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KAMALA HARRIS'S IRONIC D/DEMOCRATIC CORONATION AND GENUINE ELECTORAL REFORM

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Something strange happened in U.S. politics. Vice President Kamala Harris was nominated as the Democratic Party candidate in the 2024 election through an unprecedented political process. That process, and what it tells us about electoral legitimacy, holds implications not only for an election cycle initially cast as a referendum on democracy, but also for the hope of genuine democratic reform.[1]

Following incumbent President Joe Biden's remarkable decision to step aside and not run for reelection, the Democratic Party accepted his endorsement of sitting Vice President, Kamala Harris, as the Democratic nominee.[2] There was never a primary in which Harris's name appeared to let registered Democratic voters formally decide that she should be their general election candidate. For the first time since the primary voting process began, a candidate has emerged as a major party nominee without a single primary ballot or caucus vote expressing that preference.[3]

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1. Commentators have observed that among other shifts in focus, the Harris campaign chose to emphasize freedoms and even weirdness of their opponents over democracy, fearing the latter under the Biden campaign had not gained adequate traction with voters. Jess Bidgood, *When It Comes to Trump, Harris Tries a Sunnier Tone*, N.Y. TIMES (July 31, 2024), https://www.nytimes.com/2024/07/31/us/politics/kamala-harris-trump-democrats.html; Eli Stokols & Elena Schneider, *How Trump and Vance Went from a 'Threat to Democracy' to 'Weird'*, POLITICO (July 26, 2024, 5:28 PM), https://www.politico.com/news/2024/07/26/trump-vance-weird-00171470.

2. Lazaro Gamio et al., *Many Elected Democrats Quickly Endorsed Kamala Harris. See Who Did.*, N.Y. TIMES (June 24, 2024), https://www.nytimes.com/interactive/2024/07/22/us/politics/kamala-harris-democrats-endorsement-list.html.

3. For a discussion of the history of caucuses and primaries, see Scott Bomboy, *A Brief History of Presidential Primaries*, NAT'L CONST. CTR. (Mar. 1, 2024), https://constitutioncenter.org/blog/a-brief-history-of-presidential-primaries (tracing the emergence of primaries to the Progressive Era and their rise to the end of World War II); Clay S. Jenkinson, *Why Does America Have Primaries?*, GOVERNING (May 29, 2022), https://www.governing.com/context/why-does-america-have-primaries (describing primaries as a Progressive Era reform designed to give voters greater control over party candidates).

Republicans point out the irony, to some the hypocrisy, of the Democratic Party having pitched Election 2024 as vital to democracy while having selected their presidential nominee through a seemingly non- or, even, anti-democratic process.[4] By contrast, Democrats were mostly gushing, enthusiastically embracing Harris. They did so stunningly rapidly and despite sometimes harsh criticism in earlier periods of the Biden administration in which critics claimed Harris was ineffective.[5] Some had even hoped Biden might replace her if he ran for a second term.[6] If nothing else, these events illustrate our capacity to endure political whiplash. But I will argue that they do a great deal more than that.

Regardless of views concerning Kamala Harris as a 2020 Democratic primary candidate or as Biden's Vice President, Democratic leaders in the House and Senate, state governors, other officials across the country, and past Democratic presidents and party nominees unfailingly followed the President's lead, enthusiastically endorsing Harris.[7] A mere eleven days after Biden dropped out, Harris secured a sufficient number of votes to lock in her nomination at the Democratic National Convention.[8] Democratic voters gleefully acquiesced in what became a coronation, not a contest.

These rapid events occurred in the primary stage in our two-party presidential elections. And they arose in the context of a single, quite unusual, election. Even so, they convey something profound about meeting our ongoing crisis of democracy with truly meaningful reform that tackles our electoral system and system of executive accountability. These developments demonstrate that contrary to common intuition, perhaps conventional wisdom, even in the United States democratic legitimacy is not necessarily tied to casting an ultimate ballot on who wins a particular high-level electoral contest, such as a major party's nomination for President, or, by extension, a final vote for President in a general election.

