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CHAPTER 5

How Well Does the Constitutional System Perform?

LET ME REPEAT THE QUESTION I RAISED AT THE beginning: Why should we uphold the American Constitution? One response might be: Because it performs better than any feasible alternative.[1]

If the unique properties of our constitutional system enable it to perform better than the systems of other democratic countries, then it merits our pride and confidence. If these peculiarities don't matter, perhaps we should ignore them. But if it performs worse, then shouldn't we begin to consider possible changes?

Questions about the relative performance of different constitutional systems are easy to pose but extraordinarily difficult to answer responsibly. True, we can find today, as only a generation ago or more we

could not, many good indicators of how different countries' systems perform in a variety of important ways: from literacy, education, health, and life expectancy to political and civil rights, incomes, income distribution, and others. It is, however, not easy to determine the extent to which a country's constitutional arrangements influence that country's performance on such matters. As one scientific commonplace puts it: Correlations don't prove causation. If a greater degree of income inequality exists in the United States than in most of our twenty-two established democracies, is this a consequence of our unique constitutional system?

As difficult as questions like this are and although constitution-making is still far from an exact science, we do have more knowledge at our disposal today about different constitutional systems than the Framers could have dreamed of—indeed, more than any generation in history could possibly have assembled. In the years to come we could acquire even better knowledge, if we are determined to do so.

With due respect for uncertainty, then, I want to assess how well our constitutional arrangements perform in comparison with those of the other countries where democracy is well established. I'll use five criteria. To what extent, if at all, do constitutional arrangements help to:

1. maintain the democratic system;
2. protect fundamental democratic rights;
3. ensure democratic fairness among citizens;

4. encourage the formation of a democratic consensus; and
5. provide a democratic government that is effective in solving problems?

Maintaining Democratic Stability

Do different constitutional arrangements significantly affect the chances that a country will preserve its basic democratic institutions—that it will, in short, remain a democracy? This question opens up a vast subject that has been extensively explored in recent years.

Unfortunately for my purposes here, but fortunately for democracy, the experience of our twenty-two democratic countries cannot provide the evidence we need to answer our question about stability. I selected these countries as suitable for comparison with the United States precisely because they are the only countries in the world today that have fully maintained their basic democratic institutions for a half-century or more. Since democratic institutions have never collapsed in any of these countries during that period (or longer), we lack any basis for comparing their performance in maintaining basic democratic stability. For example, if twenty-two persons of greatly varying but moderate diets all remain about equally healthy, we couldn't draw any conclusions about the effects of their diets on their health. So, too, with our twenty-two coun-

tries: they have all performed equally well in maintaining the existence of their democratic systems.

From our hypothetical study of diets, however, we could derive one conclusion that is far from trivial: good health is possible within a considerable range of moderate diets. Similarly, from the experience of our twenty-two countries we can draw at least one important conclusion: the differences in their constitutional arrangements evidently have not affected the survival of their basic democratic institutions. Because all of these countries have remained steadily democratic, it follows that within the rather wide range of constitutional variations they exhibit, their differences simply haven't mattered for democratic survival.[2]

How can we explain this surprising conclusion? Let me offer three general propositions.

First, if the conditions in a country are highly favorable for democracy, constitutional differences like those that exist among our twenty-two countries will not affect the stability of the basic democratic institutions. To return to the analogy with diet and health: among a group of people who otherwise live healthy lives, the variations in their moderate diets won't matter much. It would take us too far afield to describe the conditions that favor democratic stability, but we can say that they appear to include such things as the effective control by elected leaders over the military and police, a political culture supportive of democratic beliefs, and a relatively well-functioning economic order, among others.

Although a country with favorable conditions like these is likely to maintain its democratic institutions under a variety of constitutional possibilities, no constitutional system can preserve democracy in a country where these and other favorable conditions are absent. As I said, none of our twenty-two democratic countries have suffered a breakdown of democracy during the past half-century. But if we move back to the previous century, we do find that in one of our countries where all the basic democratic institutions (except for inclusive citizenship) had been in place for more than half a century, the constitutional arrangements could not prevent a breakdown into a civil war—a conflict, moreover, that resulted in vastly greater casualties than the American or the French Revolution. That country was the United States. The conditions necessary for preserving national unity had become so unfavorable that probably no constitutional arrangements could have prevented both secession and civil war. Given the extreme polarization in interests, values, and ways of life between the citizens of the slave states and those of the free states, I cannot imagine *any* democratic constitution under which the two sections could have continued to coexist peacefully in one country.

