

87. The SNTV-MMD system is a hotbed of party factionalism because (1) the elections under it tend to be candidate-centered, and (2) intra-party competition within one district tends to be more intense than inter-party competition. See Moon, *supra* note 86, at 667–68; Raymond V. Christensen, *The New Japanese Election System*, 69 *PAC. AFF.* 49, 64–65 (1996); Matthew Soberg Shugart & Stephan Haggard, *Institutions and Public Policy in Presidential Systems*, in *PRESIDENTS, PARLIAMENTS, AND POLICY* 64, 86–88 (Stephan Haggard & Mathew D. McCubbins, eds., 2001) [hereinafter *PRESIDENTS, PARLIAMENTS, AND POLICY*].

88. Currently there are six parties (including a constellation of independent representatives) in the Legislative Yuan. Though Taiwan is developing a bi-polar party system under the influence of the winner-take-all presidential electoral system, the coalitions are instable because parties are reluctant to cooperate in the legislative arena.

policies, except initiating a “vote of no-confidence”,⁸⁹ the political situation following the regime turnover in May 2000 resembles a scenario of “impotent presidentialism.”⁹⁰

(2) *Polarized and theatrical politics*: Compared to the SMD system, Taiwan’s SNTV-MMD system has a much lower electoral threshold on average, owing to its large district magnitude. This system facilitates the representation of minority groups, but unfortunately, Taiwan’s politics is far from the ideal of consociational democracy. Moderate candidates often have difficulty competing with militants or fundamentalists, and incumbent representatives are reluctant to devote themselves to policy research or serious deliberation, which rarely attract the media’s attention. To capture the support of their constituents, Taiwan’s legislators often engage in theatrical behavior such as fighting or quarreling with their ideological rivals.⁹¹ Although all four major parties in Taiwan are popular parties eager to gain the support of median voters, the SNTV-MMD system offers little incentive to political reconciliation but instead encourages the exploitation of social cleavage.

(3) *Corruption and money politics*: The SNTV-MMD system also plays a large role in corruption and money politics, a problematic dimension of Taiwan’s political development during the last two decades.⁹² Under the SNTV with high district magnitude, campaigns tend to be rather expensive because candidates need to cultivate personal votes to compete with their intra-party rivals.⁹³ This systematic tendency is further amplified by Taiwan’s political transition. In order to entrench its power, from the 1980s on the KMT relied on the support of “local factions,” who are often alleged to hold ties with organized crime. These local factions win seats in many district elections by vote-buying or intimidation; they later satisfy their campaign debt through various rent-seeking activities. In addition, under the current electoral system, along with the ineffective campaign finance regulations, big corporations and special interest groups can easily find their mouthpieces. Consequently, politics in Taiwan is riddled with scandals. Although, since the regime turnover in 2000, Taiwan’s prosecutors wage war against vote-buying, corruption, and other politics-related criminalities, many people believe that the vicious circle of money politics cannot be broken without radical reform.

(4) *Voter dilemmas*: Taiwan’s voters are not satisfied with the current electoral system. Under the tying arrangement of the List PR and the district election, a voter cannot choose a candidate without endorsing the candidate’s party at the same time. It remains difficult for voters to vote for a candidate who belongs to a party they do not appreciate.⁹⁴ Even if a voter is affiliated with a specific party, he or she will need to decide which candidate to vote for, especially when the party nominates more than one candi-

89. The 1997 constitutional amendment created the “vote of no-confidence” mechanism, which may lead to the dissolution of the Legislative Yuan by the President’s discretion. This deadlock-solving mechanism is ineffective mainly because under the SNTV-MMD system, campaign costs are so high and the odds of the incumbents are so low that no party wants to assume the risk of unscheduled election; see Jih-wen Lin, *supra* note 81, at 15.

90. Aurel Croissant, *Electoral System in Asia as Elements of Consensus and Majoritarian Democracy: Comparing Seven Cases* 1, 25 (2001), available at http://croissant.uni-hd.de/electoral_systems.pdf.

91. Larry Diamond, *How Democratic Is Taiwan? Five Key Challenges for Democratic Development and Consolidation* 1, 16–17 (2001), available at <http://www.stanford.edu/~ldiamond/papers/taiwan.pdf>.

92. *Id.* at 4–8. In Taiwan, people usually speak of “black and gold politics.” While “black” refers to the criminal penetration of politics, “gold” indicates the influence of money politics.

93. See Tun-Jen Cheng & Stephan Haggard, *Democracy and Deficits in Taiwan: The Politics of Fiscal Policy 1986–1996*, in *PRESIDENTS, PARLIAMENTS, AND POLICY* 183, 207.

94. See, e.g., Tzung-jen Tsai, *Xuan Ju Zhi Du He Li Hua [Rationalizing the Electoral System]* (2002), available at http://www/advocate.org.tw/ta_research.asp?pname=1901.

date in the district. For example, voting for a popular candidate may limit the party's chance to win an additional seat; voting for another candidate of the same party, on the other hand, may counter his/her preferences and even cause the voter's preferred candidate to lose.⁹⁵ Few voters enjoy engaging in strategic calculation, even though it may contribute to the proportionate election result.

Since the mid-1990s, electoral reform exists as an important issue in Taiwan. In the 1996 National Development Conference, a round-table meeting among party leaders, the KMT and DPP reached a consensus that the electoral system for the Legislature should be transformed into a combination of the SMD and List PR systems. However, they failed to negotiate a detailed proposal. At that time, the KMT preferred a Parallel system that models after the new Japanese electoral system, whereas the DPP favored the MMP system, which is actually a form of proportional representation. Electoral reform continued to be an important issue in the 2000 presidential election and the 2001 legislative election; during the 2001 election, there was even a popular movement requiring electoral reform and downsizing the Legislature. Although all the major parties pledged to support the idea of "SMD and a separate ballot for List PR," the disagreements over the reform proposal still persist. In May 2002, the Presidential Commission on Reforming Government (PCRG) passed a resolution, suggesting that the current electoral system be transformed into a Japanese-style Parallel System.⁹⁶ This proposal coincided with the KMT's previous preference, but this time the KMT and its new ally People First Party (PFP) refused to endorse it, probably because they feared that the proposed reform would give the DPP political credits as well as "seat bonuses." Again, electoral reform achieved little progress even though the public supported it.

Skepticism about the likelihood of electoral reform is warranted since any reform proposal that aims to abolish the SNTV-MMD system requires constitutional change, a very difficult process that cannot succeed without support of the major parties.⁹⁷ To press the opposition-controlled legislature to implement reform, the DPP government planned to hold an advisory referendum. This motion was ruled out by the end of 2003 because the newly enacted Referendum Act forbids the executive branch to sponsor any referendum except for the so-called "preventive referendum." The failure to appear on the referendum ballot in the 2004 presidential election did not dampen the hope for electoral reform, for both of the "Pan-Blue" (KMT and PFP) and "Pan-Green" (DPP and TSU) coalitions pledged to undertake comprehensive constitutional engineering in the near future. While serious disputes exist over the format and timetable of the proposed constitutional changes, there is no doubt that electoral reform will be a major issue in Taiwan.

95. See Nathan, *supra* note 83, at 433–35.

96. According to the Commission's proposal, the seats of the Legislative Yuan will be reduced from 225 to 150, in which 90 members will be elected through single-member districts and 60 through list-PR system; each voter may cast two ballots, one for the district-election and one for the party lists.

97. There are also reform proposals (such as reducing the district magnitude and creating a separate ballot for the list PR) for which a constitutional amendment is not needed. But since such compromised proposals would still maintain the problematic SNTV-MMD system, many people wonder whether they can improve Taiwan's electoral politics significantly.

C. Basic Concerns of Electoral Engineering

The United States and Taiwan cases demonstrate some interesting contrasts: while proponents of electoral reform in the United States seek to change the dominant single-member congressional districts into multi-member districts, reformers in Taiwan want to get rid of MMDs and instead use SMDs in district-elections; while the reform advocates in the United States hope to breathe life into static politics by increasing the proportionality of the congressional electoral system, electoral engineers in Taiwan want to decrease the electoral proportionality of legislative elections to enhance political stability and maintain social harmony.⁹⁸ The arguments against the proposed electoral reforms in these two countries present a symmetrical contrast as well: Opponents of the PR movement in the United States worry that adopting the proposed semi-proportional electoral system will exacerbate the “balkanization” of American politics and endanger the political stability of its presidential democracy;⁹⁹ some political scientists in Taiwan, on the other hand, contend that proportional representation is a merit in its own right and that the MMP system is a better alternative for Taiwan’s electoral reform.¹⁰⁰

The discourse of electoral reforms in these two countries, therefore, reveals some mutual concerns of electoral design that are easy to discern especially when we observe the deliberations from the perspective of institutional engineering. These mutual concerns can be summarized into two words: “governability” and “representativeness.”¹⁰¹ As the literature review in the Part I indicates, scholars often emphasize different concerns over electoral engineering: people oppose the combination of proportional representation and presidential democracies because of anxieties over governability. Those who support the PR movement in presidential democracies, on the other hand, think highly of full and fair representation. Could either of these two concerns resolve the heated disputes over electoral engineering? If trade-offs are inevitable, how should we balance the competing values and objectives?

III. CONCERNS OF GOVERNABILITY

The most common criticism of proportional representation is that PR tends to produce several governance problems such as balkanized politics, unstable coalitions, and excessive gridlock.¹⁰² Using the Weimar Republic, Italy, and Israel as examples, critics

98. Some political scientists predict that the proposed parallel system would be less proportional than the current electoral system for Taiwan’s Legislature; see Yung-ming Hsu, *Dan Yi Xuan Qu Liang Piao Zhi Zheng Zhi Chong Ji De Mo Ni* [Assessing the Political Impacts of the Proposed Parallel Electoral System], in XIN SHI JI XIN XIAN ZHENG: XIAN ZHENG YAN TAO HUI LUN WEN JI [NEW CONSTITUTIONAL POLITICS IN THE NEW CENTURY: A COLLECTION OF SYMPOSIUM PAPERS ON CONSTITUTIONAL POLITICS] 467, 481–83 (Lung-Chu Chen ed., 2002).

