

Militant Democracy, Populism, Illiberalism

Militant Democracy and the *Minority to Majority Effect*: on the Importance of Electoral System Design

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Impact of electoral system design on democratic self-defence – ‘informal’ (content neutral) militant democracy instrument – the minority to majority effect (assigning majoritarian power to political minorities) increases risk of democratic backsliding – minority to majority goes beyond conventional systemic dichotomies as majoritarianism versus proportionalism: outcome of diverse system features – resources and incentives as explanatory mechanisms – preliminary case studies – the limitations of institutional engineering

INTRODUCTION

Democracy has come under stress across the globe. Scholars, think tanks, and journalists alike signal democratic deconsolidation in countries as varied as Brazil, Hungary, Poland, Turkey, the United States, and Venezuela.¹ Concerns about deconsolidation in these countries have led to a rapidly growing literature,

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¹M. Coppedge et al., *Varieties of Democracy (V-Dem) Project* (2020).

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in particular after the 2016 election of Donald Trump in the United States. Scholars looked for causes in citizens that are thought to have eroding democratic values² or a lack of experience with basic democratic practices,³ and in political elites that embark on an all-out restructuring of liberal democracy, tampering with the written rules of the game⁴ or subverting unwritten norms.⁵

In response, the literature on militant democracy – or, more broadly, ‘democratic self-defence’⁶ – has grown substantially.⁷ This body of literature, originating with Loewenstein’s interwar work on European democracies combatting fascism and communism,⁸ seeks to counter threats to democracy by a diverse array of institutional instruments, such as the party ban,⁹ the rigidity of constitutional amendment rules,¹⁰ withholding party subsidies, and restrictions on free speech or other political rights of individual politicians.¹¹ Much of militant democracy

²Y. Mounk, *The People v Democracy: Why Our Freedom Is in Danger and How to Save It* (Harvard University Press 2018) p. 105-107; J. Rosen, ‘Madison vs. the Mob’, *The Atlantic* (October 2018) p. 88 at p. 93.

³Y. Appelbaum, ‘Losing the Democratic Habit’, *The Atlantic* (October 2018) p. 74.

⁴N. Cheeseman and B. Klaas, *How To Rig An Election* (Yale University Press 2018); I. Krastev, ‘Eastern Europe’s Illiberal Revolution: The Long Road to Democratic Decline’, 97 *Foreign Affairs* (May/June 2018) p. 49; R. Mickey et al., ‘Is America Still Safe for Democracy? Why the United States is in Danger of Backsliding’, 96 *Foreign Affairs* (May/June 2017) p. 20.

⁵S. Levitsky and D. Ziblatt, *How Democracies Die: What History Reveals About Our Future* (Viking 2018).

⁶A. Malkopoulou, ‘Introduction: Militant Democracy and Its Critics’, in A. Malkopoulou and A. Kirshner (eds.), *Militant Democracy and its Critics* (Edinburgh University Press 2019) p. 1 at p. 12.

⁷See e.g., for an overview, A. Ellian and B. Rijpkema (eds.), *Militant Democracy – Political Science, Law and Philosophy* (Philosophy and Politics - Critical Explorations no. 7) (Springer 2018); Malkopoulou and Kirshner, *supra* n. 6.

⁸K. Loewenstein, ‘Autocracy versus Democracy in Contemporary Europe, I’, 29 *The American Political Science Review* (1935) p. 571; K. Loewenstein, ‘Autocracy versus Democracy in Contemporary Europe, II’, 29 *The American Political Science Review* (1935) p. 755; K. Loewenstein, ‘Militant Democracy and Fundamental Rights, I’, 31 *The American Political Science Review* (1937) p. 417 (Loewenstein 1937a); K. Loewenstein, ‘Militant Democracy and Fundamental Rights, II’, 31 *The American Political Science Review* (1937) p. 638 (Loewenstein 1937b).

⁹A. Bourne, *Democratic Dilemmas: Why Democracies Ban Political Parties* (Routledge 2018).

¹⁰J. Gutmann, and S. Voigt, ‘Militant Constitutionalism: A Promising Concept to Make Constitutional Backsliding Less Likely?’, *Public Choice* (2021) para. 3.1, *see also* R. Tinnevelt, ‘De rechtsstaat: strijdbaar en weerbaar?’, in R.J.N. Schlössels et al. (eds.), *Naar een weerbare rechtsstaat* (Kluwer 2022) p. 403 at p. 417-418.

¹¹See, for these and other instruments: A. Kirshner, *A Theory of Militant Democracy: the Ethics of Combatting Political Extremism* (Yale University Press 2014); S. Tyulkina, *Militant Democracy: Undemocratic Political Parties and Beyond* (Routledge 2015); B. Rijpkema, *Militant Democracy: The Limits of Democratic Tolerance* (Routledge 2018); G. Molier and B. Rijpkema, ‘Germany’s New Militant Democracy Regime: National Democratic Party II and the German Federal Constitutional Court’s ‘Potentiality’ Criterion for Party Bans: Bundesverfassungsgericht,

research is institutional in nature. Much, after all, proposes tweaks to the political system. Yet, it tends to leave the question of the electoral system out of the picture. And when electoral system design is included, conceptual devices are used that are not fully adequate to address the issue at hand.

This paper aims to fill this gap and proposes a different line of argumentation.

First, we identify that many prominent cases of democracies under stress have one element in common that is best understood as a ‘minority to majority’ effect. Minority to majority is the consequence of various features across electoral systems, and concentrates majoritarian power in the hands of a single minority. These features are quite varied, and go beyond conventional systemic dichotomies such as presidentialism versus parliamentarism, or majoritarianism versus proportionalism. Rather, they also encompass features such as high electoral thresholds, enforced proportionalism (seat bonuses), or having a mixed system. A wide range of features can turn a minority of votes into dominance of the executive.

Second, we develop a new institutionalist framework to identify the mechanisms that relate ‘minority to majority’ to democratic resilience. We argue that institutions affect the incentive structures and set the constraints of actors that function within these institutions. System features that are conducive to the minority to majority effect do not deterministically set specific outcomes, but they offer political elites both the *resources* to constrain democratic practices via executive aggrandisement¹² and the *incentives* to do so. It thus explains why political actors are more *likely* to undertake democracy-subverting action under specific institutional configurations. We illustrate the ways in which minority to majority has affected democratic resilience via various examples and counter-examples.

This paper will not engage in the normative militant democracy debate (‘is intervention legitimate, and if so, what kind?’), but starts off from the basic notion that all (modern) militant democracy theorists share,¹³ namely: that a democracy should be allowed to defend itself. This paper argues that *if* that basic notion is correct, any effort in militant democracy should pay attention to electoral system design.

Judgment of 17 January 2017, 2 BvB 1/13, National Democratic Party II’, 14 *EuConst* (2018) p. 394.

¹²Cf N. Bermeo, ‘On Democratic Backsliding’, 27 *Journal of Democracy* (2016) p. 5.

¹³Kirshner, *supra* n. 11; Rijpkema, *supra* n. 11; overview in Malkopoulou, *supra* n. 6, p. 2: modern militant democracy theorists differ from early militant democracy theorists in the sense that they ‘are concerned with militant democracy being itself an arguably illiberal and anti-democratic practice’.