But suppose that, unlike our twenty-two countries, we have a country in which some conditions are favorable for democracy while others are unfavorable. Might the particular features of a constitution matter in a country where the underlying conditions make democracy rather chancy? It seems possible that in

situations of uncertainty, constitutional arrangements might just tip the balance one way or the other, toward democratic stability or democratic breakdown. What does the evidence indicate?

A much debated issue is the effect on democratic stability of presidential versus parliamentary systems. Perhaps because they were impressed by American stability and power, developing countries have often adopted some version of a presidential system. As two scholars have noted, "A remarkable fact . . . is the extent to which presidentialism is a Third World phenomenon."[3] So is the likelihood of breakdown. Are the two connected—presidentialism and breakdown? The answer is a subject of dispute. Some scholars have concluded that in countries where the conditions for a stable democracy are mixed—some favorable, some unfavorable—a presidential system is more likely than a parliamentary system to put a greater strain on democratic survival.[4] Others argue, however, that "parliamentarism has not fared any better in the third world than has presidentialism; arguably, it has fared worse."[5]

To explore this controversial question would take us far outside the purposes of this book, thus I leave it unsettled here but accompanied by four brief admonitions: One, the intricate American constitutional system is probably not suitable for export to other countries. Two, insofar as we Americans can directly influence decisions in newly democratizing countries, we should avoid trying to impose it on them. Three, there is probably no single best constitutional system.

And finally, democratic constitutions need to be tailored to fit the culture, traditions, needs, and possibilities of a particular country.

Protecting Fundamental Rights

If the evidence about democratic stability is inconclusive, what does the evidence show about democratic rights? How well do the constitutional systems of democratic countries protect the rights, opportunities, and duties of both majorities and minorities?

Here we again run into a methodological problem. As I shall explain in more detail in the next chapter, democracy and its fundamental institutions presuppose the existence of certain fundamental rights, such as freedom of speech and freedom of the press. We can reasonably classify all twenty-two of our countries as democratic only because, among other things, they all have maintained a high level of protection for basic democratic rights and liberties. As with stability and breakdown, in selecting our twenty-two countries we have necessarily excluded any in which massive and persistent violations of fundamental political rights have occurred.

Nonetheless, even if we assume that all of them have maintained political rights at or above the basic threshold for democracy, we do find some smaller variations. The important point, however, is that there is no discernible relationship between constitutional

systems, broadly defined, and these variations in rights and freedoms. Freedom House, an independent nonprofit organization that since 1973 has provided annual evaluations of the conditions of liberty among the countries of the world, assigns the identical score on political rights to all twenty-two democratic countries. On civil liberties, seven countries — Belgium, Costa Rica, France, Germany, Israel, Italy, and the United Kingdom — fall just below the top score.[6] Yet if we go back to our examination of the variations in broad constitutional features that might explain why these seven fall below the rest, none can account for the difference. Federalism, strong bicameralism, unequal representation in the upper house, strong judicial review, the electoral and party systems, and parliamentarism or presidentialism: none provide an explanation. Or consider freedom in print and broadcasting media. At the top, with a near-perfect score in the Freedom House evaluations, is Norway: a nonfederal country with a parliamentary system, a unicameral parliament, proportional representation, multiple parties, coalition governments, and no judicial review of parliamentary enactments. Halfway down, just below the United States, is the Netherlands, another nonfederal country with a parliamentary system, proportional representation, multiple parties, coalition governments, and no judicial review. Why the difference? Or compare four of the federal countries—Switzerland, Australia, the United States, and Germany. Federalism can hardly account for the variations in their scores.[7]

The most relevant conclusion we can draw is that among mature democratic countries, where the conditions for democracy are generally favorable, differences in rights and liberties cannot be attributed to constitutional systems. But if not constitutional systems, then what?

The answer will be found, I believe, in differences in national histories, political cultures, and perceptions of internal and strategic threats to survival. If this is the case, then in the end a democratic country cannot depend on its constitutional systems for the preservation of its liberties. It can depend only on the beliefs and cultures shared by its political, legal, and cultural elites and by the citizens to whom these elites are responsive.