99. See, e.g., Ackerman, *supra* note 14, at n.53.

100. See, e.g., Yeh-lih Wang, *Zai Zao Xian Zheng Yun Zuo De Li Xiang Huan Jing: Xuan Ju Zhi Du, Guo Hui Yun Zuo Yu Zheng Dang Xie Shang Ji Zhi De Gai Ge Chu Yi* [Toward an Ideal Environment of Constitutional Politics: Reform Proposals for the Electoral System, Bylaws of the Legislature and the Mechanisms of Inter-Party Negotiation], in XIN SHI JI XIN XIAN ZHENG: XIAN ZHENG YAN TAO HUI LUN WEN JI [NEW CONSTITUTIONAL POLITICS IN THE NEW CENTURY: A COLLECTION OF SYMPOSIUM PAPERS ON CONSTITUTIONAL POLITICS] 331, 340–44 (Lung-Chu Chen ed., 2002).

101. See Larry Diamond, *Three Paradoxes of Democracy*, in THE GLOBAL RESURGENCE OF DEMOCRACY 95, 100–03 (Larry Diamond & Marc F. Plattner eds., 1993); THE LAW OF DEMOCRACY, *supra* note 2, at 1160 (indicating that “[r]epresentation versus effectiveness are the fundamental lines along which the battle is usually drawn”).

102. See Douglas J. Amy, *Common Criticisms of PR and Responses to Them*, available at

of PR often argue that its potential threats to the sustainable development of democracy should outweigh whatever advantages it may hold.¹⁰³ On the other hand, proponents of PR say that this argument is an exaggeration. Given that PR tends to encourage multi-partism, they contend that the fragmentation of the party system can be tamed by introducing a higher (3–5%) threshold of exclusion.¹⁰⁴ The fact that many European countries enjoyed stable democracy and effective governance under this brand of electoral system empowers PR advocates to maintain that instability is not a common problem.¹⁰⁵ Their forceful cross-examination further indicates that even the rise of the Nazis—the most dramatic case presented by the anti-PR camp—had little to do with the PR system used in the Weimar Republic.¹⁰⁶

From the perspective of constitutional engineering, it appears that both sides of this debate miss one crucial point: the constitutional framework in which the electoral system operates. Proponents of PR are correct to challenge the general criticism that PR tends to destabilize the political system. However, this assertion is doubtful not only because minor changes in institutional details may result in different consequences,¹⁰⁷ but also because the institutional and cultural contexts of electoral systems vary significantly.¹⁰⁸ “Electoral systems do not work in a vacuum,” a handbook of electoral design reminds us.¹⁰⁹ To ascertain the political consequence of PR, accordingly, we need to consider various contextual factors.

Other things being equal, does PR contain different consequences in different types of constitutional systems? Probably all constitutional engineers would answer “yes”. Disagreement ensues when we try to specify the differences and their implications. For many constitutional engineers, PR is hardly compatible with the presidential system. The mixture of these two systems is often condemned as the worst constitutional design, for PR would pose serious threats to the governability of presidential democracy. Based on the comparative studies of the unstable democracies in Latin America, this viewpoint becomes the orthodoxy of constitutional engineering. Among its supporters we find Professors Lijphart and Ackerman,¹¹⁰ two leading scholars in comparative politics and constitutional law respectively, even though both are rather sympathetic to the egalitarian ideal of proportional representation.¹¹¹ However, Professors Guinier and Amy—two leading advocates of the PR movement in the United States—believe the opposite. While acknowledging that government instability may be an issue for countries using parliamentary and PR systems, they argue that this would not be the case in a presiden-

http://www.mtholyoke.edu/acad/polit/damy/articles/common_criticisms_of_pr.htm.

103. See, e.g., Steven G. Calabresi, *The Virtues of Presidential Government: Why Professor Ackerman Is Wrong to Prefer the German to the U.S. Constitution*, 18 CONST. COMMENT. 51, 59–66 (2001).

104. See Guinier, *The Lessons of Bush v. Gore*, *supra* note 69, at 258–59.

105. See Douglas J. Amy, *Common Criticisms of PR and Responses to Them*, available at http://www.mtholyoke.edu/acad/polit/damy/articles/common_criticisms_of_pr.htm.

106. See Guinier, *The Lessons of Bush v. Gore*, *supra* note 69, at 258.

107. See Guinier, *The Lessons of Bush v. Gore*, *supra* note 69, at 259 (noting that “instituting a five percent threshold of exclusion would reduce the number of parties in [Israel’s] current legislature from fifteen to seven”).

108. See *id.* at 259. In discussing the case of Israel, Professor Guinier also mentions the religious background of Israeli politics.

109. See IDEA HANDBOOK OF ELECTORAL SYSTEM DESIGN, *supra* note 5, at 122.

110. See Nohlen, *supra* note 6, at 49 (citing Lijphart’s paper in a German book that ranks the combination of PR and presidential system as the least efficient form of democracy); Ackerman, *supra* note 14, at 656–57.

111. See Arend Lijphart, *The Wave of Power-Sharing Democracy*, in THE ARCHITECTURE OF DEMOCRACY, *supra* note 1, at 52; Ackerman, *supra* note 14, at 657.

tial system because changes of legislative coalition carries no impact on government formation under the separation-of-power framework.¹¹² Professor Cheibub's empirical research further challenges the conventional wisdom. Based on his quantitative analysis, Professor Cheibub launches a vigorous attack on the validity of the conventional theory.¹¹³

Should we trust the conventional wisdom of constitutional engineering and reject the proposals of increasing electoral proportionality in presidential democracies? Or should we embrace a combination of PR and presidential system that is intuitively appealing for many people?¹¹⁴ Focusing on the concerns over governability, this part examines the controversy over the compatibility of the PR and presidential systems. By clarifying and reexamining the factual assumptions and value judgments inherent in the concerns of governability, I argue that neither the conventional thesis that opposes this combination nor the minority opinion that supports the marriage is decisive on this issue. Accordingly, we should make a more empirical and pragmatic inquiry when assessing the proposals of electoral reform in the United States and Taiwan. Increasing electoral proportionality does not necessarily endanger the survival of presidential democracy, nor will a semi-proportional compromise necessarily alleviate the worry of governability. Before we make this judgment, however, we must first review both sides of the debate.

A. *The Linzian Nightmare*

The conventional wisdom that the combination of PR and presidential system is highly problematic derives from the comparative studies of presidential democracies in Latin America. Beginning in the 1970s, Professor Linz, a well-known political scientist specializing in studies of democracy, authoritarianism, and totalitarianism, began to explore the failure of democracy in Latin America. Professor Linz and his followers attributed the numerous constitutional breakdowns in Latin America to the design and performance of constitutional institutions *per se*.¹¹⁵ According to them, the fact that most countries in Latin America adopted a presidential system with PR was not merely a coincidence; it revealed the root of the problem.¹¹⁶ Professor Linz later warned of the perils of presidentialism.¹¹⁷ Although Professor Linz's criticism focuses on the structure and logic of the presidential system, he also notes that his conclusion "applies especially to nations with deep political cleavages and numerous political parties."¹¹⁸ Whether the parliamentary system is more conducive to stable democracy than the presidential sys-

112. See Douglas J. Amy, *Common Criticisms of PR and Responses to Them*, available at http://www.mtholyoke.edu/acad/polit/damy/articles/common_criticisms_of_pr.htm; LANI GUINIER, *LIFT EVERY VOICE: TURNING A CIVIL RIGHTS SETBACK INTO A NEW VISION OF SOCIAL JUSTICE* 263 (1998).

113. See Jose Antonio Cheibub, *Presidentialism and Democratic Performance*, in *THE ARCHITECTURE OF DEMOCRACY*, *supra* note 1, at 104.

114. See Carey, *supra* note 26, at 94 ("If the executive and legislative branches of government fulfill different functions—the former, for example, representing a broad national policy agenda and the latter representing the diversity of society—this characteristic may be intuitively appealing.") Professor Jones also argues that presidential government combined with PR can be an ideal type of presidentialism as long as the electoral rules merely encourage moderate multipartism. See JONES, *supra* note 26, at 80–81.

115. See *THE FAILURE OF PRESIDENTIAL DEMOCRACY*, *supra* note 9, at ix–xiv.

116. Nohlen, *supra* note 6, at 48–49.

117. Linz, *supra* note 9, at 3.

118. Linz, *supra* note 13, at 109.

tem—the major question raised by Professor Linz’s seminal work—is an issue of endless debate, but his observations regarding the tension between multipartisan and presidentialism now seems to be conventional wisdom.¹¹⁹ In this regard, the combination of PR and presidential system is especially problematic because PR appears to contribute to the formation of multi-party system.

In honor of Professor Linz’s contribution, Professor Ackerman labels the scenario of constitutional breakdown that may happen in the presidential system the “Linzian nightmare.”¹²⁰ According to Professor Ackerman, this worst-case scenario of presidential democracy “is most likely to occur when proportional representation generates five or six or more parties in the congress.”¹²¹ Even though PR does not necessarily cause the constitutional breakdown of a presidential democracy, it may nonetheless invite crises in governability.¹²² But why is a presidential democracy vulnerable to the threat of constitutional breakdown, especially when it uses PR to conduct legislative elections? What crises does PR in presidential democracies actually invite? From the current literature we find two explanations: one emphasizes problems of impasse and the other stresses the danger of a weak legislature.

1. The Crisis of Impasse

The presidential system is built upon a power structure of dual democratic legitimacy: both the president and the assembly are popularly elected and both can claim to be the representative of the people.¹²³ These two political branches might work together with one heart. But what if they don’t? Consider Professor Ackerman’s description of the crisis in governability:

[r]ather than all out war, president and house may merely indulge a taste for endless backbiting, mutual recrimination, and partisan deadlock. Worse yet, the contending powers may use the constitutional tools at their disposal to make life miserable for each other: the house will harass the executive, and the president will engage in unilateral action whenever he can get away with it.¹²⁴

Certainly, this is a common problem faced by all presidential democracies, but one may argue that the combination of PR and presidential system can exacerbate the crisis. First of all, since PR tends to encourage multipartism, it increases the likelihood of divided government.¹²⁵ If the president’s party cannot control a majority of seats in the assembly, the president would need to rely on coalitions or cross-party alliances to pursue his/her political agendas. Unfortunately, it is rather difficult for the president to form or maintain a stable ruling coalition because there is no strong incentive for coali-

119. See, e.g., Mainwaring & Shugart, *supra* note 18, at 1–2; JONES, *supra* note 26, at 78–79.

120. Ackerman, *supra* note 14, at 645. The other two scenarios identified by Professor Ackerman are “Madisonian hope” and “crisis in governability.” *Id.* at 645–47.

121. *Id.* at 656.

122. *Id.* at 647.

123. THE FAILURE OF PRESIDENTIAL DEMOCRACY, *supra* note 9, at 6–7; see also SHUGART & CAREY, PRESIDENTS AND ASSEMBLIES, *supra* note 11, at 32–33.