Importantly, defending democracy through electoral system design is ‘content neutral’, as it does not discriminate against ideas directly.¹⁴ Therefore, electoral design would not usually qualify as a militant democracy instrument per se: instruments that discriminate between actors on the substance of their ideas.¹⁵ However, if these ‘informal’ militant democracy measures can enhance democracy’s defence *without* discriminating between different ideas, such a measure might be preferred *before* – or at least alongside – instruments from militant democracy’s traditional arsenal. The argument presented here, although not normative in itself, therefore does have *implications* for normative militant democracy theory.

ELECTORAL SYSTEM DESIGN MATTERS: THE MINORITY TO MAJORITY EFFECT

Militant democracy literature and electoral system design

In discussions on militant democracy, electoral system design is generally not given substantial attention. Even George van den Bergh, one of the early militant democracy theorists and an author on electoral systems,¹⁶ did not pay specific attention to the effects of electoral system design in developing his ideas on democratic self-defence.

There are, of course, some notable exceptions. In a way, the intellectual father of the militant democracy tradition, Karl Loewenstein, paid attention to electoral system design in relation to militant democracy – thinking unfavourably of proportional representation, because of the relatively easy access it provides to the democratic arena.¹⁷ In his two-part article ‘Militant Democracy and Fundamental Rights’ he wrote:

¹⁴Indirectly electoral law *also* impacts content: a majoritarian two-party system serves as what Bligh calls a ‘*de facto* banning system’, excluding more radical politics (to the left and right): see G. Bligh, ‘Extremism in the Electoral Arena: Challenging the Myth of American Exceptionalism’, *Brigham Young University Law Review* (2008) p. 1367, and in more detail below.

¹⁵See e.g. A. Malkopoulou, ‘Greece: A Procedural Defence of Democracy against the *Golden Dawn*’, 17 *EuConst* (2021) p. 177 at p. 180-181; L. Vinx, ‘Democratic Equality and Militant Democracy’, *Constellations* (2020) p. 1 at p. 2.

¹⁶G. van den Bergh, ‘On Electoral Systems’, in G. van den Bergh, *Verzamelde Staatsrechtelijke Opstellen* (Samsom NV 1957) p. 64; G. van den Bergh, *Eenheid in Verscheidenheid: Hoe moet ons kiesstelsel worden herzien? Een systematisch kritisch overzicht van alle kiesstelsels* (Samsom NV 1951); on Van den Bergh as militant democracy theorist, see Rijpkema, *supra* n. 11, p. 31-49.

¹⁷Rijpkema, *supra* n. 11, p. 27.

... power [by fascism] is sought on the basis of studious legality. If possible, access is obtained to national and communal representative bodies. This purpose is facilitated by that gravest mistake of the democratic ideology, proportional representation.¹⁸

More recently, a few authors do explicitly link militant democracy (or, *generally*, protection against anti-system challengers) to the electoral specifics of a given democracy. Bligh contends that we should understand ‘American Exceptionalism’ regarding political freedoms (i.e. no party bans, as they are formally ‘a dead letter’, paired with few free speech restrictions)¹⁹ in the light of the United States’ restrictive electoral system, resulting in a two-party system.²⁰ Bligh therefore speaks of a ‘*de facto* banning system’,²¹ and argues that these implicit restrictions are in need of a justification just as much as, for instance, explicit restrictions on political freedoms such as a party ban.²² Weill comes to the same conclusion as Bligh: ‘majoritarian democratic countries should examine the implications of their own election methods’.²³ Democracies with a system of proportional representation are far more likely to have at least one of two militant democracy instruments in their arsenal (either a party ban or an eternity clause): 94.5% of the proportional representation countries had at least one; against 55.5% of countries with a (majoritarian) First Past the Post system.²⁴ This fits in well with Bourne’s observation that ‘democracies ban parties when electoral systems are not effective at marginalizing the anti-system parties in question, either due to the effect of electoral rules or an anti-system party’s abstentionist stance’.²⁵

While these approaches primarily explore the connection between the choice of an electoral system and militant democracy measures, Issacharoff, Ginsburg and Huq make a more explicit *normative* choice for a specific electoral system out of militant democracy concerns.²⁶ Issacharoff sees the American system as the best bulwark against deconsolidation and therefore favours a system that is *non-proportional* – in which there are two dominant parties that marginalise challengers from the start – and *non-parliamentary*: ‘There are many reasons to be

¹⁸Loewenstein (1937a), *supra* n. 8, p. 424.

¹⁹Rijkema, *supra* n. 11, p. 104.

²⁰Bligh, *supra* n. 14.

²¹Bligh, *supra* n. 14, p. 1414.

²²Bligh, *supra* n. 14, p. 1440.

²³R. Weill, ‘On the Nexus of Eternity Clauses, Proportional Representation, and Banned Political Parties’, 16 *Election Law Journal* (2017) p. 237 at p. 246.

²⁴Weill, *supra* n. 23, p. 241.

²⁵Bourne, *supra* n. 9, p. 173; *see also* A. Bourne, ‘Why ban Batasuna? Terrorism, Political Parties and Democracy’, 13 *Comparative European Politics* (2015) p. 325 at p. 331.

²⁶S. Issacharoff, ‘Fragile Democracies’, 120 *Harvard Law Review* (2007) p. 1405; T. Ginsburg and A. Huq, *How to Save a Constitutional Democracy* (Chicago University Press 2018).

wary of presidentialism, but it does serve as a buffer to the threat posed by marginal parties' ability to insinuate themselves into parliament and disrupt governance from within',²⁷ which comes close to Loewenstein's 1937 assessment above. For Issacharoff, however, electoral system design is not an alternative to instruments restricting democratic rights (as a party ban) *per se*; for Ginsburg and Huq it is. When they review different institutional design options – ranging from e.g. international courts to constitutional amendments – as alternatives to rights restrictions, Ginsburg and Huq also delve into the debate on parliamentary versus presidential systems. They (mildly) prefer parliamentary systems, which they see as 'less vulnerable to erosion than presidential ones, *ceteris paribus*'.²⁸ They reason that in parliamentary systems 'antisystem movements' are more likely to be given a voice (in parliament) but actual power generally stays out of reach because then they need to function in coalitions; while the system itself is more responsive to shifting opinions and *thereby* more stable; and parliamentary systems have more mechanisms for accountability (such as debating government ministers in parliament).²⁹

The missing element: electoral minorities obtaining a political majority

The conceptual devices in the literature – presidential versus parliamentary systems or majoritarianism versus proportionalism – do not show the full issue at stake. Democratic backsliding has taken place across these distinct categories. They obscure a crucial characteristic that connects countries that recently went into democratic retreat, as varied as Hungary, Turkey, Venezuela, and the United States. They all suffer from system features that place majoritarian political power (of the executive and often even the legislative) *in the hands of a single minority*; features that do not spread but bundle political power.³⁰ This is what we label the minority to majority effect. Depending on features in the electoral system, majoritarian political power can even be awarded to a single party without

²⁷Issacharoff, *supra* n. 26, p. 1420.