Democratic Fairness

How does the American constitutional system compare with those of other mature democracies in the fairness with which it treats different citizens? As we all know, the question of fairness or justice has been a source of endless debate among the best minds since ancient times. Indeed, differences in views about justice seem to be built into the human condition. I, however, want to bypass these perennial controversies and focus instead on one aspect of fairness that bears directly on the question at hand.

If I may now use the term constitutional system in its broader sense to include electoral arrangements,

we can arbitrarily reduce the alternatives to two. In one, which I'll call a proportional system, as a result of proportional representation the percentage of seats won by a party in the legislature will roughly mirror the percentage of votes cast for candidates of that party. In the other, which I'll call a majoritarian system,[8] candidates receiving the most votes in a particular district win that district's single seat, and the other candidates, therefore, win no seats at all. In a proportional system, all minority parties that gain votes above some threshold, such as 5 percent, will be represented in the legislature. In a majoritarian system, if the candidate of one party were to win a plurality (relative majority) of votes in every district, then that party would win *all* the seats. Although such an extreme outcome is only a theoretical possibility, in majoritarian systems the party with a majority of votes does ordinarily win a disproportionately large number of seats; the second largest party gains a disproportionately small number of seats; and all third parties gain few if any seats.

In an earlier chapter I pointed out that proportional representation is likely to produce a multiparty system and coalition governments; first-past-the-post is likely to produce two dominant parties; and in a parliamentary system with two dominant parties, the prime minister and cabinet are likely to be drawn from a single party with a majority of seats, as is typically the case in Britain.

In the debate over the relative desirability of proportionality versus majoritarianism,[9] virtually no one

questions that proportionality is fairer to citizens than majoritarianism. Proportionality doesn't necessarily mean, however, that the principle of majority rule entirely stops operating. In the legislature, for example, elected representatives will ordinarily make their decisions by majority rule. But because the governing coalition will generally include representatives from minority parties, governing majorities are likely to be more inclusive than in a majoritarian system. Thus, a proportional system comes closer than a majoritarian system to providing equal representation—an equal say—for all.

Advocates of majoritarianism may concede that proportionality is fairer; but they might argue that a majoritarian system offers two advantages that considerably outweigh its unfairness. For one thing, its defenders often say, proportionality tends to produce governing coalitions that are more unstable and, therefore, more *ineffective* than governments in majoritarian systems. Does the experience of the large number of mature democratic countries with proportional system confirm that their governments are less effective? In a moment I'll turn to evidence bearing on this question. But just suppose we were to find that proportional systems are, in general, no less effective than governments in countries with majoritarian systems. On what grounds could we then reject proportionality?

We might still reject proportionality if we conclude that having two dominant parties rather than the multiplicity of parties typical of proportional systems helps to make governments more *accountable* to voters. Our

supposition might run something like this: Two-party majoritarian systems help voters hold governments more accountable because they are better at simplifying and clarifying the alternatives open to voters. Consequently, during campaigns and elections, voters can fix responsibility for the decisions and policies that the government has recently adopted. What is more, because voters in proportional systems face a multiplicity of parties and possible governing coalitions, they may find it difficult to guess what their vote will actually mean. Forming a majority coalition in a multiparty parliament can be a tricky business. If a voter's party wants to be included in the governing coalition, what compromises will it be compelled to make in order to find a place? And what policies will the coalition finally manage to agree on and carry through? In contrast, because voters in majoritarian systems ordinarily have only two realistic choices, they can make more informed guesses about the direction the government is likely to take under one major party or the other.[10]

A justification along these lines would provide strong support for majoritarian systems. But as appealing as it is, the majoritarian vision isn't easily transformed into reality. For one thing, in the small number of countries with nominally majoritarian systems, as Powell points out, we find a "persistent refusal of voters to deliver majority support for a single party or even a preelection coalition." In forty-five elections from 1969 through 1994 in six "predominantly majoritarian" countries, "only in Australia in 1975 and in

France in 1981 did a party or preelection coalition win a clear voter majority." In short, just as happens in American presidential elections, majoritarianism often fails to produce a government that reflects the choices of a majority of voters. Second, the distortion between seats and votes in majoritarian systems sometimes creates a majority of seats for a party that has failed to win even a plurality of votes and thus has actually come in second. In these cases, the minority party among voters becomes the majority party in the legislature. Third, even in majoritarian systems, "in practice, purely two-party politics is a rare phenomenon and often not robust when it appears." That is, a third party—like the Liberal Democrats in Britain—may prevent either of the two major parties from gaining a majority of votes, even though one of them may gain a majority of seats.[11]

Encouraging Consensus

Even if proportionality is fairer than majoritarianism, many Americans will say that the price of fairness is too high. Any country in which multiple parties compete for office, they assume, will surely be divided and contentious and suffer from government by unstable and ineffective coalitions. How valid is this common American view?