124. Ackerman, *supra* note 14, at 647.

125. See Cheibub, *supra* note 113, at 110 (confirming that “divided government is more frequent when legislative elections are held under proportional representation system”).

tion building in the presidential system.¹²⁶ In certain circumstances, the president may try hard to make deals with individual legislators to form cross-party alliances, but he/she would work in vain if parties have rigid discipline.¹²⁷ Meanwhile, it would be more difficult for opposition parties in the assembly to form and maintain their legislative coalitions, especially when parties have different ideological positions and when their faithful supporters dislike political compromises.¹²⁸ In this scenario, the closed list-PR system also heightens the difficulties of divided government because it tends to enhance the discipline and ideological cohesiveness of political parties.

If political actors cannot overcome these difficulties, a presidential democracy will suffer from government paralysis, endless deadlock, or even chaos. Professor Ackerman further indicates that the Linzian nightmare is more likely to materialize under these circumstances, for dissatisfied actors may be prompted to seek extra-constitutional solutions (such as military coup d'etat).¹²⁹ This scenario is conceivable, but to confirm the causation between divided government, deadlock, and constitutional breakdown, more empirical findings of comparative politics are required.

2. The Crisis of Weak Legislature

The second explanation prompts us to consider a deeper tension between multipartism and presidentialism; it suggests that even in the absence of deadlock, a multi-party presidential democracy is still vulnerable to the disastrous constitutional breakdown. This scenario is weaved in Professor Ackerman's illustration of "crisis in governability" when he notes that "[i]ncreasingly, the house is reduced to a forum for demagogic posturing, while the president makes the tough decisions unilaterally without considering the interests and ideologies represented by the leading political parties in congress."¹³⁰ Later Professor Calabresi elaborates on this, emphasizing that multipartism jeopardizes a presidential democracy mainly because it can weaken and fragment the legislative leadership.¹³¹ To illustrate the crisis of a weak legislature stemming from the adoption of PR, Professor Calabresi poses an interesting hypothesis:

[n]ow imagine that we had proportional representation in the House of Representatives. Instead of facing a powerful Republican and Democratic Party leader, President Clinton might have faced a House with a leader from: the Christian Coalition, the Libertarian Party, an African-American Party, the Social-Democratic Party, the Business Roundtable Party, the Ku Klux Klan Party, the Green Party, and the Labor Party. Such a fragmented party leadership would carry little leverage with President Clinton and so the presidency would have become incomparably more powerful. This is the dynamic that in fact plays out now in many Latin American countries that combine presidentialism with proportional representation, and it is a dynamic that has

126. See Mainwaring & Shugart, *supra* note 18; JONES, *supra* note 26, at 6–8.

127. See, Mainwaring & Shugart, *Conclusion*, *supra* note 23, at 420–21.

128. For a vivid explanation of why it might be difficult to achieve political compromise under the conditions of polarized society and proportional representation, see Horowitz, *supra* note 7, at 20–25.

129. See Ackerman, *supra* note 14, at 656.

130. *Id.* at 647.

131. See Calabresi, *supra* note 103, at 79.

contributed to democratic breakdown through presidentially-led coups in some of those countries.¹³²

Based on his commitment to presidentialism, Professor Calabresi argues that the use of PR in legislative elections is incompatible with the presidential system not only because multipartism—the presumed consequence of PR—is inconsistent with the “non-ideological nature of presidentialism,”¹³³ but also because a fragmented legislature may be too weak to act as a check and balance to the powerful presidency, and thus open the doors to constitutional breakdown.¹³⁴ The rationale of this scenario is understandable in light of the historical experiences of some Latin American countries, but this explanation has not been fully elaborated upon. For instance, it is less clear why we can measure the strength of a legislature based on the degree of its fragmentation; whether multipartism per se has miserable impacts on the survival of a presidential democracy also requires closer examination.

B. Alternative Theories

Mainstream constitutional engineers seem to believe that the combination of PR and presidential system is a bad idea. But some scholars refuse to echo the majority view. These scholars share the view that PR is not incompatible with the presidential system per se, although they take different positions on the issue of desirability and use different strategies to argue their cases. In this section, I categorize the alternative theories into two schools: one reflects optimism with respect to the prospect of PR in presidential democracies, and the other reflects skepticism toward the conventional assertion.

1. Optimists' Viewpoints

In contrast to the prevailing fear of the Linzian nightmare, some scholars take a more positive attitude toward the use of PR in presidential democracies. They either contend that there is far less need to worry about the destabilizing effects of PR in the context of the presidential system, or believe that its impacts on constitutional politics are manageable. Professor Guinier incorporates these two positions when arguing for the transition to PR in the United States. In response to the general fear of proportional representation, she first builds her case on the structural differences between the parliamentary and presidential systems. While admitting that the fear is “at least relevant in a parliamentary system in which the elections to the national legislature determine the composition of the executive branch,” Professor Guinier contends that “the specter of balkanization is much less persuasive when considering elections whose only purpose is to determine the membership of an exclusively legislative body such as our Congress.”¹³⁵

Certainly, the legislative elections in presidential system have no direct impacts on government (cabinet) formation. The inference that PR would be less troublesome in

132. *Id.*

133. *Id.* at 79. Professor Calabresi argues that presidential system tends to be non-ideological or even anti-ideological; *see id.* at 78–85.

134. *Id.* at 79–80.

135. GUINIER, *supra* note 112, at 263.

the context of a presidential democracy, however, presupposes that government formation is the major conduit through which PR exerts its influences on governability; without this assumption, we can only claim that the impacts of PR on a presidential system may be different from its impacts on a parliamentary system. This implied assumption is the main weakness of this argument, because it is contrary to the findings of comparative politics. Professor Guinier is right in refuting the “general” fear of balkanization as applied to presidential democracy, but she does not address the haunting nightmare specific to this institutional context. This neglect weakens her argument.¹³⁶

The case for using PR in a presidential democracy, nonetheless, should not be summarily dismissed since Professor Guinier and some political scientists advance another argument that seems to be more cogent. In a later book, Professors Guinier and Torres recognize the flip side of the quest for proportional representation:

[h]igher rates of participation, more robust forms of debate, and greater minority representation can themselves become barriers to efficient decision-making. Proportional representation would lower the bar to successful cross-constituency and multi-racial coalition organizing, but even with proportional representation it would still be essential to fight fragmentation and to aggregate, rotate, and share power among progressive interests in a lasting and sustainable way in order to realize a fully democratic movement.¹³⁷

This remark signals another optimists’ message: even though PR may create some problems, the risks can still be managed. Several prophylactic measures have been suggested by the current literature. For example, to restrict the fragmentation of party system, we can decrease the electoral proportionality of legislative elections by imposing a higher electoral threshold (threshold of exclusion), lowering the district magnitude, or simply choosing a semi-proportional system. Some political scientists also suggest that the combination of PR and presidential system would function better if the presidential and legislative elections are held concurrently and/or if the presidential elections are based on the plurality formula.¹³⁸ Generally speaking, this proposal appears sound. It takes the concerns of governability more seriously and promises to reconcile multipartism with presidentialism. But since this position presumes that all that is needed is to avoid excessive fragmentation of the party system, its persuasiveness depends on whether (1) the balkanization can be deterred effectively by the proposed electoral engineering, and (2) crises in governability will be reduced if PR merely generates a moderate multi-party system. The first proposition seems to be supported by comparative politics studies; the validity of the second proposition, however, looks quite dubious in light of Professor Cheibub’s statistical analysis introduced below.¹³⁹

136. See Ackerman, *supra* note 14, at 657 n.53.

137. GUINIER & TORRES, *THE MINER’S CANARY*, *supra* note 56, at 212.

138. This is because the shape of the party system may also be influenced by the institutional designs of the presidential elections and the “electoral cycle,” which means the relative timing of the presidential and legislative elections. Professors Shugart and Carey suggest that a concurrent or a honeymoon electoral cycle is more likely to generate a unified government or increase legislative support for the president; they also argue that the plurality election of the presidency tends to induce two-bloc competition. See SHUGART & CAREY, *PRESIDENTS AND ASSEMBLIES*, *supra* note 11, at 224–25, 257–58.

139. See Cheibub, *supra* note 113, at 123–24 (suggesting that “[i]n presidential democracies high risks are associated with situations of very low pluralism, or situations conducive to moderate pluralism, which as Sartori suggested, are the ones in which there are between 2 and 5 relevant political parties”).

2. Skeptics' Perspectives

We are told that PR in a presidential democracy tends to produce divided governments and ceaseless deadlocks between the two political branches, which ultimately might lead to constitutional breakdown. We are also told that it is necessary to fight against the excessive fragmentation of the party system, which is extremely dangerous for the survival of a presidential democracy. These arguments sound rational, but a skeptic would urge us to take a critical stand on these causal propositions unless they have been proved by sufficient and compelling evidence. If this skeptical position is grounded in empirical research, it is not a cheap shot that can be easily dismissed.

Professor Cheibub leads us "to reconsider the causal mechanisms that are allegedly responsible for presidentialism's relatively poor performance."¹⁴⁰ Based on the quantitative data for all presidential and semi-presidential regimes from 1946 to 1996, Professor Cheibub's research points out several fallacies prevailed in the current literature. First, although it is true that the use of PR in legislative elections, the non-concurrent electoral cycle, and the multiplication of the effective numbers of parties tend to increase the likelihood of divided government,¹⁴¹ "neither divided government nor the factors that make it more likely to occur affect the probability that deadlock situations will occur. And, most importantly, neither divided government nor deadlock affect[s] negatively the longevity of presidential regimes or the survival in office of presidents and their parties."¹⁴² In this regard, Professor Ackerman's scenario that the crisis of impasse will eventually lead to a constitutional breakdown is not supported by Professor Cheibub's statistical data.

Secondly, Professor Cheibub indicates that multipartism per se does not affect the survival of presidential regimes. Contrary to the prevalent favor on moderate multi-party systems (where the effective number of legislative parties is about 3.5),¹⁴³ Professor Cheibub finds that the survival of presidential democracies is strongly affected by the existence of moderate pluralism,¹⁴⁴ especially when there are "three political forces of relatively equal strength, each of which is attempting to implement its own programme either alone or in alternating coalitions."¹⁴⁵ In another paper, Professor Cheibub further indicates that government coalitions are more likely to occur when the legislature is more fractionalized.¹⁴⁶ In this regard, the widespread fear that the excessive fragmentation of a party system is extremely harmful to the prospect of presidential democracy is also unwarranted.