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4. Richard L. Hasen, *Kamala Harris Replacing Joe Biden Is Not Antidemocratic*, SLATE (July 22, 2024, 5:50 AM), https://slate.com/news-and-politics/2024/07/republicans-kamala-harris-replacing-joe-biden-not-coup.html; Lauren Irwin, *Whitmer on GOP Claims of 'Undemocratic' Shift to Harris: 'Give Me a Break'*, THE HILL (July 26, 2024, 2:26 PM), https://thehill.com/homenews/campaign/4794912-gretchen-whitmer-kamala-harris-gop-attacks/.

5. Anthony Zurcher, *Kamala Harris One Year: Where Did It Go Wrong for Her?*, BBC (Jan. 19, 2022), https://www.bbc.com/news/world-us-canada-60061473; Edward-Isaac Dovere & Jasmine Wright, *Exasperation and Dysfunction: Inside Kamala Harris' Frustrating Start as Vice President*, CNN (Nov. 18, 2021, 9:04 AM), https://www.cnn.com/2021/11/14/politics/kamala-harris-frustrating-start-vice-president/index.html.

6. *See, e.g.*, Eric Levitz, *The Case for Biden to Drop Kamala Harris*, N.Y. MAG. (Sept. 13, 2023), https://nymag.com/intelligencer/2023/09/the-case-for-biden-to-drop-kamala-harris.html.

7. Gamio et al., *supra* note 2.

8. Will Weissert, Chris Megerian & Seung Min Kim, *Harris Has Secured Enough Democratic Delegate Votes to Become Their Party's Nominee, Chair Says*, AP NEWS (Aug. 2, 2024, 2:36 PM), https://apnews.com/article/kamala-harris-nomination-dnc-463d0b8095f2ca3526b3af3a2f44c3ca.

This insight, however surprising in the United States, is almost certainly intuitive to millions of voters around the world.[9] That is important for two reasons. First, it is wise to understand that such broad terms as "democracy" and "elections" admit of considerable global variation. And second, these recent developments within the Democratic Party belie what many imagine is a serious impediment to genuine institutional reform in the United States.

The U.S. electoral system and system of electing and holding accountable the President—two-party presidentialism—is truly an outlier across the globe.[10] The United States has been successful in exporting democracy, especially since World War II. It has not been successful in exporting our own brand of democracy, and truthfully it has not tried. Across the globe, successful democracies are generally characterized by two features both missing at home: multiple parties and parliamentary selection of the head of government.

There are multiple ways to combine these features. Thriving democratic nations do not all do democracy the same way. Despite the variation, one commonality across such systems is essential. To achieve a genuine multiparty system, it is imperative that elections to the lower, or sometimes exclusive, legislative chamber operate on a system of proportional representation. This means that the system of electoral voting is processed with the goal of ensuring a meaningful correlation between the percentage of votes each of several parties receives, however calculated, and the percentage of seats each party obtains in the legislative chamber.

In general, schemes that combine geographical districting with single winner-take-all outcomes tend to produce two dominant parties. The intuition is that in such contests, voters come to realize that the winning strategy entails keeping its side together, papering over differences, and seeking to divide the opposition. The incentives are mutual, and the result—an equilibrium—is two dominant parties.[11]

This insight can readily be extended from single-seat House districts, to Senate elections, to entire legislative chambers, and to the Electoral College.

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9. *See* Drew DeSilver, *Among Democracies, U.S. Stands Out in How It Chooses Its Head of State*, PEW RSCH. CTR. (Nov. 22, 2016), https://www.pewresearch.org/short-reads/2016/11/22/among-democracies-u-s-stands-out-in-how-it-chooses-its-head-of-state/. *See also Electoral Systems*, ACE PROJECT, https://aceproject.org/epic-en/CDTable?view=country&question=ES002 (last visited Oct. 23, 2024) (listing different electoral systems around the world).

10. DeSilver, *supra* note 9.

11. Technically, it is a pure Nash equilibrium, meaning an outcome or set of outcomes that depends on each player responding rationally to incentives without knowing the other player's or players' strategies, assuming the other player or players will do the same, and generating a combined strategy or set of strategies that no single player can improve upon unilaterally. MAXWELL L. STEARNS, TODD J. ZYWICKI & THOMAS J. MICELI, LAW AND ECONOMICS: PRIVATE AND PUBLIC 579–80 n.21 (2018) (collecting authorities).