In direct contradiction to that view, Arend Lijphart, the scholar who pioneered the comparative analy-

sis of proportionality and majoritarianism in democratic countries, refers to proportional systems as "consensus governments."[12] And rightly so, for experience shows that even if proportionality cannot always overcome deep political, social, cultural, or economic cleavages (as in Israel, for example), a proportional system can sometimes help to maintain internal peace, provide opportunities for compromise among opponents, and produce a broad consensus in favor of not only government policies but the country's political arrangements as well.

Let me offer three examples. In the Netherlands,[13] religious and ideological differences led to a profound division of the country into four basic groups: Protestants, Catholics, Liberals, and Socialists. The four groups became fairly distinctive subcultures pretty much walled off from one another by their own institutions, from newspapers and radio to schools, trade unions, hospitals, marriages, residences, and more. After proportional representation was introduced early in the twentieth century, each of the groups also supported its own separate political party. Not surprisingly, in the late nineteenth and early twentieth centuries these basic cleavages among the four subcultures led to severe conflicts over education, the franchise, and the rights of labor. By 1910 the disputes had became so intense that leaders of the four groups became alarmed for the future of the country. Spurred by their concern, from 1913 to 1917 they not only managed to negotiate acceptable compromises, but

they also agreed that the political parties representing the four groups would all be represented in the cabinet. In short, they created a consensus government. Despite the persisting cleavages among the four subcultures, a highly institutionalized system of full inclusion endured for half a century, when demographic changes and a decline in the intensity of the differences reduced the need for complete inclusion of all four parties in every cabinet. Even so, and down to the present day, Dutch governments have continued to emphasize inclusion and consensus rather than majoritarian control of the government.

Or consider Switzerland with its four national languages — German, French, Italian, and the tiny Romansh-speaking population; its two major religions, Protestantism and Catholicism, which were the source of sanguinary conflict until the middle of the nineteenth century; and its two dozen or so cantons, many of which are internally rather homogeneous in language and religion. If you were to reflect on the possibilities of conflict among these subcultures you might conclude that, like the Balkans, Switzerland must be forever bubbling over with intense disputes and might even be on the verge of national disintegration. But the pragmatism, common sense, and national attachments of the Swiss enabled them in 1959 to create a proportional system in which representatives of the four major parties representing the different subcultures are usually all included in the executive branch—the federal council or *Bundesrat*.

It is a reasonable conclusion that majoritarian systems in Switzerland and in the Netherlands would have made the search for governments based on a broad consensus among different subcultures not only extraordinarily difficult but probably downright impossible.

A very different situation exists in Sweden. A highly homogeneous people (until the recent influx of immigrants, at any rate), Swedes have a long and settled tradition of consensus politics. Although the origins of the Swedish parliament go back some centuries, democratization arrived comparatively late. Not until 1917 was the power to choose the prime minister shifted from the king to the parliament. In that sense, Swedish democracy dates back to 1917. Proportional representation had already been introduced in parliamentary elections, however, at the beginning of the twentieth century. Yet neither proportional representation nor democratization diminished the long-standing Swedish tradition of consensus. As a Swedish political scientist has written:

> In the Swedish political tradition . . . "accountability" is seldom mentioned as a value. Instead, legitimacy is promoted by another strategy. By sharing power with the parties in opposition and including them in the rule of the country, the government is supposed to be regarded as representative for the people as a whole and consequently one that all can feel loyal to. To "reach consensus," to "find a common policy," to "capture the will of the people" have been the declared motives of Swedish politicians. *Representativeness* is the central norm of political culture.[14]

From an American perspective, the result can be unbelievable. In stark contrast to Holland and Switzerland, Swedish cabinets have frequently been drawn from a party or coalition that has actually *lacked* a majority of seats in parliament. In the past century, "minority governments have been by far the most common. The average parliamentary support enjoyed by governments between 1920 and 1994 has been 41.5 percent." You might well wonder how minority governments could ever get anything accomplished—or, for that matter, remain very long in office. The answer seems to be that in order to gain a broad consensus both in the parliament and in the country at large, even minority governments negotiate with representatives of parties *outside* the government. In short, even minority governments govern by consensus.