²⁸Ginsburg and Huq, *supra* n. 26, p. 180. For a similar view, see Gutmann and Voigt, *supra* n. 10, para. 4.2.

²⁹Ginsburg and Huq, *supra* n. 26, p. 180-183.

³⁰Closest to our observation here comes the interesting recent paper by Gutmann and Voigt, in which they, in an analysis of a wide array of 'defence options' of constitutional design (under a 'militant constitutionalism') also briefly point to the problem of the 'imbalance between popular vote and parliamentary seat shares' that some electoral systems create, but still frame this problem within the proportional versus majoritarian divide, arguing for a preference for proportional representation (instead of focusing on the minority to majority effect as such). They also provide some specific recommendations (such as not allocating 'bonus seats') if a majoritarian system is preferred. See Gutmann and Voigt, *supra* n. 10, para. 3.2.

a plurality (let alone a majority) of the votes. As we argue below, it is precisely this combination – majoritarian powers, resting on minorities – that increases the threat to democratic resilience. This minority to majority effect may occur in a variety of systems. Hence, straightforward dichotomies such as presidentialism versus parliamentarism³¹ or majoritarianism versus proportionalism³² do not suffice.

To be sure, parliamentarism and proportionalism can function as relevant institutional constraints on executive aggrandisement. In his scathing critique of presidentialism, Linz wrote ‘perhaps the most important implication of presidentialism is that it introduces a strong element of zero-sum game into democratic politics with rules that tend toward a “winner-takes-all” outcome’.³³ In the same way that parliamentarism constrains the executive, proportionalism functions as a political constraint on parliamentary majorities. Ginsburg and Huq explicate that ‘parliamentary systems are more open to the intuition that not only those who hold power, but those in opposition, should have formalized and entrenched entitlements’.³⁴

However, while we acknowledge the benefits of both parliamentarism and proportionalism, the minority to majority effect has risen in presidential as well as parliamentary systems, and in majoritarian as well as in proportional and mixed systems. We should, therefore, not emphasise the system *type* but rather the system *features* that invoke these risks. Even proportional systems can contain features (such as thresholds, seat bonuses, or a multi-tier allocation of seats)³⁵ that complicate the rules of the game in such a way that minority to majority effects may occur.

The United States is an example in many respects of the way in which electoral minorities obtain singular political majorities within democratic institutions. The 2016–2020 Republican presidency and the concurrent Republican majority in the Senate rested on a smaller number of votes than the Democrats had cast,

³¹J.J. Linz, ‘Presidential or Parliamentary Democracy: Does it Make a Difference?’, in J.J. Linz and A. Valenzuela (eds.), *The Failure of Presidential Democracy: Comparative Perspectives* (John Hopkins University Press 1994) p. 3; Ginsburg and Huq, *supra* n. 26.

³²A. Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-six Countries* (Yale University Press 1999).

³³Linz, *supra* n. 31, p. 18. See also J.A. Cheibub, *Presidentialism, Parliamentarism, and Democracy* (Cambridge University Press 2006), attributing democratic breakdown not to presidentialism itself, but to the (unstable) countries that tend to *choose* presidentialism. Our argument, however, as we explain in more detail below, is not dependent on this debate, as it focuses on features, not systems.

³⁴Ginsburg and Huq, *supra* n. 26, p. 183.

³⁵M.S. Shugart and R. Taagepera, *Votes from Seats: Logical Models of Electoral Systems* (Cambridge University Press 2017).

due to geographical representation across states.³⁶ Various Democratic and Republican majorities in houses at the state level rest on regional representation via gerrymandered districts.³⁷

There are many examples outside of the United States as well, including in parliamentary and proportional and mixed systems. Hungary mixes proportionality and electoral districts. Via a new electoral law that introduced further bias, government party Fidesz cemented its power. Under the new rules it received more than two thirds of the seats in parliament in 2014 even though it obtained just 45% of the votes.³⁸ In Turkey, an extremely high electoral threshold of 10% undermines the potential for opposition to organise. Rather, in 2002, Erdogan's AKP won 34% of the votes but received almost two thirds of the seats in the Turkish parliament (363 out of 550 seats, 66%).³⁹ In Poland the Law and Justice party, PIS, obtained a parliamentary majority based on 37.6% of the votes (235 out of 460 seats, 51%).⁴⁰ Greece (2004–2019) and Italy (2006–2013) briefly assigned a large bonus in parliamentary seats to the party (or party coalition) with the most votes, in order to stimulate or ensure a single parliamentary majority.⁴¹

The minority to majority effect is most likely in conventional majoritarian systems with single member districts (such as the United Kingdom) and presidential systems (such as the United States). Yet it also occurs in mixed systems (such as Hungary), countries with a high electoral threshold (such as Turkey), or countries with enforced proportionalism (such as the short-lived bonuses in Greece and Italy).

Even systems with a moderate electoral threshold (5% for single parties) such as Poland and Germany may find themselves subject to the minority to majority effect under unfavourable circumstances, i.e. when multiple political parties barely fail to meet the electoral threshold. The type and interaction of complexities in basic proportional rules (e.g., thresholds, bonuses, multi-tier allocations,

³⁶A. Beaumont, 'US 2016 election final results: how Trump won', *The Conversation*, 17 December 2016.

³⁷D.A. Lieb, 'AP analysis shows how gerrymandering benefited GOP in 2016', *AP News*, 25 June 2017.

³⁸K.L. Scheppele et al., 'Legal but not Fair: Viktor Orbán's New Supermajority', *New York Times* (Paul Krugman Blog), 12 April 2014.

³⁹All parties but the AKP and CHP were below the 10% threshold, resulting in a two-party parliament: see 'Islamic party wins Turkish general election', *The Guardian*, 4 November 2002.

⁴⁰See 'Rightwing Law and Justice party wins overall majority in Polish election', *The Guardian*, 27 October 2015.

⁴¹For Greece, see: OSCE, Greece: *Parliamentary Elections 2019, ODIHR Needs Assessment Mission Report*, Warsaw, 24 May 2019, p. 4; for Italy, see: G. Passarelli, 'Electoral Systems in Context: Italy', in E.S. Herron et al. (eds.), *The Oxford Handbook of Electoral Systems* (Oxford University Press 2018).

transferable votes) affect the translation of votes into seats,⁴² which in turn affects the risk of minority to majority. The minority to majority effect can thus arise conditionally, depending on the distribution of votes across parties, and the way system features translate these votes into seats.

Non-mixed systems that emphasise proportionality more radically – be it in a single district (such as the Netherlands) or via large multimember districts (such as Denmark) with a low electoral threshold – are, by contrast, highly unlikely to experience the minority to majority effect. In the Netherlands and Denmark, no single party has obtained a majority of seats in parliament since the introduction of universal suffrage.