Although it is mistaken to call this intuition a "law," it is true that districting schemes using single winner-take-all outcomes tend toward two dominating parties.[12]

This feature characterizes both the United States and the United Kingdom, even though the United States is a presidential republic, and the United Kingdom is a republican monarchy. Two-party systems create serious challenges. One challenge is that precisely because such schemes motivate each side to avoid internal fragmentation, even a small minority, or faction, within either of the two major parties risks gaining outsized political leverage. If a faction's credible threat of defection, implicit or explicit, risks throwing power to the other major party, even party elites will begin to acquiesce in that faction's demands.[13] Over time, what may have started as an outlier faction can gain influence on the party as a whole. Eventually that faction might come to dominate, even define, one of the only two parties capable of gaining power.

The GOP, and the United States, has experienced this since the rise of Donald Trump and his MAGA movement. MAGA not only influences the GOP; over the past several years, commentators have observed that the GOP has morphed into Donald Trump's MAGA party.[14] Even Trump's early and most ardent GOP detractors have, with rare exception, ultimately come fully on board.[15]

A critical feature in blunting the risk of an extreme faction taking over the party and then the government is proportional representation. Proportionality is one of two features that are vital to how coalition-based democratic systems work. Proportional representation increases the likelihood that multiple parties will be represented. In terms of elections themselves, proportionality defines how the legislature, or more typically a lower chamber in a bicameral legislature, is elected. The legislative electoral process is one of two key axes that help define a democratic system.[16]

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12. For a discussion of the misuse and application of the term Duverger's Law, see MAXWELL L. STEARNS, PARLIAMENTARY AMERICA: THE LEAST RADICAL MEANS OF RADICALLY REPAIRING OUR BROKEN DEMOCRACY 34–35 (2024).

13. For a discussion of how this dynamic invited the Brexit referendum in the United Kingdom, and a comparison to the dynamics in the United States respecting support for Donald Trump, see *id.* at 117–19.

14. Philip Bump, *From a GOP Platform to a MAGA One*, WASH. POST (July 10, 2024, 12:42 PM), https://www.washingtonpost.com/politics/2024/07/10/republican-party-platform-trump/; Grace Segers, *J.D. Vance Is the Ultimate MAGA Republican and Future of the Party*, NEW REPUBLIC (July 16, 2024), https://newrepublic.com/article/183880/jd-vance-ultimate-maga-republican-future-party.

15. STEARNS, *supra* note 12, at 338 n.20 (listing Republicans who declined to acquiesce in Trump's rise to power in the GOP).

16. *Id.* at 165–68.

The other key axis is the manner of selecting and holding accountable the head of government. In parliamentary schemes, a common means of accomplishing the latter involves negotiations based on relative party legislative representation.

If a party obtains a majority of seats in the relevant chamber on its own, it forms the government. More typically, proportionality prevents any single party from doing so. Instead, the party that obtains a plurality of seats, meaning more seats than any other but less than a majority, negotiates with the heads of other parties to form a governing majority coalition.[17] Once such a coalition forms, the head of the party that led the negotiations, which will not always be the plurality party, is typically rewarded with the position of prime minister. There are other important details as to how such schemes work, and, once more, there is considerable variation.

The purpose here is not to explore those variations. Instead, I want to focus on two features that might appear troubling to U.S. voters, but that are commonplace to voters in democratic systems around the globe. These are, first, how party representation is determined in the legislature, and second, how the head of government is chosen and held accountable.

Within coalition-based parliamentary systems, it is generally up to the parties to determine who will serve from that party in the legislature. It is also generally up to the parties to devise the process through which that is determined. There are a variety of mechanisms to accomplish this. One commonplace system involves party lists.

Party lists are sometimes constructed by party elites rather than registered party voters, such as through a primary or caucus, as occurs in the United States.[18] Larger parties might seek to broaden support by expanding the means of input in various ways, such as primary voting. Smaller parties, by contrast, might employ methods that exhibit tighter internal controls by elites to avoid the associated financial burdens of broadening input. How far down the lists parties go in sending their delegations to the legislature—whether assessed nationally or by states, provinces, or other political subdivisions—is a function of how well that party performed relative to others in party-based balloting.