For those who believe statistics, Professor Cheibub's research probably has thrown the conventional scenarios into the shade. But do they force us to conclude that our concerns about the compatibility of PR and the presidential system are nothing but groundless fears? Maybe they do not. After all, not all crises in governability can be

140. *Id.* at 105.

141. *See id.* at 106–10.

142. *Id.* at 132.

143. *See* Mainwaring & Shugart, *Conclusion*, *supra* note 23, at 398–99.

144. *See* Cheibub, *supra* note 113, at 123–24.

145. *Id.* at 124. Professor Cheibub suggests that moderate pluralism is problematic probably because political compromises may be difficult to maintain under this circumstance.

146. *See* Jose Antonio Cheibub et. al., *Government Coalitions and Legislative Effectiveness under Presidentialism and Parliamentarism*, Address at the Council on Latin American and Iberian Studies at Yale University Conference 12 (March 22, 2002), available at <http://www.yale.edu/las/conference/papers/cheibub.pdf>.

measured quantitatively, and the absence of deadlock in its strict sense does not mean that tension does not exist between the two political branches.¹⁴⁷ Professor Cheibub and his colleagues conclude that “Linz . . . must be right that something is wrong with presidentialism, but we have not been very successful in discovering which of his hundred reasons is the real one.”¹⁴⁸ Maybe their difficulty in ascertaining the “real reason” has something to do with the approach they take.

C. *Beyond the Nightmare*

After reviewing both sides of the story, it is time to make our own judgment on the compatibility of PR and the presidential system. We may find that conventional wisdom provides persuasive explanations for certain Latin American cases, but its validity as a general theorem is seriously challenged by empirical-quantitative research. We may also conclude that some engineers’ positive attitudes are admirable, but they cannot guarantee that the proposed electoral engineering could effectively eliminate or alleviate the hazards of governability. Recognizing the controversies and uncertainties, however, does not relieve us of a tough judgment. We still need to decide whether concerns of governability shall prevent us from pursuing the ideal of proportional representation in presidential democracies, especially in the contexts of the United States and Taiwan.

1. Reflections on General Theory

To begin with, we need to clarify the factual or causal assumptions upon which our value judgment is based. It is safe to say that the multi-party system is more likely to come into being if PR is used in legislative elections. But electoral proportionality is merely one of the contributing factors in the formation of party systems; without considering other institutional and non-institutional variables, we simply cannot predict how many parties will acquire seats in the legislature.¹⁴⁹ In other words, multipartism is too general a concept to inform us how fragmented the party system could be if we increase the proportionality of legislative elections; to identify the kind of multi-party system PR might bring about, a more context-specific analysis is required.

We may also presume that PR will encourage the emergence of ideological and disciplined parties because elections under PR tend to be more issue-oriented,¹⁵⁰ and because parties will have more authority to nominate candidates especially when the closed-list PR system is used. However, it is rather difficult to pin down the impacts of disciplined parties on the presidential system. Professors Mainwaring and Shugart hypothesize that (1) weak party discipline makes it difficult to establish and maintain stable coalitions, and that (2) rigid party discipline also makes it difficult for the president

147. When assessing the deadlock situations, Professor Cheibub defines “deadlock” in a very rigid sense: “conditions for deadlock are present only if the president is likely to veto a bill and the opposition does not have enough votes to override the presidential veto.” Cheibub, *supra* note 113, at 111. Therefore, one may argue that his assessment does not capture all the crises of impasse.

148. Cheibub et. al., *supra* note 146, at 15.

149. Professors Shugart and Haggard even suggest that “the degree of proportionality of elections has much less . . . effect on the number of parties in presidential than in parliamentary systems.” See Shugart & Haggard, *supra* note 87, at 90.

150. See GUINIER & TORRES, *THE MINER’S CANARY*, *supra* note 56, at 210; Shugart & Haggard, *supra* note 87, at 85–88.

to form cross-party alliances.¹⁵¹ Given that these two hypotheses are correct, it is still hard to predict or measure the degree of party discipline PR might create.¹⁵² After all, party discipline or party cohesiveness is a fluid concept; a weak party may act cohesively in certain occasions, whereas a strong party will not act unanimously all the time.

In any event, the multi-party system does tend to increase the frequency of divided government, which usually refers to the situation in which a single party does not control the presidency and the legislature.¹⁵³ Since there are many parties playing in the political process and since each party tends to act ideologically and cohesively, it seems reasonable to presume that the divided government resulting from multipartism will incur significant transaction costs in making policies; that the policy process will be slower and less decisive under this circumstance is also a reasonable expectation.¹⁵⁴ These conditions may affect the policy outcomes significantly, but what intensifies concerns of governability is mainly the potential stalemate or partisan warfare between the two political branches. Given that the presidential system is more vulnerable to deadlock situations than the parliamentary system because of its separation-of-power structure, many people worry that the president or the legislature might act unilaterally or seek exceptional (even extra-constitutional) measures to break gridlock.¹⁵⁵ Certainly, constitutional democracy is in great peril if political actors no longer play by the rules, but such a worrisome situation is not inevitable. Whether crisis of impasse or weak legislature will occur, in fact, further depends on many factors, such as the political culture, constitutional provisions regarding presidential and legislative powers, ideological proximity of parties, and the distribution of seats in the legislature. The complexity of causation also explains why divided government and gridlock in presidential democracies do not necessarily lead to constitutional breakdowns.

When explaining his judgment that PR is incompatible with the presidential system, Professor Calabresi wrote, "The costs of democratic breakdown are so high and the comparative benefits of a multi-party system so low that I cannot imagine the risk being worth taking."¹⁵⁶ This remark reveals a common sentiment shared by many conventional engineers that democracy is too fragile to withstand any risky experiment. But even if we accept such a conservative attitude toward democracy, the conventional thesis is still questionable because it is based on a dubious assumption that the multipartism itself endangers the survival of a presidential democracy. Without considering other institutional and non-institutional factors in a given society, we simply cannot tell the vulnerability of a democracy, nor can we predict the seriousness of the threat of constitutional breakdown. The conventional thesis arguing that PR is incompatible with the presidential system is surely a powerful rhetoric, but just like other rhetoric, it suffers from oversimplification.

151. See Mainwaring & Shugart, *Conclusion*, *supra* note 23, at 418–21.

152. Professor Cheibub also argues that party discipline is a behavioral concept and cannot be inferred from electoral and partisan legislation. See Cheibub, *supra* note 113, at 118.

153. For an introduction to the concept of divided government, see Robert Elgie, *What is Divided Government?*, in *DIVIDED GOVERNMENT IN COMPARATIVE PERSPECTIVE 1* (Robert Elgie ed. 2001).

154. See Gary W. Cox & Mathew D. McCubbins, *The Institutional Detriments of Economic Policy Outcomes*, in *PRESIDENTS, PARLIAMENTS, AND POLICY 21, 26–27*; Shugart & Haggard, *supra* note 87, at 95–97.

155. See Shugart & Haggard, *supra* note 87, at 95–96; Cox & McCubbins, *supra* note 154, at 29–30; Robert Elgie, *Divided Government in Comparative Perspective*, in *DIVIDED GOVERNMENT IN COMPARATIVE PERSPECTIVE 209, 223–24*.

156. Calabresi, *supra* note 103, at 76.

Nonetheless, the conventional wisdom which envisions crises in governability can still be construed as a fair warning. We should not neglect the difficulties of building and sustaining coalitions that are crucial to effective policymaking during periods of divided government, nor should we underestimate the ill effects of chronic confrontations between the president and the assembly. Whether such concerns would counsel for or against the use of PR in a presidential democracy is yet another question that calls for our value judgment. For those who prefer the value of decisive and effective government, the combination of PR and a presidential system is probably not a good idea because it tends to breed divided government. For those who appreciate the substantial checks and balances between governmental branches, the inconvenience of divided government resulting from the use of PR is to a great extent durable. Reasonable disagreements are inevitable, but we should be able to achieve informed decisions through a more candid deliberation.

2. Reflections on Cases of the United States and Taiwan

Once we transcend the Linzian nightmare, we can review the proposals of electoral reform in the United States and Taiwan in more pragmatic terms. From a comparative perspective, I think American democracy is strong enough to sustain the electoral reform toward proportional representation; the fear of constitutional breakdown is simply too remote to thwart the reformers' aspiration. Certainly, a more proportionate electoral system for Congress will foster the fragmentation of the party system, but the party system of the United States will remain a bi-polar one due to the strong effect of presidential elections.¹⁵⁷ The qualitative transformation of politics envisioned by the current literature, ironically, is also limited or ambiguous: if a semi-proportional system under the multi-member districts is used, electoral politics in the United States will continue to be candidate-centered and not issue-oriented in a strict sense; consequently, party discipline will remain weak under these circumstances. Regardless of the impacts that have not been fully clarified, the proposed PR reform does create challenges of governability. Whether such reform that will normalize divided government is worth taking is a judgment call that awaits the electoral engineers and the United States public.

Taiwan is a different story. In a society where authoritarian rulers still enjoy higher popularity than democratic leaders, and in a society where the thrust of nationalism overshadows commitment to liberal democracy, constitutional breakdown seems to be a real threat. But throughout the 1990s, political actors in Taiwan did not take the teaching of the Linzian nightmare seriously when engineering Taiwan's young democracy; they thought a semi-presidential system could integrate a popularly-elected president with an assembly reflecting divergent interests in the society.¹⁵⁸ The endless partisan warfare following the first regime turnover in 2000 appears to prove Professor Ackerman's prophecy. The tension between the two political branches is hard to resolve;

157. This prediction is premised on the condition that presidential elections are still governed by the plurality formula; if the majority runoff or instant runoff system is used in presidential elections, the presidential elections will have less restrictive effect on the fragmentation of party system. See also TODD DONOVAN & SHAUN BOWLER, *REFORMING THE REPUBLIC: DEMOCRATIC INSTITUTIONS FOR THE NEW AMERICA* 69 (2004).

158. See Wen-Chen Chang, *Xian Zheng Zhu Yi Yu Xuan Ju Zhi Du: "Xin Guo Hui" Xuan Zhi Gai Ge Chu Yi* [*Constitutionalism and Electoral System: Designing a New Parliament for Post-Transition Taiwan*], in XIN SHI JI XIN XIAN ZHENG: XIAN ZHENG YAN TAO HUI LUN WEN JI [NEW CONSTITUTIONAL POLITICS IN THE NEW CENTURY: A COLLECTION OF SYMPOSIUM PAPERS ON CONSTITUTIONAL POLITICS] 485, 496-97.

however, it is not likely that Taiwan will switch into a parliamentary democracy in the near future, nor is it possible to change the current electoral system for the Legislature into a plurality-majority one.¹⁵⁹ Now, people in Taiwan can only count on careful electoral engineering to prevent crisis in governability by reducing the possibility of a divided government.