If you wonder why the Dutch, the Swiss, and the Swedes prefer proportionality to majoritarianism, the answer is fairly clear: not only does it seem to them much fairer but it also helps to achieve and maintain a broad consensus for government policies.

What is more, proportionality can strengthen consensus not just for policies but for democracy as well. The reason appears to be that proportionality results in fewer losers. To clarify this point let me overstate it: In a majoritarian system the only winners in elections are the citizens who happen to be in the majority; all the other citizens, being in the defeated minority, are losers. By contrast, in proportional systems with consensus governments, everyone—well, almost every-

one—can win, not everything they hoped for perhaps but enough to leave them basically satisfied with their government.

Lest you suppose that these judgments are nothing more than interesting speculations, let me cite some persuasive supporting evidence.[15]

In a 1990 survey of citizens' views in eleven European democracies, respondents were asked how satisfied they were with "the way democracy works" in their country. They also reported how they voted in their country's last national election. Knowing the outcome of that election in each country, the authors of the study classified the respondents as winners or losers. The eleven countries were then arranged from the most majoritarian, Britain, to the most consensual, the Netherlands. The results, which the authors of the study describe as "robust," were pretty clear: In the more consensual countries, losers were almost as satisfied as the winners with the way democracy worked in their country. By contrast, in the more majoritarian countries, losers were much more likely to be dissatisfied.

To describe the results another way, suppose that in one country 70 percent of the winners but only 40 percent of the losers are satisfied with the working of democracy, a difference of 30 percent. In another country, say, 70 percent of the winners and 65 percent of the losers are satisfied, a difference of only 5 percent. In the study of eleven European democracies that I just mentioned, this difference in satisfaction with the way

democracy worked decreased steadily from large differences in the most majoritarian countries like Britain—around 25 percent—to almost negligible differences in the most consensual countries like the Netherlands, where it was less than 5 percent.[16] Moreover, these results held up even when variations in such influences as economic performance, socioeconomic status, and political interest were taken into account.[17]

In short, if you live in a majoritarian country and your party comes in second or worse, you're likely to be dissatisfied with the way democracy works in your country. But if you live in a democratic country with a more consensual system and your party comes in second, or third, or maybe even fourth, you're likely to feel satisfied with the way democracy works because you know your views will still be represented in the government.

This is all fine, you might say, but can a consensus system produce effective governments—governments that can solve the problems that concern citizens? Might not majoritarian governments perform more effectively? In particular, hasn't our American constitutional system been just as effective as many consensus governments and perhaps even more effective than most in getting things done that citizens want? I'll turn to this question in a moment.

But before I do so, I want to call your attention to one salient aspect of our constitutional system: *The American constitutional system is not majoritarian.*

The American Hybrid

Whatever its hypothetical advantages might be, the majoritarian vision is not applicable to the American system of government. Although our system is not proportional, neither is it majoritarian. Whether by rational intention or bv an understandable inability to foresee the consequences, or both, James Madison and his fellow delegates created a constitutional system that is a hybrid of proportionality and majoritarianism.

Three majorities. It is true that two parties dominate our political landscape more completely than in any other established democracy. Yet even when one party wins not only the presidency but also majorities in both the Senate and House, three different popular majorities are at work; the composition of each of the three majorities does not match the others; and their representatives do not necessarily agree. I would not say that this feature is necessarily undesirable, but undesirable consequences do show up when it is combined with other aspects of our system.

Divided government. To begin with, one party may fail to win control of all three branches. Indeed, during the past half-century, control of the presidency and both houses of Congress by a single party has become a rarity. As David Mayhew comments in *Divided We Govern*, "Since World War II, divided party control of the American national government has come to seem normal."[18] From 1946 to 2000, the three

branches have been divided between the two parties more than six years out of every ten. Our constitution not only permits divided government, it cannot prevent divided government. And it provides no way out except by elections at fixed intervals—elections that may only reproduce the existing divisions or inaugurate new ones.