HOW MINORITY TO MAJORITY RAISES ACTORS' RESOURCES AND INCENTIVES FOR DEMOCRATIC DECONSOLIDATION: A FRAMEWORK

Resources and incentives

The minority to majority effect does not unequivocally threaten liberal democracy. It is unlikely, for instance, that German democracy would have come under threat if Angela Merkel's CDU/CSU coalition party had obtained the parliamentary majority that it barely missed in 2013. Institutional configurations do not *deterministically* induce specific outcomes. Other institutional and cultural factors function as additional constraints. However, the minority to majority effect sets the incentive structures and constraints of actors that function within these configurations.⁴³ In this context, we argue that system features that lead to minority to majority effect offer political elites: (a) more *resources* to bend democratic institutions, rules, and norms to their advantage; and (b) stronger *incentives* to actually do so. Executive aggrandisement is not a necessary outcome, but the option is more viable in the context of minority to majority.

In the following we will substantiate this claim by looking at how system design, through minority to majority, shapes the resources and incentives of three crucial actors in the democratic process: voters, incumbents, and electoral influencers.

Voters, incumbents, and electoral influencers

Voters

First, we consider the impact of a system that experiences strong minority to majority effects on the voters within that system. Majoritarian elements affect

⁴²Shugart and Taagepera, *supra* n. 35.

⁴³P. Ingram and K. Clay, 'The Choice-Within-Constraints New Institutionalism and Implications for Sociology', 26 *Annual Review of Sociology* (2000) p. 525.

the strategic considerations of citizens.⁴⁴ The incentives to vote for a third party or for a newcomer erode if there is little chance for such parties to get elected into parliament and/or office. Duverger's law reads that systems with plurality-rule election rules in single member districts will stimulate bipartisanship,⁴⁵ except for third parties with strong regional roots.⁴⁶ Similarly, high electoral thresholds have the same effect on small and new parties, as a vote for any party that does not meet the threshold would effectively be a wasted vote. *Ceteris paribus*, in systems with these features, voters are more likely to take strategic considerations of vote choice into account next to their sincere preferences.

These strategic considerations have relevant consequences for democratic resilience. At first sight, one might consider that radical proportionalism is harmful to democracy, as it lowers the thresholds for radical, populist, and even anti-democratic parties to get elected into parliament, making use of the electoral platform in the process. This was the analysis of Karl Loewenstein in 1937 (see above), in part inspired by the demise of the Weimar Republic with its paralysed parliament.⁴⁷ And it must be recognised that the rise of modern radical right-wing populist parties in parliaments did first become visible in countries with rather proportional electoral systems such as Denmark (Danish People's Party), the

⁴⁴J.H. Aldrich et al., 'Strategic Voting and Political Institutions', in L.B. Stephenson et al. (eds.), *The Many Faces of Strategic Voting: Tactical Behavior in Electoral Systems Around the World* (University of Michigan Press 2018) p. 1.

⁴⁵M. Duverger, *Political Parties: Their Organization and Activity in the Modern State* (Wiley 1954).

⁴⁶W.H. Riker, *Liberalism against Populism: A Confrontation between the Theory of Democracy and the Theory of Social Choice* (Waveland Press 1982).

⁴⁷The Weimar 'case against proportionalism' warrants some further attention. First, Weimar's demise is more complex than a story of *only* rampant fragmentation, as it can be described as a complex tale of 'legal, pseudolegal and illegal maneuvers' (J.W. Bendersky, *A Concise History of Nazi Germany* (Rowman and Littlefield 2014) p. 84). Furthermore, from the *legal* causes in that mix, not only 'Loewensteinian' conclusions on proportionalism can be drawn, but *also* arguments against majoritarian features, notably against the possibility of rule by (presidential) emergency decree, on the basis of (the disputed use of) Art. 48 of the Weimar Constitution (see the brief overview in Rijpkema, *supra* n. 11, p. 1-2), concentrating power in the hands of Reichspräsident Hindenburg and bypassing parliament. And lastly, we also need to consider the Weimar case in the broader pattern of democratic backsliding during the interwar period. Karvonen and Quenter show that the interbellum had cases of highly fragmented systems with low cabinet stability that led to democratic breakdown (e.g. Weimar Germany; Spain), but also similar systems that did *not* break down (e.g., France). While other proportional systems did not lead to high fragmentation (e.g., Belgium) or did lead to high fragmentation, but not to cabinet instability (e.g., Czechoslovakia, the Netherlands): see L. Karvonen and S. Quenter, 'Electoral Systems, Party System Fragmentation and Government Instability', in D. Berg-Schlosser and J. Mitchell (eds.), *Authoritarianism and Democracy in Europe, 1919–39* (Advances in Political Science: An International Series) (Palgrave Macmillan 2002) p. 131.

Netherlands (List Pim Fortuyn and the Freedom Party), and Switzerland (Swiss People's Party). To some, this rise of populism in proportional systems has signalled a new democratic deconsolidation.⁴⁸

However, a system of proportionalism is more likely to have positive than negative effects when it comes to deconsolidation. Their voice in parliament has offered disgruntled and distrusting voters an alternative within the system. In absence of proportionalism, radical, distrusting and/or outright anti-democratic sentiments might not be voiced in parliament, but that does not mean that these sentiments do not exist in society. Distrust and populist sentiments are inherent to any democracy, but need not be problematic as long as they are canalised within the system and they do not substantially threaten the democratic system itself.⁴⁹ In this sense proportionalism offers a 'safety valve'⁵⁰ by allowing, rather than excluding, these voices: *in principle*, representation is possible. Just compare the experience of the United Kingdom Independence Party (UKIP) voters in 2015 (13% of the votes, <0.2% of the seats in Parliament) to those that voted for the Freedom Party in the Netherlands in 2017 (13% of the votes and seats) and the Sweden Democrats in Sweden in 2018 (13% of the votes, 14% of the seats).⁵¹ This positive effect of proportionalism is visible in empirical studies concerning political trust: proportionalism stimulates rather than undermines trust in parliament and democracy, although its effect is substantially small.⁵²

In contrast, majoritarian elements in an electoral system offer third party voters the incentive to tune out or vote strategically, as their sincere votes are likely to be ineffective, i.e. will not lead to representation in parliament. As such, one could argue, most of the time majoritarian arrangements may produce electoral outcomes that are not threatening to democracy.

Yet, that impression is deceiving. Disproportional systems can produce unstable equilibria, precisely because they prevent alternatives arising from within the system. Their conventional strength becomes a serious weakness when circumstances change.⁵³ The strategic incentives against alternatives within the system turn

⁴⁸E.g. in Mounk, *supra* n. 2.

⁴⁹Cf. T.W.G. Van der Meer, 'Democratic Input, Macro-economic Output, and Political Trust', in S. Zmerli and T. Van der Meer (eds.), *Handbook on Political Trust* (Edward Elgar Publishing 2017).

⁵⁰S. Holmes, 'Andras Sajó (ed.), *Militant Democracy*' (review), 4 *International Journal of Constitutional Law* (2006) p. 586 at p. 591.

⁵¹That is not to say that these voices should be tolerated at any cost when elected; that is a different discussion. Yet, tolerating threats *as long as possible* is also in line with modern militant democracy theory, see e.g. Kirshner, *supra* n. 11; Rijkema, *supra* n. 11.

⁵²T.W.G. Van der Meer and A. Kern, 'Consensualism, Democratic Satisfaction, Political Trust, and the Winner-loser Gap: A State of the Art of Two Decades of Research', 1 *Politics of the Low Countries* (2019).