Concerns of governability help us to understand why Taiwan's Presidential Commission on Reforming Government proposes a Japanese-style parallel system, a semi-proportional system which is arguably less proportionate than the current SNTV-MMD system. The necessity of reducing electoral proportionality of the legislative elections, however, has not been fully justified. Given the strong effect of presidential elections on the formation of a party system, one can argue that adjusting the electoral cycles to have concurrent elections is a more effective and less restrictive alternative in fostering the occurrence of unitary government. Since the PCRG also suggests that presidential elections and legislative elections be held concurrently to save some social costs, maybe the electoral engineers intend to have a double insurance in this regard. Unfortunately, the proposed electoral system still runs the risk of moderate multipartism, a problematic situation in Professor Cheibub's accounts. It seems that no matter how thoughtful we are, electoral engineering is doomed to have limitations.

IV. CONCERNS OF REPRESENTATIVENESS

In the grand debate over the choice of electoral systems, virtually every one admits that PR is "fairer" to citizens than majoritarian representation.¹⁶⁰ The comparative fairness of PR is evident in the analytical framework introduced by Professor Beitz: whereas both PR and majoritarian representation satisfy the basic procedural requirement of political equality when they confer on each voter an "equal power" to cast his or her vote, only PR satisfies the vision of "equal prospects of electoral success" by assuring that nearly every voter will have "an equal chance of voting for a winning candidate, regardless of the distribution of preferences in the electorate."¹⁶¹ The phrase "equal prospects of electoral success" may sound abstruse, but electoral minorities can easily discern its significance: In a PR system, electoral minorities can be represented by representatives of their choice; in a majoritarian system, by contrast, they can only be represented in a supposititious sense by representatives whom they did not vote for.

Many PR proponents further argue that the proportionality principle is a normative imperative of political equality, the very foundation of democracy. Mill, for example, claims that "[i]t is an essential part of democracy that minorities should be adequately represented. No real democracy, nothing but a false show of democracy, is possible without it."¹⁶² Though Mill's endorsement of PR is largely driven by his elitist sentiment, he makes his argument delicately in egalitarian terms. The libertarian ideal of self-government also prompts Mill to question whether it is legitimate for "one part of the people [to] rule over the rest."¹⁶³ Professor Christiano's work is a more recent in-

159. Due to the path-dependence of the electoral reform, the plurality-majority system is simply not a feasible alternative in Taiwan; see Yung-ming Hsu, *supra* note 98, at 469-70.

160. ROBERT A. DAHL, *HOW DEMOCRATIC IS THE AMERICAN CONSTITUTION?* 100-01 (2001).

161. CHARLES R. BEITZ, *POLITICAL EQUALITY: AN ESSAY IN DEMOCRATIC THEORY* 133 (1989).

162. JOHN STUART MILL, *REPRESENTATIVE GOVERNMENT* 135 (1998).

163. *Id.* at 131.

stance of the theoretical efforts to justify the proportionality principle as an integral part of representative democracy. While admitting that political equality should be construed as a procedural requirement of collective decision-making, as opposed to an outcome-oriented requirement, Professor Christiano asserts that Professor Beitz is mistaken in suggesting that PR only equalizes the prospects of electoral success.¹⁶⁴ Viewing the process of collective decision-making in the modern representative democracy as a two-stage process consisting of the election and legislative phases, Professor Christiano argues that only PR can ensure equality “in the overall process” because only PR can (1) comply with the requirement of anonymity in the distribution of voting power and (2) ensure the egalitarian decision-making of the assembly.¹⁶⁵

Justifying proportional representation as an imperative for democracy or political equality is certainly a tempting approach for PR advocates to present their case. But even if we are not agnostics, we still need to be cautious with any claim of the moral truth. Mill’s argument is problematic because it is based on the distrust of the majority rule itself.¹⁶⁶ Doubtless, a central objective of traditional constitutionalism is to prevent the tyranny of the majority, but whether we need to do so is a question that can be distinguished from the quest for egalitarian democracy. Given that majority rule is usually considered the most democratic decision rule,¹⁶⁷ our commitment to political equality simply does not preclude us from using majority rule in the election phase. Mill’s argument is persuasive, therefore, only if we read certain constitutional limitations of the majority rule into the very definition of democracy. Professor Christiano’s argument also faces a similar problem, as he presupposes a broad view of the political process and a quasi-delegate theory of representation.¹⁶⁸ Neither of them should be taken for granted. Whether we like it or not, we live in a world where people have different visions of representative democracy and/or different expectations of politics, and the requirements of political equality vary accordingly.

The relative property of political equality leads us to accept Professor Beitz’s conclusion that “considerations of political equality or fairness do not necessarily require adoption of proportional representation.”¹⁶⁹ Of course, PR advocates can still argue that PR is more desirable than other electoral systems, even on the ground that it “optimizes” the procedural fairness of the overall political process, as Professor Christiano suggests.¹⁷⁰ However, concerns of equality or fairness cannot be separated from conceptions of representation and democratic politics; we simply cannot choose one electoral system without accepting its underlying assumptions about what role representatives should play and how democratic politics should work. Concerns of political equality are not

164. THOMAS CHRISTIANO, *THE RULE OF THE MANY: FUNDAMENTAL ISSUES IN DEMOCRATIC THEORY* 233 (1996).

165. *Id.* at 233–34.

166. While conceding that democracy requires that legislative decision-making be subjected to the rule of the numerical majority, Mill seeks to constrain the power of the majority by using PR in the election phase. See MILL, *supra* note 162, at 129–31, 143–45.

167. For a dialectic assessment of majority rule, see ROBERT A. DAHL, *DEMOCRACY AND ITS CRITICS* 135–52 (1989).

168. CHRISTIANO, *supra* note 164, at 233 (“Only if legislators are delegates of citizens with respect to aims [of the society] can we have equality with regard to control over the laws and policies of the society”).

169. BEITZ, *supra* note 161, at 125.

170. See also WILLIAMS, *VOICE, TRUST, AND MEMORY*, *supra* note 70, at 218.

decisive because competing visions of representative democracy still exist, and their disagreements are not entirely reconcilable.¹⁷¹

Focusing on the concerns of representativeness, we may proceed from a popular idea in comparative politics that proportional representation and majoritarian representation exemplify two different visions of representative democracy.¹⁷² I elaborate on the underlying assumptions of these two ideal types of electoral systems in the following two sections. If PR and majoritarian representation do imply different visions of representative democracy, does that mean our concerns of representativeness are predicated on the kind of politics we want to pursue? In the last section of this chapter, I will re-evaluate the lessons that institutional engineers can learn from such philosophical reflections.

A. *The Guinierian Hope*

The idea of PR is often intertwined with a distrust of simple majorities, a typical sentiment of elitism. As Professor Powell puts it, “[p]roportionalism is the contemporary democratic face of the tendency to limit the power of the people.”¹⁷³ This characterization is vividly demonstrated by Mill, who voices his dislike for “collective mediocrity” and his confidence in the natural leadership of elites once they could be elected through PR.¹⁷⁴ The prevalence of PR in the wake of the adoption of universal suffrage in certain European countries during the early 20th century also seemed to be motivated by the self-preservation of the then ruling elites.¹⁷⁵ But whatever it once was, the advocacy of PR is no longer dominated by the sentiment of elitism. Today, many students of democracy support PR not because it would limit the power of the people, but—on the contrary—because it would empower the people by revivifying democratic participation. In honor of Professor Guinier’s contribution to transforming PR from an elite-oriented strategy into a project of participatory democracy, I call this newborn idea of using PR to regenerate democracy the “Guinierian hope.”

Professor Guinier’s scholarship developed from her deep concern for the marginalization of racial minorities under the district-based, winner-take-all electoral politics in the United States.¹⁷⁶ Racially polarized voting patterns prompted Professor Guinier to question whether the winner-take-all majority rule can maintain political fairness and promote social justice in such a divided society.¹⁷⁷ The controversies of creating majority-minority districts as remedies for “vote dilution,” pursuant to Section II of the Voting Right Act, have further prompted her to criticize the problems of districting and seek other mechanisms to fulfill the ideal of democratic fair play.¹⁷⁸ But Professor Guinier’s concern is not limited to the plight of racial minorities. Using the metaphor of the

171. See POWELL, ELECTIONS AS INSTRUMENTS OF DEMOCRACY, *supra* note 36, at 237.

172. See LUPHART, PATTERNS OF DEMOCRACY, *supra* note 8, at 1–8; POWELL, ELECTIONS AS INSTRUMENTS OF DEMOCRACY, *supra* note 36, at 4–7.

173. POWELL, ELECTIONS AS INSTRUMENTS OF DEMOCRACY, *supra* note 36, at 90.

174. See MILL, *supra* note 162, at 143–47.

175. See Carles Boix, *Setting the Rules of the Game: The Choice of Electoral Systems in Advanced Democracies*, Vol. 93, No.3 AM. POLITICAL SCIENCE REV. 609, 609–10 (1999) (arguing that the adoption of PR was a ruling elites’ response to universal suffrage, “which led to the massive entry of mostly left-wing voters”).

176. See generally GUINIER, THE TYRANNY OF THE MAJORITY, *supra* note 56.

177. *Id.* at 77–82.

178. *Id.* at 119–56.

miner's canary, Professors Guinier and Torres later transform their criticism of racial politics in the United States into a general attack on the fundamental flaws in the winner-take-all electoral system:

[T]he canary metaphor reminds us that experiences which converge around a racial minority are often a diagnostic tool. Starting with the experience of people of color, we can begin to identify the crucial missing elements of American democracy—missing elements that make the system fail not just for blacks or Latinos but for many other groups that are similarly situated. . . . Winner-take-all territorial districting is fundamentally flawed because some minority—black, Republican, or Green—will always feel unrepresented. . . . And not surprisingly, this zero-sum electoral system depresses voter turn-out, further eviscerating democracy. . . . Ostensibly developed to protect the people from an unelected monarchy, our winner-take-all elections have recreated a political hierarchy that diminishes the people's role in determining their own destiny and privileges institutional order over widespread and ongoing public participation.¹⁷⁹

In response to these problems, Professors Guinier and Torres propose the use of PR as the key to transform democracy. They recommend PR not only because it can facilitate meaningful participation of electoral minorities in the political process, but also because it can strengthen the representational relationship between citizens and their representatives, foster the development of grassroots political organizations, promote issue-oriented elections and public deliberations, and ultimately, bring about positive-sum policy outcomes.¹⁸⁰ The participatory democracy envisioned by Professors Guinier and Torres is surely appealing. But how can the adoption of PR induce such a chain reaction? To answer this question, we have to look into the concept of representation and the logic of politics embedded in the Guinierian hope.