Does divided government matter? In particular, do periods of divided government make it more difficult for the three branches to agree on national policies requiring legislation—in short, do these periods make a stalemate easier? The evidence is mixed. In a landmark study of the period between the elections of 1946 and 1990, David Mayhew found no "relation worth crediting between the incidence of important laws and whether party control was unified or divided."[19] A subsequent analysis of the period from 1947 to 1994, however, concluded that important legislation is more likely to be passed in periods of unified government. The difference between divided and unified government is particularly marked when all three branches are under the unified control of the more activist of the two parties, the Democrats.[20]

The president: consensual, majoritarian, neither, both? At the apex of this complex structure of political institutions sits—or stands, as the case may be—the American presidency, an office with no equivalent in any of the other established democracies or, so far as I am aware, in any other democratic country.

It is difficult, indeed impossible, to fit the presidency into the simple categories of consensual or majoritarian. One obstacle to straightforward classification is the president's combination of roles. Most notably, whereas in the other older democracies the roles of prime minister and ceremonial head of state are separated, in our system they are blended, not only constitutionally but also in popular expectations. We expect our president to serve both as chief executive and as a sort of ceremonial, dignified, American-style elected monarch and moral exemplar.

The mix of roles was present from the beginning. Although during the early years the vituperation of presidents in the press often far exceeded boundaries now regarded as acceptable, in order to maintain the dignity of the office presidents rarely addressed the general public, except possibly on official occasions; and when they did they rarely employed popular rhetoric or discussed their own policies. In these respects, if no others, they acted less like politicians than monarchs or ceremonial heads of state. Indeed, until the 1830s, presidential candidates did not make campaign speeches at all; and until Woodrow Wilson broke a century-old taboo in 1912, no president had ever "stumped on his own behalf."[21]

Beginning with Andrew Jackson, however, presidents had already begun to make the audacious claim that by virtue of their election, they alone represented the *entire* people, or at least a majority. Some would

even assert that their election endowed them with a "mandate" for their policies. To the extent that the claim of a mandate was accepted, it would increase the acceptability of a president's policies by clothing them with the legitimacy of popular sovereignty.

Despite the frequency with which newly elected presidents stake a claim to a mandate, the closer you inspect the chain of assumptions that are supposed to support the claim, the more fragile the links appear.[22] It requires an extraordinary leap of faith to infer the views of voters from nothing more than the way they cast their votes for president. Although systematic opinion surveys provide a much firmer basis for understanding public attitudes and expectations, the claim to a presidential mandate based on nothing more than the outcome of an election antedated systematic surveys by more than a century. And even since the beginning of systematic opinion surveys in the 1940s, presidents and their followers (and pundits) have typically based their shaky claim to a mandate on nothing more than the election returns, which could not possibly reveal whether presidential policies accorded with voters' preferences. Since the 1940s that concordance is more likely to come from scrupulous attention to public opinion surveys than from reading the tea leaves of the election results.

Presidential claims to represent "the American people" together with efforts to promote particular national policies are elements in the general mixture of

roles that distinguishes the American presidency and makes it neither simply majoritarian nor simply consensual.

This mix of roles seems to be generally accepted by Americans. We want our presidents, it seems, to be simultaneously shrewd politicians and gifted statesmen. We expect them to live in both the real world of daily politics and an imaginary world above politics. Most of us understand that to succeed in office a president must be an active and forceful partisan, a party leader, and the negotiator and deal-maker who massages, cajoles, bribes, threatens, and coerces Congress to secure both votes and support if promises and policies are to be realized.

But we also expect our president to serve as a moral example for us all, to stand as an icon on which we can devoutly project qualities of intelligence, knowledge, understanding, compassion, and character far above those we expect in ordinary beings like ourselves. Because no mortal can meet these exalted standards, we have often savaged a president while he is in office and then exalted him in memory. In office, we may portray a president as a cartoonish bungler. But after departing the White House, or this world, we ignore the warts and scars and paint an idealized portrait of a noble and exemplary figure.

Ambivalence toward the presidency is deeply ingrained in our American culture. As children we learn to worship our presidents for their greatness;[23] as adults we deride them for failing to achieve the great-

ness of their mythic predecessors. In choosing among candidates for the presidency we yearn for perfection; yet our only realistic choices are among flawed human beings who live with all the moral ambiguities required by the life of politics. In short, the impossible mix of roles an American president is expected to play places a heavy burden not only on the incumbent, but more important, on American voters.