⁵³See also Ginsburg and Huq, *supra* n. 26, p. 181.

problematic as soon as a big corruption scandal arises (such as in Hungary in the mid-2000s or India and Brazil in the 2010s),⁵⁴ or when the mainstream candidates are both ‘historically’ unpopular (such as in the United States presidential elections of 2016),⁵⁵ or when a party system implodes (such as in Turkey in 2002).⁵⁶ Under such circumstances, lacking a ‘third option’, citizens are forced to vote for what they perceive as the *lesser* of two evils, like an Orbán, a Bolsonaro, a Trump, or an Erdogan. And if no serious alternatives are offered within the system, citizens will find these alternatives outside of that system.⁵⁷

Stable majoritarian democracy can thus become surprisingly fragile under adverse circumstances. In addition, in majoritarian democracy, citizens are not likely to punish their preferred party or leader for incremental violations of democratic principles. The larger the level of polarisation, and the lower the number of alternatives, the less likely candidates are to be punished for supporting policies that undermine democracy.⁵⁸

Incumbents

The bigger risk for democracy lies with the position of the incumbent. Recent studies into democratic resilience have put strong emphasis on the risk of executive aggrandisement, the process by which the executive erodes and eliminates checks on its power, such as independent (electoral) institutions, the courts, or the media.⁵⁹ Levitsky and Ziblatt carefully outline how liberal democracy is threatened primarily by elites who no longer agree about democratic norms and give precedence to the preservation or execution of political power over protecting those norms: ‘institutions alone are not enough to rein in elected autocrats’.⁶⁰

⁵⁴See respectively: J-W. Müller, ‘The Hungarian Tragedy’, *Dissent*, Spring 2011; ‘India’s corruption scandals’, *BBC*, 18 April 2012; J. Watts, ‘Operation Car Wash: Is this the biggest corruption scandal in history?’, *The Guardian*, 1 June 2017.

⁵⁵L. Saad, ‘Trump and Clinton Finish with Historically Poor Images’, *Gallup*, 8 November 2016, with figures going back to 1956.

⁵⁶‘Islamic party wins Turkish general election’, *The Guardian*, 4 November 2002.

⁵⁷E.E. Schattschneider, *The Semisovereign People. A Realist’s View of Democracy in America* (Wadsworth 1960); P. Mair, *Party System Change. Approaches and Interpretations* (Clarendon Press 1997).

⁵⁸M.H. Graham and M.W. Svobik, ‘Democracy in America? Partisanship, Polarization, and the Robustness of Support for Democracy in the United States’, 114 *The American Political Science Review* (2020) p. 392; A. Agadjanian, ‘When Do Partisans Stop Following the Leader?’, 38 *Political Communication* (2021) p. 351.

⁵⁹Bermeo, *supra* n. 12.

⁶⁰Levitsky and Ziblatt, *supra* n. 5, see also D. Runciman, *How Democracy Ends* (Profile 2017).

Indeed, democratic institutions are dependent on the politicians that shape them.⁶¹ Yet, any choices-within-constraint approach⁶² would argue that the way institutions are designed nevertheless forms an important precondition to a possible slow descent into authoritarianism. This risk is particularly high in institutional configurations that allow political power to rest in the hand of a single political minority.

First of all, this is a matter of *resources*. If political power is bundled in the hands of a single party, democracy puts a heavy burden on a constitution, democratic traditions, and democratic norms to keep this power in check. Svobik observes: '(. . .) the accumulation of too much power in the hands of an incumbent, appears to be a persistent threat to democratic stability'.⁶³ When powers need not be shared with other parties, a system of checks and balances becomes quite unlikely. Why would an incumbent limit itself by an opposition, a constitution, tradition, courts or media? Why would this unrestricted incumbent not bend the system to its will, if it has the political power to do so?

Contrast the many recent examples of single party governments that put democracy under stress in various ways – Turkey, Hungary, Poland, Brazil, Venezuela, the United States – with countries with a tradition of coalition government, such as Denmark or the Netherlands. In the United States the Republican majority in the Senate was able to stonewall Supreme Court nominations until after the presidential elections of 2016,⁶⁴ after which it could ensure a Republican legacy in the composition of the Supreme Court. In Hungary, the Fidesz government has rewritten the electoral system, was able to draft its new 2012 constitution without involving other parties, and in this constitution, Fidesz granted citizenship to what it calls 'Ethnic Hungarians' in neighbouring countries, whose 95% vote for Fidesz in turn helped cement further victories.⁶⁵

By contrast, in a proportional system, political actors lack the *resources* to engage in such acts, simply because they have to share political power. In typical proportional countries such as Denmark and the Netherlands, no party has received an absolute majority since the introduction of universal suffrage; and the odds of that happening are smaller than ever. Consequently, government is made up of a coalition of multiple parties. Any single party would simply lack

⁶¹ Cf. K. Popper, *The Open Society and Its Enemies* (Princeton University Press 2013/1945) p. 120.

⁶² See again e.g. Ingram and Clay, *supra* n. 43.

⁶³ M.W. Svobik, 'Which Democracies Will Last? Coups, Incumbent Takeovers, and the Dynamic of Democratic Consolidation', 45 *British Journal of Political Science* (2015) p. 715 at p. 735.

⁶⁴ Editorial: 'When the GOP stole Merrick Garland's Supreme Court seat, they set the stage for a miserable battle', *Los Angeles Times*, 31 January 2017.

⁶⁵ Scheppele et al, *supra* n. 38; overview in B.R. Rijkema, 'Militant Democracy and the Detection Problem', in A. Kirshner and A. Malkopoulou (eds.), *Militant Democracy and its Critics* (Edinburgh University Press 2019) p. 169.

the possibility to change the electoral system, to pack a supreme court, or to politicise state-controlled media according to its views. Coalition partners would first have to agree on an overriding concern that they deem to be so relevant that it is worth stretching democratic norms to deal with it.

Secondly, the *incentives* to override democratic norms and reshape the political system are particularly high when political power is bundled in the hands of a single political minority. In many countries that find democracy under threat, executive power (or a parliamentary majority) is artificially created by the electoral system. One may consider the Republican president Donald Trump, who lost the popular vote by millions but got elected by an electoral college in which his majority relied on 80,000 voters in three states, no more than would fill a football stadium.⁶⁶

This matters. Because when this political minority is out of power, they tend to end up empty-handed. This all-or-nothing, zero-sum game puts a lot of pressure on the peaceful transfer of power, as was evinced in the 2020/2021 transition from the Trump to the Biden government. This is, *mutatis mutandis*, no different in Hungary, Turkey, or Brazil. It explains why incumbents and parliamentary majorities have enacted policies that tilt the balance in the system in order to structurally enhance their electoral or political position. The most typical examples originate – again – from the United States and Hungary.