1. Interest Representation and Representative as Delegate

Proportional representation basically assumes that the electorate is composed of various groups of people with different interests and tastes. Under this assumption, PR aims to enable each group to elect a number of representatives roughly proportional to the size of the group.¹⁸¹ The concept of "interest representation," or "group representation," therefore, marks the central idea of proportional representation. Unlike majoritarianism, which tends to de-emphasize the divergence of human interests and the role of groups in formulating and mobilizing political actions,¹⁸² proportionalism explicitly recognizes that there are different interests in society and that these interests should be fairly represented. In view of PR's emphasis on interest representation, it seems quite natural that it tends to encourage issue-oriented campaigns and the development of ideologically cohesive political parties.

179. See GUINIER & TORRES, *THE MINER'S CANARY*, *supra* note 56, at 171–72.

180. See *id.* at 209–13.

181. See POWELL, *ELECTIONS AS INSTRUMENTS OF DEMOCRACY*, *supra* note 36, at 93.

182. See, e.g., *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (stating that "[l]egislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests").

Certainly, the winner-take-all, district-based electoral system may accommodate the reality of group politics through the practices of redistricting or gerrymandering.¹⁸³ But the enterprise of districting is highly problematic for at least three reasons: (1) territory is not an effective proxy for interests other than geographical interests; (2) territorial districting implies the danger of imposing stigma because the boundary of the district is fixed involuntarily from the voters' perspective; (3) as long as the constituency within a district is not politically homogeneous, the winner-take-all voting procedure will produce the problem of "representational synecdoche," which means "the part substituted for the whole."¹⁸⁴ By contrast, the concept of interest representation embedded in PR implies three assumptions that seek to break the limits of territorial districting and reconcile the tension between liberal individualism and group politics: (1) To avoid the problem of representational synecdoche, representatives should represent unanimous constituencies;¹⁸⁵ (2) Apart from geographical interests, group interests defined by other social cleavages should also be fairly represented;¹⁸⁶ (3) Voters should be able to identify or define their interests voluntarily; in other words, "[a]ll voters should district themselves by the way they cast their ballots."¹⁸⁷ From the standpoint of interest representation, PR advocates seem to have good reasons to believe that PR will function better than the majoritarian systems.¹⁸⁸

Two relevant ideas of representation can be further inferred from the notion of interest representation embraced by PR. First, by assuring that the diverse interests in a society are fairly represented in the representative body, PR exemplifies the idea of "descriptive representation" at the institutional level;¹⁸⁹ "representation" in the context of PR, accordingly, means "resemblance," "reflection," or "accurate correspondence."¹⁹⁰ This theoretical characterization helps to explain why PR proponents believe that "a perfect representation is plainly inconsistent with the exclusion of minorities."¹⁹¹ It also indicates that "accountability," when construed as the retrospective control over policy-makers who are responsible for the policies, plays a less significant role in the vision of proportional representation than in the majoritarian vision.¹⁹² Secondly, because interest representation is meaningless unless the representatives are loyal to their constituents in post-election bargaining, PR necessarily embraces a concept of representation that treats representatives as "delegates," at least in certain important issues.¹⁹³ As Professors Guinier and Torres suggest, "[t]he representative is chosen to reflect a political mandate on the issues and is in this sense a delegate of his or her constituents. But the represen-

183. DENNIS F. THOMPSON, *JUST ELECTIONS: CREATING A FAIR ELECTORAL PROCESS IN THE UNITED STATES* 48 (2002).

184. For criticisms of the territory-based districting, see GUINIER, *THE TYRANNY OF THE MAJORITY*, *supra* note 55, at 127–37; GUINIER & TORRES, *THE MINER'S CANARY*, *supra* note 56, at 173–202.

185. GUINIER, *THE TYRANNY OF THE MAJORITY*, *supra* note 55, at 140.

186. *Id.*

187. GUINIER & TORRES, *THE MINER'S CANARY*, *supra* note 56, at 196 (italics omitted).

188. See James A. Gardner, *Madison's Hope: Virtue, Self-Interest, and the Design of Electoral Systems*, 86 *IOWA L. REV.* 87, 163–65 (2000).

189. It should be noted that at the individual level, Professor Guinier argues against the idea of descriptive representation that emphasizes the physical likeness between individual representatives and their constituencies; see GUINIER, *THE TYRANNY OF THE MAJORITY*, *supra* note 55, at 12–13.

190. HANNA FENICHEL PITKIN, *THE CONCEPT OF REPRESENTATION* 62 (1967).

191. *Id.* at 63.

192. See POWELL, *ELECTIONS AS INSTRUMENTS OF DEMOCRACY*, *supra* note 36, at 50.

193. See CHRISTIANO, *supra* note 164, at 233.

tative, informed by his or her constituents' interests, is also empowered to exercise judgment and discretion."¹⁹⁴

The delegate or quasi-delegate model of representation is rather important for the justification of PR as a mechanism of participatory democracy; if the representatives do not act as delegates and have plenary leeway to play the game of politics, the promise that PR will empower the people is nothing but a rubber check issued by political elites. Apparently, there is a tension between the delegation requirement of participatory democracy and the need to have a deliberative assembly, which cannot function without giving the representatives certain discretion. The strict or pure delegate model proposed by the Anti-Federalists is simply not an option for the modern representative democracy.¹⁹⁵ But to argue that the model of representation associated with PR can nevertheless be labeled as a "quasi-delegate model" or "delegate model" in a loose sense, we must demonstrate that (1) the act of voting conveys an intelligible message of delegation, and (2) mechanisms are in place to enforce the voters' delegation, or, hold the representatives accountable. Since none of these elements are self-evident in the relationship between voters and their representatives under PR, whether PR can really serve as a means to participatory democracy remains in doubt.

To unravel the mystery of the quasi-delegate model, Professor Christiano resorts to the function of political parties: Under the list-PR system favored by Professor Christiano, parties are expected to develop "specific and distinctive packages of proposals" for voters to choose, and after an election, these packages can be construed as mandates from their supporters;¹⁹⁶ besides, parties "can play an important oversight role in guaranteeing that individual candidates actually pursue the aims for which they are elected."¹⁹⁷ Accordingly, PR's tendency to encourage the development of ideological and disciplined parties, as I mentioned earlier, is closely related to the substantiation of the quasi-delegate theory. Professor Christiano's argument may justify such development under PR, but we still don't know to what extent party leaders will construe and enforce voters' delegations faithfully. Nor can this rationale apply to other PR or semi-PR systems that are less dependent on political parties. To accommodate the need to have a closer tie between voters and their representatives, these systems can only rely on other mechanisms of accountability, mechanisms that are not directly related to PR.¹⁹⁸

2. Post-Election Bargaining and Power-Sharing Politics

A student of modern democracy may wholeheartedly agree that in a plural society people have divergent interests and opinions, and that these different voices need to be presented and heard in the process of collective decision-making. But does the assumption of interest pluralism compel us to conclude that PR is better than majoritarian representation? Professor Gardner suggests that it does because he asserts that the winner-take-all system would make it unnecessary for majorities to negotiate and deliberate with minorities.¹⁹⁹ Professor Beitz, on the other hand, invites us to think twice. In

194. GUINIER & TORRES, *THE MINER'S CANARY*, *supra* note 56, at 212.

195. See WILLIAMS, *VOICE, TRUST, AND MEMORY*, *supra* note 70, at 228.

196. See CHRISTIANO, *supra* note 164, at 231.

197. *Id.* at 223.

198. See WILLIAMS, *VOICE, TRUST, AND MEMORY*, *supra* note 70, at 230-33.

199. See Gardner, *supra* note 188, at 164.

measuring PR and majoritarian representation against the interest of deliberative responsibility, Professor Beitz suggests:

The real differences between these systems involve the stage within the process of election and representation at which the positions are articulated and the framework within which divergent positions are compromised to form workable political coalitions. In proportional representation, these functions take place largely within the legislature itself under the aegis of parties or groups of legislators representing various constellations of interest; in district representation, they normally occur at an earlier stage—for example, in the selection of party candidates and in the formation of party platforms—where there may be substantial competitive incentives to take account of minority interests.²⁰⁰

Whether majoritarian representation can sustain public deliberation as vigorously as under PR is an empirical question that calls for further discussion. But Professor Beitz is probably right on one point: Even if both PR and majoritarian representation share the same assumption of interest pluralism, they still differ from each other over how and when a society's divergent interests should be considered. One way to discern the differences between the proportional and majoritarian visions of politics is to ask what should be counted as the "decisive stage" of the political process. The majoritarian vision, according to Professor Powell, regards the election phase as the decisive stage "at which the choice of the majority [of the electorate] should prevail in setting the guidelines of public policy."²⁰¹ Since government formation and policy-making should be determined or controlled by the people, the negotiation and bargaining of different interests should take place in the electoral process before the people deliver their verdict on Election Day. By contrast, the proportional vision assumes that the decisive stage of the political process is the policy-making that takes place in the representative government in between elections.²⁰² Since many important decisions are actually made by policymakers—as opposed to the people—through a process of deliberation, negotiation, bargaining, and logrolling, the principle of political equality would command that different interests be fairly represented and contemplated in the legislature. These two perceptions of politics can also be formulated in terms of the roles that elections play: while majoritarian representation enables citizens to *control* policymakers, PR gives citizens opportunities to *influence* policymakers.²⁰³

Proponents of PR advance several arguments to explain why they consider the post-election legislative process as the decisive stage of collective decision-making. For instance, the election phase may occur too early or be too short of a period to be the sole decisive stage;²⁰⁴ the problem of "multiple majorities on multiple issues" also asks for "a more complex pattern of bargaining and negotiation to build new majorities as issues are addressed in policy making."²⁰⁵ Given the complexity of policy-making, PR advocates have reason to condemn the majoritarian vision of citizen control as an illusory promise.

200. BEITZ, *supra* note 161, at 137–38.

201. POWELL, ELECTIONS AS INSTRUMENTS OF DEMOCRACY, *supra* note 36, at 89.

202. *Id.* at 90.

203. *Id.* at 5 (emphasis added).

204. *Id.* at 90.

205. *Id.* at 70.