Accountability. Holding the government accountable for its actions may be an even greater burden for voters. Where are we to place responsibility for the conduct of our government? When we go to the polls, whom can we hold accountable for the successes and failures of national policies? The president? The House? The Senate? The unelected Supreme Court? Or, given our federal system, the states, where governments are, in their complexity, a microcosm of the national government?

Even for those who spend their lives studying politics, these can be extremely difficult questions to answer. I, for one, am inclined to think that compared with the political systems of the other advanced democratic countries, ours is among the most opaque, complex, confusing, and difficult to understand.

We see, then, that our hybrid system, which is neither majoritarian nor proportional, may possess the advantages of neither and the defects of both. If it fails to ensure the fairness promised by the proportional vision, it also fails to provide the clear accountability promised by the majoritarian vision.

Democratic Effectiveness

To all this you might say: Even if the American hybrid may have some shortcomings when it is viewed in a comparative perspective, isn't it just as effective as other governments in dealing with the issues that concern American citizens?

Once again, we cannot answer this question responsibly without facing up to some severe methodological problems. Our twenty-two democratic countries differ in so many ways that teasing out the effects that we can reasonably attribute to constitutional systems is a pretty formidable task. Take *size*. The population of the United States is sixty times larger than Norway's, fifty times Denmark's, thirty-seven times Switzerland's, thirty times Sweden's, and nearly a thousand times larger than Iceland's, which is somewhat smaller in population than Tampa, Florida.

Although the effects of population size on democratic political life are extremely difficult to measure, they can hardly be ignored.[24]

Or consider *diversity:* in a very general way, diversity tends to increase with size.[25] Yet can we truly say that the United States is more diverse than Switzerland, or than our neighbor Canada?

Add in one more variable: *relative affluence*. Although Norway and Costa Rica are both relatively small in population—there are around 4.5 million Norwegians and around 3.7 million Costa Ricans—Norway's GNP per capita is fourteen times that of Costa Rica.[26]

How much do these differences in size, diversity, and relative affluence affect political life and public policy? Despite the difficulties presented by national variations like these, comparative data can help us gain some appreciation of the way in which American performance compares with that of other advanced democratic countries.[27] When the United States is ranked with other established democracies on such matters as the rate of incarceration, the ratio of poor to rich, economic growth, social expenditures, energy efficiency, foreign aid and the like, its performance is something less than impressive. (See Appendix B, Table 5.) Two areas in which our country ranks highest are hardly achievements of which we can be proud. On the percentage of the population we incarcerate, we come out a clear winner, while our ratio of rich to poor is higher than that of most other countries. We rank in the bottom third—and on some measures close to the bottom of the bottom third—on voter turnout, state welfare measures, energy efficiency, and the representation of women in the national legislature. What is more, in spite of our good showing on economic growth, we are almost dead last in our social expenditures. Finally, even though many Americans believe that we are too generous in our economic aid to other countries, among nineteen democratic countries we are at the very bottom.

In his comparison of consensual and majoritarian systems in thirty-six countries, Arend Lijphart concluded that "majoritarian democracies do not out-

perform the consensus democracies on macroeconomic management and the control of violence—in fact, the consensus democracies have the slightly better record—but the consensus democracies do clearly outperform the majoritarian democracies with regard to the quality of democracy and democratic representation as well as with regard to what I have called the kindness and gentleness of their public policy orientations."[28]

Paraphrasing Lijphart's conclusion, I find no convincing evidence that our hybrid outperforms systems that are either more fully consensual systems or more fully majoritarian. On the contrary, compared with other democratic countries our performance appears, on balance, to be mediocre at best.

How much does our performance have to do with our constitutional system? To tease out the extent of that connection would be extraordinarily difficult, perhaps impossible, and I am going to leave that task to others.[29]

It seems reasonably clear, however, that a constitutional system better designed to achieve such democratic goals as the protection of fundamental rights, fair representation, and greater consensus does not necessarily come at the price of governmental effectiveness, much less the stability of the democratic system itself.

If this is so, then do we not have every reason to undertake a serious and responsible examination of pos-

sible alternatives to our present American Constitution? Or, at the very least, isn't it time—well-past time—that we stop thinking of our Constitution as a sacred text and begin to think of it as nothing more, or less, than a means for achieving democratic goals?