As said, in the United States the Republican majority in the Senate ensured a Republican-leaning Supreme Court that will last beyond their incumbency.⁶⁷ Gerrymandering and *de facto* disenfranchisement in several states of the United States has all but ensured fixed political majorities for the next decade, while undermining the spirit behind the principle of one man, one vote.⁶⁸ And in 2018, the Republican-led senate of the State of Wisconsin passed a bill to reduce the powers of the incoming Democrat governor and attorney-general.⁶⁹

Similarly, in Hungary the Fidesz government has adapted the electoral system in such a way that a minority of the votes would suffice to obtain a supermajority in parliament. Moreover, it has packed the Constitutional Court and other neutral institutions with its own nominees.⁷⁰

The majoritarian system thus gives the incumbent minority the *resources* – a lack of countervailing powers – and the *incentives* – strengthening or

⁶⁶P. Bump, 'Donald Trump will be president thanks to 80,000 people in three states', *The Washington Post*, 1 December 2016.

⁶⁷Editorial: 'When the GOP stole Merrick Garland's Supreme Court seat, they set the stage for a miserable battle', *Los Angeles Times*, 31 January 2017.

⁶⁸Lieb, *supra* n. 37.

⁶⁹'Wisconsin Legislature passes bill to limit powers of incoming Democratic Governor Tony Evers', *CBS News*, 5 December 2018.

⁷⁰See Rijpkema, *supra* n. 65, p. 175.

consolidating power in a zero-sum game – to bend democracy to its will. The temptation to appropriate power by unilaterally changing democratic rules or practices is hard to resist. The higher the levels of polarisation, the more attractive this temptation will be.⁷¹ The incumbent will aim to tilt the political balance of the electoral process (electoral system, gerrymandering) and the checks on political power (subverting media and the justice system), to structurally improve its own position.

Democratic norm erosion by one party invokes like-minded behaviour by the other. Just imagine the party (and voters) which finds that the system actively works to their disadvantage. They are hardly able to correct this system. What keeps these parties (and their voters) motivated? And if they succeed in overcoming their systematic disadvantages, what would prevent them from taking revenge on their opponents?

Electoral influencers

A third group of actors consists of societal or foreign entities who aim to interfere with the electoral process to stimulate one potential outcome over another, for instance via the use of social media bots, negative campaigning, one-sided polarisation, and the introduction of fake news into the election campaign. While the resources available to engage in such tactics do not seem to inherently differ across electoral systems, the incentive structure differs considerably.

As elections in countries such as the United States and the United Kingdom show, relatively modest shifts in voting behaviour (turnout, vote choice) may have disproportional effects on the division of legislative and executive power. One may win the popular vote, but lose the election; gain a share of the votes, but lose seats. Political scientists Achen and Bartels have therefore argued that ‘in a two-party system with competitive elections, (...) the choice between the candidates is essentially a coin toss’.⁷² This provides a relatively strong incentive to those wanting to influence election outcomes by interfering in the electoral process.

By contrast, in proportional, multiparty systems, small changes in vote shares tend to have proportionally small consequences in parliamentary seat distribution. Moreover, the losses incurred by one political party do not necessarily benefit their main ideological opponent.⁷³ This is most likely in multidimensional, multiparty systems: the ‘larger number of competitors affects the expected benefits of

⁷¹F. Vegetti, ‘The Political Nature of Ideological Polarization: The Case of Hungary’, 681 *Annals AAPSS* (2018) p. 78 at p. 92-93.

⁷²C.H. Achen and L.M. Bartels, *Democracy for Realists: Why Elections Do Not Produce Responsive Government* (Princeton University Press 2016) p. 35.

⁷³Cf M. Haselmayer, ‘Negative Campaigning and its Consequences: A Review and a Look Ahead’, 17 *French Politics* (2019) p. 355.

negative campaigning. It increases the uncertainty of acquiring the benefits of attack behaviour as voters have a much broader range of parties to choose from'.⁷⁴

PRELIMINARY EMPIRICAL ANALYSIS AND ANTI-MINORITY TO MAJORITY ENGINEERING

A preliminary analysis: minority to majority in examples of democratic erosion since 2000

Over recent decades several countries have moved away from liberal democracy to electoral democracy (with weakened rule of law and independent media), or from electoral democracy to competitive authoritarianism (with a weakened political opposition).⁷⁵ The Varieties of Democracy project (V-Dem) shows that the democratic deconsolidation since 2000 has been most pronounced in countries such as Hungary, Poland, and Serbia (that were liberal democracies in the mid-2000s), as well as in Venezuela, Thailand, Turkey, and Nicaragua (that started out as electoral democracies). Yet, the quality of democracy has come under pressure in more countries, including the United States, Brazil, India, and the Philippines.⁷⁶

Of these countries, we contend that the minority to majority mechanism is visible in at least Venezuela, Brazil, Poland, Hungary, Turkey, India and the United States, both in the way that features of the electoral system provide majoritarian power to an electoral minority, and in the way that this strengthens the incentives and resources for that minority to subvert democratic procedures. To illustrate this, we will use Hungary and Turkey as examples.

Hungary is a prototypical country with a liberal democracy that experienced democratic deconsolidation, sliding into competitive authoritarianism.⁷⁷ The crucial elections in 2010 have been described as a 'perfect storm', when public disaffection led to a simple majority of votes for the then opposition alliance between Fidesz and KDNP.⁷⁸ The electoral system, which mixed majoritarian and proportional rules, turned this simple electoral majority (53%) into a parliamentary supermajority (67%). This supermajority gave the alliance the power to unilaterally amend the constitution, pack the courts, and write a new electoral law

⁷⁴A.S. Walter, 'Negative Campaigning in Western Europe', 62 *Political Studies* (2014) p. 42 at p. 47.

⁷⁵S. Levitsky and L.A. Way, 'The Rise of Competitive Authoritarianism', 13 *Journal of Democracy* (2002) p. 52; Coppedge et al., *supra* n. 1.

⁷⁶Coppedge et al., *supra* n. 1.

⁷⁷Coppedge et al., *supra* n. 1.

⁷⁸M. Bogaards, 'De-democratization in Hungary: Diffusely Defective Democracy', 25 *Democratization* (2018) p. 1481.

that was highly biased to favour Fidesz (by extending enfranchisement and redrawing district boundaries).⁷⁹ Under the new rules it consolidated its supermajority with only 44% of the votes in 2014.

At the beginning of the 21st century Turkey had a more tenuous relationship with democracy. It started out as an electoral (rather than liberal) democracy, and fell back to electoral authoritarianism under the governance of the AKP of Erdogan.⁸⁰ The AKP came to political power in 2002. It won a plurality of the votes (34%) but received almost two-thirds of the seats (66%) in parliament. Due to an implosion of the party system, many parties had ended up below the 10% electoral threshold, leading to 46% wasted votes.⁸¹ Over the following decades, the 'hegemonic' power of the AKP provided them with the means to weaken countervailing powers such as the opposition, the media, the universities, and the judiciary.⁸² AKP kept a hold of majoritarian political power (short of a parliamentary supermajority), despite never obtaining an electoral majority.

The new institutionalist argument we present is that, *ceteris paribus*, minority to majority makes democratic deconsolidation more likely: it added to the likelihood of the backsliding the countries mentioned above experienced. However, minority to majority neither necessarily leads to, nor is a necessary explanation of, democratic backsliding. We will illustrate this using the United Kingdom and Nicaragua as examples.