Regardless of the processes parties use to generate their individual lists, such systems exhibit another critical common feature. The ultimate choice of

17. *See, e.g.*, Hanna Bäck, Matthew E. Bergman & Wolfgang C. Müller, *Coalition Bargaining Time and Governments' Policy-Making Productivity*, 63 EUR. J. POL. RSCH. 1263 (2024), https://ejpr.onlinelibrary.wiley.com/doi/epdf/10.1111/1475-6765.12651.

18. For a helpful resource and introduction, see *Electoral Systems*, ACE PROJECT, https://aceproject.org/main/english/es/esg04.htm (last visited Oct. 19, 2024) (especially tabs on Open, Closed, and Free Lists and on District Magnitude). *See also* Peter Buisseret et al., *Party Nomination Strategies in List Proportional Representation Systems*, 66 AM. J. POL. SCI. 714 (2022).

who runs the government does not fall to the voters themselves. Voters never cast a ballot in which they are choosing among final candidates for the nation's highest office. Instead, their votes control the relative power each party holds in the legislative body that, through negotiations on behalf of the voters, decides who runs the government.

To American voters, long accustomed to voting directly for who heads their party's ticket and then who among the nominees is chosen as President, this might seem un- or, even, anti-democratic. And admittedly, our Electoral College system is more nuanced than just described, but for present purposes those differences do not matter.[19] The fact remains that American voters *perceive* themselves as casting ultimate ballots—perhaps justifiably given how ballots are presented—even if it is not quite true. In politics, the line between perception and reality is often blurred. Some voters in the United States might consider it anti-democratic for party elites to create lists with voters determining which party they most prefer. Claiming such alternative voting systems are un- or anti-democratic may be intuitive. It is also mistaken. Voting systems that combine proportionality with coalition governments are differently democratic, not less so. Indeed, in some respects they are more democratic, at least if the relevant benchmark for assessing democratic legitimacy is voter satisfaction.[20]

The observation that proportional systems in which citizens do not vote directly for the head of government are widely regarded as more responsive and thus more legitimate applies generally despite considerable variation. But here it is helpful to briefly consider the specific package of reform proposals I advocate in my book, *Parliamentary America: The Least Radical Means of Radically Repairing Our Broken Democracy*.[21] When presenting these proposals, I have repeatedly heard concerns that American voters could not wrap their heads around abandoning directly voting for President.

Over the past several years, I have grown convinced that the most promising way to fix our broken democracy is to enact three constitutional amendments that will produce a thriving multiparty system. The best means of accomplishing reform requires two steps. The first step infuses a system called mixed-member proportionality (MMP) in a doubled House of

19. For example, we do not actually vote for President and Vice President in the general election. We vote for electors who cast ballots as part of a state delegation to the Electoral College, and those delegations are, with only two exceptions—Maine and Nebraska—winner take all. The electors themselves lack any discretion on voting, at least in the initial round. Chiafalo v. Washington, 591 U.S. 578, 584 n.1 (2020).

20. *See, e.g.*, AREND LIJPHART, PATTERNS OF DEMOCRACY: GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES (2d ed. 2012); Christopher J. Anderson & Christine A. Guillory, *Political Institutions and Satisfaction with Democracy: A Cross-National Analysis of Consensus and Majoritarian Systems*, 91 AM. POL. SCI. REV. 66, 66 (1997).

21. STEARNS, *supra* note 12.

Representatives (870 rather than 435 members). Here, voters cast two ballots for the House of Representatives, the first in a districted election, as they do now, and the second by party. The party ballots are then used to produce party proportionality for each state's House delegation. Party proportionality will be imperfect due to the varying sizes of states, but the combined scheme will be sufficient to end the two-party duopoly. The second step introduces coalition-bargaining among leaders of multiple parties to choose, and hold accountable, the President and Vice President. The three amendments I propose will produce a multiparty House of Representatives and ensure a meaningful role for third, fourth, or more parties through coalition bargaining.[22]

The overall scheme provides considerable benefits not only to voters, but also to politicians. For example, it allows them more than two party pathways to power, thereby ending the need to succumb to the extreme views of leaders with whom aspiring politicians might not agree. And it rewards supporting third parties. Those parties, through coalition bargaining, have the potential to gain policy concessions and even notable appointments. By creating genuine space for third parties to thrive, the combined scheme blunts the ability of an outlier faction to overtake one of only two parties capable of gaining power and then take control of the government.