When I requested Professor Guinier to comment in this regard, she said that “the majoritarian vision only fools the people and minimizes their role in politics.”

What is at issue is not just a matter of timing. Another relevant debate centers around what decision rule should be used in determining the outcomes of policy-making. Although the proportional vision of politics does not necessarily repel the principle of majority rule,²⁰⁶ many PR advocates do challenge the adequacy of simple majority rule, especially when it is used in the context of a divided society. Professor Guinier, for example, criticizes majority rule, for it cannot achieve reciprocal outcomes or promote public deliberation when majorities are fixed.²⁰⁷ Professor Lijphart, another standard bearer of PR, also argues against the use of majority rule in pluralistic societies, because “minorities that are continually denied access to power will feel excluded and discriminated against and may lose their allegiance to the regime.”²⁰⁸ The ideal of politics embraced by Professors Guinier and Lijphart underscores the importance of inclusiveness, meaningful participation, compromise, coalition-building, and consensus. They further contend that these objectives can only be achieved through cooperation and power-sharing among the political elites. The advocacy of PR, in this regard, is associated with the vision of “power-sharing democracy,” or, a more fancy term, “consociational democracy.”²⁰⁹

B. The Majoritarian Vision

The arguments for proportional representation have been so well articulated over the past few decades that many masters of constitutional engineering think highly of this kind of electoral system. But even in the context of a divided society, the most favorable setting for PR advocates, the adoption of PR has not necessarily promoted political justice and social harmony. Goodwill simply cannot guarantee positive results. Professor Donald Horowitz, a long-term dissenter from Professor Lijphart’s consociational theory, advances several objections to this popular approach. Among other things, it might be too naïve to expect that statesmanship will prompt group leaders to pursue political compromise; even when a compromise across group lines is made by some leaders, it may be denounced as a sellout by others.²¹⁰ In sum, although PR does induce the inclusion of smaller parties within the legislature, it remains an open question whether doing so will promote group cooperation and enhance the political support among electoral minorities, or will perpetuate the segregation along the social cleavages.²¹¹

In any event, the grand debate over the relative desirability of PR versus majoritarian representation continues to rage. The majoritarian vision still appeals to many people because it envisions a representative democracy that has a strong and direct connection between votes, legislative seats and governments.²¹² The use of the single-member district also promotes constituency service and strengthens the links between

206. DAHL, *supra* note 160, at 101.

207. See GUINIER, THE TYRANNY OF THE MAJORITY, *supra* note 55, at 77–80.

208. LIJPHART, PATTERNS OF DEMOCRACY, *supra* note 8, at 32–33.

209. For discussions of power-sharing democracy or consociational democracy, see generally THE LAW OF DEMOCRACY, *supra* note 2, at 1168–72; see also Lijphart, *supra* note 111.

210. See Horowitz, *supra* note 7, at 20–22.

211. See THE ARCHITECTURE OF DEMOCRACY, *supra* note 1, at 208–16.

212. See POWELL, ELECTIONS AS INSTRUMENTS OF DEMOCRACY, *supra* note 36, at 124.

voters and their representatives.²¹³ But how would the majoritarians respond to the accusations brought by the proportionalists? It seems to me that there are at least three strategies for the majoritarians to defend their position, and each of these represents a distinct version of the majoritarian vision.

1. Decisive Elections and Competitive Democracy

The first strategy is to argue that, although majoritarian representation is imperfect, it is the only way to ensure that elections are effective instruments of citizen control. Under this line of argument, assuring the decisiveness of elections is the most important requirement of democracy, for the liberal veto (i.e., the rejection of incumbents)—though being a minimal idea of democracy—is all we can ask for. As Professor Riker suggests:

Social choice theory forces us to recognize that the people cannot rule as a corporate body in the way that populists suppose. Instead, officials rule, and they do not represent some indefinable popular will. Hence they can easily be tyrants, either in their own names or in the name of some putative imaginary majority. Liberal democracy is simply the veto by which it is sometimes possible to restrain official tyranny.²¹⁴

Professor Riker's argument is powerful for those who believe in the idea of *competitive democracy*. If democracy means nothing but producing an effective government that is accountable to the people, then proportional representation is simply an alien and dangerous idea because it can hardly ensure the electoral accountability of the government.²¹⁵ Judge Posner is the latest advocate of this "minimal" yet "realistic" vision of democracy; although refusing to be a simple majoritarian, Judge Posner argues that it is better for society to have more moderate, more centrist, and less passionate politics, which results from the functioning of the winner-take-all system.²¹⁶ Maybe the idea of competitive democracy does favor or even compel the adoption of majoritarian representation, but competitive democracy is no more privileged than other visions of democracy. Judge Posner seeks to justify the relative desirability of competitive democracy on the grounds of pragmatic considerations. But are the sentiment of political stability and the preference for moderate politics more "realistic" than the aspiration for public participation and deliberation? Even an "everyday pragmatist" might disagree with Judge Posner's conclusions.

213. See THE ARCHITECTURE OF DEMOCRACY, *supra* note 1, at 209.

214. WILLIAM H. RIKER, LIBERALISM AGAINST POPULISM: A CONFRONTATION BETWEEN THE THEORY OF DEMOCRACY AND THE THEORY OF SOCIAL CHOICE 244 (1982).

215. See JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM AND DEMOCRACY 272–73 (1984) ("If acceptance of leadership is the true function of the electorate's vote, the case for proportional representation collapses because its premises are no longer binding"); POWELL, ELECTIONS AS INSTRUMENTS OF DEMOCRACY, *supra* note 36, at 11–12 ("[i]f policy-making resources were divided among numerous parties or groups or if the policy-making coalitions changed from issue to issue, then it would be difficult for citizens to use elections as instruments of accountability").

216. See POSNER, *supra* note 53, at 172–78.

2. Pre-Electoral Deliberations and the Incentives Approach to Power-Sharing Politics

The second strategy for the defense of majoritarian representation takes more seriously the interests in public deliberation and the quest for political compromise. The basic idea of this strategy is to demonstrate that majoritarian representation can serve these interests at least as well as PR. Professor Beitz, for example, argues that district representation can promote a broad scope for public debate if “the process of candidate selection and the internal governance of the parties” are regulated to pursue this end.²¹⁷ Professor Horowitz also suggests that by means of “vote-pooling arrangements” (such as Alternative Vote or Majority-Runoff), majoritarian systems can create strong incentives for pre-electoral coalitions and accommodative behavior, which can reduce inter-group conflict and promote political compromise in a divided society.²¹⁸

This strategy responds to the main charges against the majoritarian vision of politics; it aims to prove that majoritarian representation can adapt to interest pluralism and even facilitate the ideal of power-sharing politics. However, the practical effectiveness of using majoritarian systems to pursue objectives that are usually associated with PR is still questionable. The success of this vein of arguments is not a matter of logic, but a matter of empirical findings.

3. Implementing Virtuous Politics

The last strategy, adopted by Professor Gardner, is to defend majoritarian representation on an assumption of politics that is entirely different from interest pluralism. In view of the difficulties in defending the majoritarian systems on the pluralist assumption, Professor Gardner argues that only through a different lens—a lens that enables us to view politics from the perspective of republicanism or populism—can we appreciate the merits of majoritarian representation.

[J]ust as PR is the electoral system best suited to a conception of politics as interest pluralism, so winner-take-all electoral systems are perfectly suited to achieve the goals of politics understood as a politics of virtue. If the common good is objective and unitary; if the purpose of politics is to identify and implement this common good; if the people have either the ability to identify the best and wisest representatives, or the virtue and wisdom to discern the common good directly; and if a majority of the people know these things better than any minority; then a winner-take-all electoral system must be the electoral system of choice.²¹⁹

The genius of Professor Gardner’s argument is to mold the ideas of republicanism and populism into a conception of politics that can turn all the alleged weaknesses of majoritarian representation into its very strengths. Since the purpose of politics is to implement the objective, unitary common good of the entire polity, which is best identified by the majority of the people or their representatives, the clash and accommodation of competing interests are no longer legitimate concerns. Once the common good has

217. BEITZ, *supra* note 161, at 138.

218. See Horowitz, *supra* note 7, at 23–25.

219. Gardner, *supra* note 188, at 142–43.

been identified, the voices of electoral minorities should be disregarded because their failure to become the majorities also means that their political views are wrong on the merits.²²⁰ PR, on the other hand, has difficulty in achieving the ideal of virtuous politics embraced by republicanism or populism: “[a]ny electoral system that would deliberately introduce into the legislature representatives committed to the advancement of incorrect positions can only make it harder for the political process to achieve the common good.”²²¹

Certainly, the vision of virtuous politics is deeply rooted in Western political thoughts. What Professor Gardner endeavors to do is to resurrect the faith in the common good and use it to save the winner-take-all electoral system, which is indefensible—in Professor Gardner’s eyes—with the assumption of interest pluralism. The common good, however, is a theoretical construction whose existence cannot be vindicated by modern social science; like any claim of the moral truths, its validity is based on whether we believe in it or not. Whether the vision of virtuous politics can be sustained in our modern or postmodern world, as Professor Gardner notes, is a key problem with this approach.²²²

The revival of republicanism in the United States over the past two decades may give some credit to Professor Gardner’s faith in civic virtue, but probably not to his confidence in majoritarian representation. Given that the ideal of virtuous politics should play some meaningful role in our political life, it is still uncertain which type of electoral systems it would endorse. The abstract doctrine simply begets different constructions. Professor Sunstein, for example, suggests that PR may enhance, not undermine, the political process of Madisonian democracy by ensuring “that processes of deliberation are not distorted by the mistaken appearance of a common set of interests on the part of all concerned.”²²³ Similarly, in a mass democracy where representation and the division of political labor are inevitable, even a faithful populist may still wonder which system—PR or majoritarian representation—actually carries out the will of the people.

4. Common Themes

The multiplicity of the defense strategies indicates that majoritarian representation is an ideologically ambiguous concept. Whereas Judge Posner wants to discard the ideal of deliberative democracy and build his case on the assumption of competitive democracy, Professor Gardner regards the vision of virtuous politics as the savior of the winner-take-all system. Nonetheless, we can identify some common themes of the majoritarian vision with respect to the concept of representation and the logic of politics.

(1) *Virtual Representation*: In response to the charge of “representational synecdoche,” a standard answer of majoritarian representation is “virtual representation,” the idea that expands representation beyond the relationship between a representative and his/her actual constituents.²²⁴ As long as a representative is not merely the agent of the voters who voted for him/her, but has a moral obligation to look after other constituent

220. *Id.* at 143–45.

221. *Id.* at 161.