First, minority to majority does not *necessarily* lead to deconsolidation. Despite a long history of minority to majority, the UK has not experienced substantive democratic backsliding. Majoritarian powers are commonly attributed to the party with only a plurality of the votes.⁸³ In 2019, the Conservative party won 56.2% of the seats in the Lower House with less than 44% of the votes.⁸⁴ This solidified the position of the government of its then party leader, Boris Johnson. Since then, we have seen attempts by the executive to aggrandise its

⁷⁹G. Tóka, 'Constitutional Principles and Electoral Democracy in Hungary', in E. Bos and K. Pócsa (eds.), *Verfassungsgebung in Konsolidierten Demokratien: Neubeginn oder Verfall eines Politischen Systems?* (Nomos 2014) p. 311; see also Rijpkema, *supra* n. 65, p. 175-177.

⁸⁰Coppedge et al., *supra* n. 1.

⁸¹'Islamic party wins Turkish general election', *The Guardian*, 4 November 2002.

⁸²M. Somer, 'Understanding Turkey's democratic breakdown: old vs. new and indigenous vs. global authoritarianism', 16 *Southeast European and Black Sea Studies* (2016) p. 481.

⁸³P. Norris, 'Choosing Electoral Systems: Proportional, Majoritarian and Mixed Systems', 18 *International Political Science Review* (1997) p. 297.

⁸⁴Recent elections had similar outcomes. The 2015 elections led to parliamentary majority for the Conservative party based on 36.8% of the votes. The Conservatives fell short of a parliamentary majority in 2017 (48.8% of the seats based on 42.3% of the votes), but gained majority support from the DUP (1.5% of the seats based on 0.9% of the votes). The 2010 elections had led to a coalition government that rested on a majority of the votes. See R. Cracknell and S. Pilling, 'UK Elections Statistics: 1918–2021: A century of elections', *House of Commons Library*, 18 August 2021.

powers and reduce accountability. These attempts include the prorogation of British Parliament in 2019 in the month before the planned deadline for Brexit,⁸⁵ the 2021 proposals that enable government to sidestep judicial review,⁸⁶ and the 2022 proposal in the election law that would politicise the now independent Electoral Commission (that oversees the elections).⁸⁷ Yet, ultimately, party members ousted Johnson in the summer of 2022 in response to several crises of integrity and accountability.⁸⁸

Minority to majority is not a *necessary* explanation for democratic deconsolidation either. Nicaragua is an example of a country that experienced democratic backsliding without an evident role of minority to majority. Nicaraguan President Ortega obtained presidential power after the crucial 2006 elections with 38% of the votes. However, his party the FNLS obtained 35 of the 90 seats (39%) in the National Assembly, making Ortega a ‘minority president’.⁸⁹ Ortega expanded his presidential power, unopposed by a divided parliament, by packing the courts, co-opting the electoral committee, and turning competitive elections into authoritarian and ultimately hegemonic elections before 2012.⁹⁰

Minority to majority, institutional engineering, and electoral reform

According to political scientists ‘the electoral system is by far the most powerful lever of constitutional engineering’.⁹¹ In the debate on engineering a stable democracy for segmented societies – a related, but different endeavour from ours⁹² – prominent

⁸⁵G. Cowie and A. Cygan, ‘The Prorogation Dispute of 2019: one year on’, *House of Commons Library Briefing paper*, no. 9006, 24 September 2020.

⁸⁶J. Manenschijn, ‘Parliamentary Sovereignty to the Rescue?’, *LeidenLawBlog*, 15 February 2022.

⁸⁷T. Helm, ‘Elections bill is “a power grab to rig polls in favour of Tories”’, *The Guardian*, 5 September 2021.

⁸⁸J. Guy et al., ‘UK Prime Minister Boris Johnson resigns after mutiny in his party’, *CNN*, 7 July 2022.

⁸⁹L.E. Anderson and L.C. Dodd, ‘Nicaragua: Progress Amid Regress?’, 20 *Journal of Democracy* (2009) p. 153.

⁹⁰S.M.I. Puig, ‘Nicaragua: Desdemocratización y caudillismo/Nicaragua: De-democratization and Caudillism’, 36 *Revista de ciencia política* (2016) p. 239; K.M. Thaler, ‘Nicaragua: A Return to Caudillismo’, 28 *Journal of Democracy* (2017) p. 157.

⁹¹D.L. Horowitz, *A Democratic South Africa? Constitutional Engineering in a Divided Society* (University of California Press 1991) p. 163; *see also* G. Sartori, ‘Political Development and Political Engineering’, 17 *Public Policy* (1968) p. 261 at p. 273.

⁹²The main focus in the consociationalism debate is how divided societies can achieve a stable democracy; the focus of our study here is how the electoral system shapes the resources and incentives of actors to hamper democracy – not *per se* in deeply divided societies, to the contrary, *see for instance* Hungary. However, there is an overlap in the prescribed solution: our study of minority to majority suggests lessening majoritarian elements (*see below*) to prevent transforming a *minority of votes* into a power-wielding *absolute majority* (i.e. the minority to majority effect) – which to some

scholars have actively proposed power-sharing or even consociational institutions.⁹³ Northern Ireland, Lebanon, South Africa, Bosnia-Herzegovina, and Iraq all incorporated power-sharing elements into their constitution.⁹⁴

From a militant democracy perspective, countries do well in evading minority to majority effects by *lessening* majoritarian elements in institutional design and *increasing* proportional system features. Yet, in countries where strong minority to majority effects are already present, it is very difficult to reform the electoral system. New Zealand is one rare exception that was able to shed its majoritarianism 20 years ago.⁹⁵ In the United Kingdom, Tony Blair proposed electoral reform in the mid-1990s in the United Kingdom, but let go of this promise once he got elected and was in a position to benefit from the disproportional system himself.⁹⁶ The same goes for Trudeau in Canada, who had promised electoral reform – a more proportional alternative vote – only to shed this idea once he got in power and benefited from majoritarianism.⁹⁷ The reason why electoral reform is so difficult in majoritarian systems mirrors the reason why these systems may constitute a threat to democratic resilience: when in power, the incumbent has the *resources* to change the electoral system but typically loses the *incentives* to do so.⁹⁸

Minority to majority effects are therefore very much a *cautionary* tale. From the perspective of democratic perseverance, democracies do best to *avoid* legal changes

extent overlaps with the general prescription in normative consociationalist theory (see R. Andeweg, 'Consociational Democracy', 3 *Annual Review of Political Science* (2000) p. 509 at p. 516-517) of power-sharing (to deal with the issue of democracy in a segmented society). Recently Boogaards explored how militant democracy and consociational democracy are fused in Belgium: 'Militant consociational democracy is a political system that includes political parties across the main dividing lines in society but categorially refuses to accept extremist parties on the right and left as legitimate partners': see M. Boogaards, 'Militant Consociational Democracy: The Political Exclusion of the Extreme Right in Belgium', in S. Baume and S. Novak (eds.), *Compromises in Democracy* (Palgrave Macmillan 2020) p. 175 at p. 194. See also in the consociationalism debate: P. Emerson, *Majority Voting as a Catalyst of Populism: Preferential Decision-making for an Inclusive Democracy* (Springer 2020), building on Lijphart, partly from a concern with populism (and extremism), see in particular ch 3.3.