The scheme also holds yet another notable advantage in comparison with nearly all other proposed reforms. It alone ensures that all sitting members of both Houses of Congress remain incumbents in their existing House districts or states. Such reforms as ranked-choice voting, multi-member districts, and term limits are specifically designed to displace existing members of Congress with others who might be more moderate.[23] Political buy-in is essential for any reform to succeed, and members of Congress are less likely to support reforms that threaten their power and prestige.

The scheme would end the two-party stranglehold that has continued to wreak havoc with our politics and society. It does so by introducing genuine party competition. For third, fourth, or more parties to thrive, they must have a positive role in governing. Otherwise, such parties are limited to playing the role of spoilers, throwing support to the other side, or randomizers, rendering outcomes a roll of the dice. By combining proportionality in the House and coalition bargaining in selecting the President and Vice President, the combined MMP/coalition governance scheme provides third parties this vital role.

22. For a detailed discussion of my proposed constitutional amendments, see STEARNS, *supra* note 12, at 173–235, and for drafts of the proposed amendments, see *id.*, at 303–07.

23. *Id.* at 245–67.

Over the past year, I have given talks about these proposals across the country, both live and virtual.[24] I have been pleased by the reception to these ideas across the political spectrum. But I have also encountered a common concern. I am often asked, without regard to personal political ideology or party affiliation, if U.S. voters would even consider proposals that relinquish the power to cast ultimate ballots for President.

The recent developments within the Democratic Party—nominating Kamala Harris through a coronation, not a contest—is directly relevant to this concern. Indeed, these developments might be regarded a natural experiment that disproves, or at least is in tension with, the intuition, or hypothesis, that U.S. voters are uniquely resistant to such change.

Whatever the ultimate outcomes of the 2024 presidential election, the immensely favorable response among affected Democratic voters to the Kamala Harris coronation belies concerns that American voters will not accept electoral reform that includes no longer casting ballots for the top office. Although these events took place at the primary stage, the fundamental insight is the same for a general election. Voters care most about participating in a legitimate scheme that offers candidates and policies they are excited to support. That does not have to take a particular form, such as casting an ultimate ballot in a primary or general election, simply because it is longstanding and familiar. We now have supporting evidence here at home, not simply from foreign countries.

In *Parliamentary America*, I take readers on a virtual world tour to seven countries—England, France, Germany, Israel, Taiwan, Brazil, and Venezuela—discussing other present and former democracies along the way.[25] Among the central lessons of that tour is there never was and never can be a perfect democracy and that all democratic systems necessarily embed some features that can fairly be characterized as non- or even anti-democratic.

This certainly includes two-party presidentialism. Our two-party presidential scheme, with voters casting ballots directly for President, is anti-democratic in limiting voters to the least bad of only two candidates who can possibly succeed to power. Although voters might imagine themselves empowered by casting a ballot on the final choice, real power comes from influencing the ultimate list of choices, not from selecting options presented through a deeply problematic process.

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24. For a partial list, with links to those available online, see Maxwell Stearns, *Parliamentary America: The Least Radical Means of Radically Repairing Our Broken Democracy (JHU Press 2024) – Appearances with Hyperlinks*, BLINDSPOT (June 4, 2024), https://www.blindspotblog.us/post/parliamentary-america-the-least-radical-means-of-radically-repairing-our-broken-democracy-jhu-pres.

25. STEARNS, *supra* note 12, at 111–68.

Around the world, successful democracies vest final decision making over the head of government in legislatures, not voters. There are many ways to accomplish this, and some are more effective than others. Despite the variation, the baseline for effective schemes includes combining proportionality with coalition governance. And yes, such schemes remove final selections from voters. But rather than disempowering voters, such schemes empower them to express their true preferences with greater party competition.

The Harris coronation supports an intuition common across the globe: Electoral power is not defined by the right to cast an ultimate flawed ballot. Rather, it derives from the legitimacy of the processes that generate the menu of choices and by how the final decisions are made. Recent election cycles have demonstrated that two-party presidentialism increasingly fails that test. And an intuitive yet flawed objection to fixing it, we now know, should not stand in the way.