222. *Id.* at 169–71.

223. Cass R. Sunstein, *Beyond the Republican Revival*, 97 *YALE L.J.* 1539, 1588 (1988).

224. See PITKIN, *supra* note 190, at 173–76.

interests, there is no representational deficit. The idea of virtual representation is often associated with theories of civic republicanism and deliberative democracy.²²⁵ A believer in competitive democracy may also embrace this idea to justify the representatives' wide discretion. But Professor Guinier is definitely not comfortable with this concept. Professor Guinier not only points to the failure of virtual representation in the real world, but also warns us of its threat to the values of participation.²²⁶ Resolving the "tension between ideal and achievement"²²⁷ of virtual representation, accordingly, is basically an assignment for the majoritarians.

(2) *District Representation*: The single-member district is the cornerstone of majoritarian representation; a majoritarian electoral system without territorial districts is simply unimaginable. In addition to the necessity of territorial districts, which can be viewed as the spatial dimension of majoritarian representation,²²⁸ a majoritarian can advance several arguments for district/territorial representation. For instance, since people do not choose their residence randomly, territory is undeniably an important proxy for interests.²²⁹ By maintaining "effective links between voters and their representatives," territorial representation also creates strong incentives for representatives to provide local constituency service.²³⁰ Besides, as Professor Calabresi suggests, district elections tend to be less ideological and, for this reason, politics may be more moderate.²³¹ But above all, the single-member district substantiates the idea of "geographic accountability," ensuring that voters can identify and control their representatives even on the individual level.²³²

(3) *Electoral Accountability and Representative as Trustee*: According to Professor Powell, the majoritarian vision basically regards elections as the decisive stage of the democratic political process. Because of its strong effect in creating a clear legislative majority, majoritarian representation enables citizens to *control* policymakers either by mandating their future governments prospectively or by evaluating the accountability of the incumbent governments retrospectively.²³³ Conceivably, government accountability is the major concern of the majoritarian vision of citizen control. The advancement of electoral accountability is also considered the main virtue of majoritarian representation.²³⁴ But majoritarian democracy is not by definition a regime where the people rule. Except for the populists, supporters of majoritarian representation usually embrace a trustee model of representation that gives representatives considerable discretion in making independent judgments.²³⁵ Professor Powell also reminds us that "it is something of an illusion to think that the mechanical processes of vote-seat-government connections in majoritarian systems are shaped more by citizens and less by party leaders

225. See Gardner, *supra* note 188, at 144; see also AMY GUTMANN & DENNIS THOMPSON, *DEMOCRACY AND DISAGREEMENT*, 144–64 (1996).

226. See GUINIER, *THE TYRANNY OF THE MAJORITY*, *supra* note 55, at 130–32, 218 n.100.

227. PITKIN, *supra* note 190, at 240.

228. See ELAINE SPITZ, *MAJORITY RULE* 56 (1984).

229. See Briffault, *supra* note 70, at 442.

230. *THE ARCHITECTURE OF DEMOCRACY*, *supra* note 1, at 209.

231. Calabresi, *supra* note 103, at 81 ("The basic point is that the fundamental unit of democratic representation is a geographic entity and not an ideological point on the political spectrum, so geographic districting tends to cut across ideology and to de-emphasize it").

232. See *IDEA HANDBOOK OF ELECTORAL SYSTEM DESIGN*, *supra* note 5, at 29.

233. See POWELL, *ELECTIONS AS INSTRUMENTS OF DEMOCRACY*, *supra* note 36, at 5, 10–12.

234. *Id.* at 237.

235. See Mark A. Graber, *Conflicting Representations: Lani Guinier and James Madison on Electoral Systems*, 13 *CONST. COMMENTARY* 291, 293 (1996).

than are the bargaining processes of vote-seat-policymaker connections in proportional systems.”²³⁶ In regard to the tug of war between people and ruling elites, it seems that the majoritarian and the proportional visions have achieved a similar equilibrium through different approaches.

C. Beyond the Dichotomy

Defining and maintaining the appropriate relationship between the people and their representatives are perpetual dilemmas facing representative democracies. The ongoing debate over the relative desirability of PR versus majoritarian representation reminds us that we are not at the end of the history of democracy. Since there are substantial disagreements about desirable approaches to politics, and since the majoritarian and proportional visions of democracy each have distinctive advantages and notable disadvantages, trade-offs—especially the trade-off between “accountability” and “responsiveness”—are simply inevitable.²³⁷ A thorough inquiry and serious reflection may save electoral engineers from bias, misunderstanding and distortion. But in the end, a choice must be made.

How should electoral engineers make their decisions? Professor Gardner suggests that “in choosing an electoral system we cannot escape the necessity of choosing among conceptions of politics, or at least of choosing which conception of politics will be favored by institutional circumstances. *To choose an electoral system is thus to put a thumb on the political scales.*”²³⁸ It seems that Professor Gardner rightly suggests that PR and majoritarian representation exemplify two different visions of representative democracy, and that our concerns of representativeness are significantly predicated on the brand of politics we intend to pursue. But the rule of thumb suggested by Professor Gardner is actually plagued by ambiguity or indeterminacy. Interest pluralism does not necessarily lead us to adopt PR, nor does the ideal of virtuous politics unconditionally endorse majoritarian representation. Reflections on political philosophies may provide us some meaningful guidance, yet they are by no means conclusive. In choosing an electoral system, pragmatic considerations are as important as our political faith.

In any case, the choices facing electoral engineers are more complicated than the majoritarian-proportional dichotomy indicates. Electoral proportionality is better viewed as a continuum with multiple possibilities, and there are several ways to maneuver electoral proportionality. In other words, not only must electoral engineers determine how proportional or disproportional the electoral system should be, but they also have to decide how to achieve the anticipated proportionality. The electoral engineering for majoritarian representation appears simple on its face; one may argue that all we need is the single-member district with the plurality or majority formula. But majoritarian representation is by no means a unitary concept. Electoral engineers have to choose between different districting policies, which to a certain extent may reflect different versions of majoritarianism. The options multiply when we move toward the direction of proportional representation. Engineers can set different electoral thresholds to control the degree of electoral proportionality. They can also choose different sys-

236. POWELL, ELECTIONS AS INSTRUMENTS OF DEMOCRACY, *supra* note 36, at 155.

237. *Id.* at 253.

238. Gardner, *supra* note 188, at 166 (emphasis added).

tems, which highlight different ideas of proportional representation. The candidate-centered STV and CV, for example, seem to embrace the idea of “geographic accountability” usually envisioned by majoritarians, whereas the party-based List-PR system implements a quasi-delegate model of representation.

During recent years, there has been a visible tendency toward hybrid systems (systems that combine SMD with List PR, such as MMP and Parallel Systems) in comparative politics. Professor Horowitz suggests that such a tendency “reflects a desire to graft one institution on to another rather than to design an ensemble of institutions.”²³⁹ Professor Olga Shvetsova, on the other hand, argues that “[i]n most cases, the adoption of the mixed electoral system was a result of political bargaining and compromise between parties and politicians who favored pure PR and those who preferred majoritarian elections.”²⁴⁰ Our prior discussions on the case of Taiwan indicate another possibility: a semi-proportional Parallel system might be chosen as a response to concerns of governability in presidential democracies. No matter what is the case, the emergence of the hybrid systems does present new challenges to the discourse of representativeness. These hybrids indicate that majoritarian and proportional visions are not mutually exclusive. They might even envision a “Third Way of electoral politics” that has not been fully captured in the majoritarian-proportional dichotomy. If we still believe that concerns of representativeness should play some role in electoral engineering, and that our visions of politics and democracy should guide our choice of electoral system, then we had better extend our imagination beyond the old dichotomy.

This theoretical reflection also invites us to reconsider the cases of the United States and Taiwan. After years of vigorous debate along the battle line of majoritarianism versus proportionalism, it seems that discourse of electoral reform in the United States has been stuck by entrenched disagreements. The disagreements persist because many participants in this grand debate take the choice of electoral system as a matter of principle, leaving little room for pragmatic considerations. Though the grand debate between majoritarians and proportionalists has provided a great contribution to our understanding of democracy, the prevalence of “electoral fundamentalism” might have forced people to take sides in this debate rather than seeking consensus and compromise. By paying more attention to studies of comparative politics, maybe Americans can release their imagination from the cage of the majoritarian-proportional dichotomy and learn that thoughtful engineering is capable of making fairer trade-offs between “accountability” and “responsiveness.”

By contrast, the discourse of electoral reform in Taiwan seems to suffer from lack of philosophical reflections. Electoral engineers in Taiwan are pragmatic enough to resist electoral fundamentalism. But because concerns of representativeness are not the major axis of the proposed electoral reform, the vision of democracy underlying the current reform proposal has not been fully articulated. In the absence of a clear vision, scholars who favor the MMP system often criticize the proposed semi-proportional Parallel System as an unjustified compromise. To defend the reform proposal from the perspective of representativeness, electoral engineers in Taiwan may have to find a more solid ground of political philosophy for their pragmatic considerations.

239. Horowitz, *supra* note 7, at 17.

240. Shvetsova, *supra* note 48, at 64.

V. CONCLUSION

This Article aims to reappraise the current academic debate on the prospects of proportional representation in presidential systems. Based on the case study of electoral reforms in the United States and Taiwan, my research confirms that governability and representativeness are the central concerns of electoral engineering. After a close examination of the relevant normative arguments and empirical evidence, I argue that neither the nightmare of constitutional breakdown nor the hope of consociational democracy should dictate our political judgment in designing the legislative electoral system. Instead, we should make the inevitable trade-offs on the grounds of pragmatic considerations as well as philosophical reflection.

“Governability” and “representativeness” can be viewed as the two dimensions of electoral engineering. Electoral engineers will face difficult trade-offs or judgment calls within these two dimensions, respectively. With respect to concerns of governability, electoral engineers in presidential democracies have to make a trade-off between effective government and substantive separation of power. In regard to concerns of representativeness, they need to balance “accountability” and “responsiveness” and then choose or formulate their visions of representative democracy accordingly. The most difficult task of electoral engineering, however, is to reconcile the possible tension between governability and representativeness. There is no magic formula in this regard, but at least we should give equal weight to these two concerns before making our final judgment.

Electoral engineering, as political theorist Pitkin reminds us, is a difficult but not hopeless challenge. The engineering of electoral proportionality in presidential democracies will continue to be a controversial issue, and it is imperative that we resist the allure of the “one-size-fits-all” solutions. Informed and less biased judgments are attainable, I believe, as long as our minds are open, yet critical.