⁹³A. Lijphart, 'Constitutional Design for Divided Societies', 15 *The Journal of Democracy* (2004) p. 96; see also J. Steiner, 'Consociational Democracy as a Policy Recommendation: The Case of South Africa', 19 *Comparative Politics* (1987) p. 361; Andeweg, *supra* n. 92.

⁹⁴Lijphart, *supra* n. 32, p. 97, 99.

⁹⁵M. Gallagher, 'The Political Impact of Electoral System Change in Japan and New Zealand, 1996', 4 *Party Politics* (1998) p. 203.

⁹⁶L. Ward, 'Blair accused of breaking promise on voting reform', *The Guardian*, 24 May 2001.

⁹⁷A. Dhillon, 'Electoral reform: Is Trudeau's broken promise on any party's agenda?', *CBS News*, 6 September 2021. To be sure, both in the case of Blair and Trudeau there can be *self-reported* other reasons for abandoning electoral reform.

⁹⁸S. Bowler et al., 'Why Politicians Like Electoral Institutions: Self-interest, Values, or Ideology?', 68 *The Journal of Politics* (2006) p. 434.

that introduce minority to majority effects; democracies wanting to turn away from minority to majority in their political systems are likely to experience difficulty in doing so.

CONCLUSIONS AND LIMITATIONS

Various scholars have raised concerns with countries that move away from (liberal) democracy.⁹⁹ This paper set out to develop a new institutionalist, theoretical framework that argues how features of electoral systems contribute to this development. Divergent features of an electoral system can induce a similar effect: the concentration of majoritarian political power in the hands of a single electoral minority. We argue that this minority to majority effect affects the incumbents in a way that is detrimental to the resilience of democracy. Minority to majority effects provide political elites with stronger incentives and better resources to reshape democratic procedures to their own advantage. Hence, *ceteris paribus*, systems are more susceptible to democratic recess as the likelihood of a minority to majority effect increases.

The minority to majority effect is not induced by a single type of electoral or political system. Common divisions – such as those between presidential and parliamentary, or between majoritarian and proportional systems – do not suffice. It can also occur in mixed systems, in countries with a high electoral threshold, in countries with enforced proportionalism, and even – under unfavourable circumstances – in proportional systems with a more moderate threshold or the interplay of other rules that complicate proportionality. Moreover, these institutional features do not unconditionally pave the road towards democratic erosion. Rather, they condition and constrain actors' incentives and resources.

Evidently, not all countries that structurally experience the minority to majority effect find their democratic institutions under threat. Majoritarian elements work quite well as long as levels of polarisation among the electorate and their political elites are relatively low,¹⁰⁰ as is evidenced by the United States until the 1990s.¹⁰¹ Similarly, democratic erosion can also occur without being rooted in an evident minority to majority mechanism, as the case of Nicaragua shows. The system features of electoral politics are part of a broader range of factors that contribute to democratic resilience, including the rule of

⁹⁹E.g., Levitsky and Way, *supra* n. 75; Levitsky and Ziblatt, *supra* n. 5; Coppedge et al., *supra* n. 1.

¹⁰⁰L. Diamond, *Developing Democracy: Toward Consolidation* (Johns Hopkins University Press 1999).

¹⁰¹*Cf* Levitsky and Ziblatt, *supra* n. 5.

law, the constitution and its rigidity, and political society. Yet, the features that stimulate minority to majority set a bigger burden on these other factors.

The minority to majority effect we describe is of importance to militant democracy, deconsolidation and legal scholarship.¹⁰² First, it conditions the suggestion that democratic erosion is rooted in the behaviour of elites that put democratic norms at risk.¹⁰³ We argue that this is more likely to happen in systems that transform an electoral minority into a power-wielding majority. Second, it further illustrates and explains how democratic erosion can be so gradual that it is difficult to mobilise opposition,¹⁰⁴ pointing to the minority to majority drivers behind incremental changes. Third, it ties directly to the emphasis on consensualism and power-sharing proportionalism as a means of conflict management.¹⁰⁵ However, we specify that the minority to majority effect is a system feature of *various* regime types. Even proportional and mixed electoral systems can suffer from minority to majority, for instance as a consequence of enforced proportionalism, of moderate to high electoral thresholds, or of unforeseen interactions between two or more of such complexities.¹⁰⁶

Fourth, it informs the normative militant democracy debate. Paying attention to minority to majority in electoral design adds a not *directly* content-related (and thus, in principle, non-discriminatory) instrument to the militant democracy arsenal, that – depending on one's position in the normative debate – might be considered earlier than, or even instead of, content-related instruments, such as party bans. Fifth, the minority to majority effect has implications for legal reform, providing a (primarily) cautionary tale when it comes to legal reform: changes to the legal system that increase the minority to majority effect run the risk of *de facto* 'locking in' these changes, making later reform *away* from minority to majority harder.

¹⁰²Just as militant democracy theory should take into account electoral system design, democratic resilience should be considered one of the factors in the design of electoral systems. We agree with Shugart and Taagepera that there is no one-size-fits-all model of electoral systems (Shugart and Taagepera, *supra* n. 35, p. 317). Electoral systems are the workhorses of representative democracy, that are required to provide structure to representation, government formation, political conflict and many other democratic principles, in harmony with a country's social structure and political culture. We contend that, next to these principles, electoral system design also affects democratic resilience; an impact that should thus also be considered in system design.

¹⁰³As is the main thesis in, for instance, Levitsky and Ziblatt, *supra* n. 5.

¹⁰⁴As observed by e.g. Levitsky and Ziblatt, *supra* n. 5.

¹⁰⁵E.g. Horowitz, *supra* n. 91; Lijphart, *supra* n. 93; Steiner, *supra* n. 93.

¹⁰⁶Shugart and Taagepera, *supra* n. 35, p. 318; other complexities include bicameralism, the number of electoral districts (the number of candidates per districts), disproportional quota (such as regional representation), and the number of tiers required to translate votes into seats. It is not so much the scale of countries but rather the type and interaction of complexities that provide relevant risks.

In this paper we were only able to outline our main thesis, build the theoretical framework, and show how minority to majority makes sense in real-world examples. In doing so, we hope to have laid the groundwork for further empirical analysis of the minority to majority thesis.¹⁰⁷ This further analysis brings challenges of its own, as the focus on features over systems will make for more complicated categorisations.



¹⁰⁷And hope to have provided a more fruitful conceptual device for further empirical analysis in democratic self-defence. An empirical test of different constitutional design options by Gutmann and Voigt showed little to no effect for several constitutional rules, possibly, at least in part, due to the research design (as the authors themselves note, *see* Gutmann and Voigt, *supra* n. 10, para. 5). An empirical analysis of the minority to majority effect, however, would focus on electoral measures (which Gutmann and Voigt, *supra* n. 10, leave out, *see* para. 4.1), and would be more robust, as it does not try (or need) to single out *specific* measures (e.g. 'term limits'), as the question is: what happens if *a system as a whole* induces 'minority to majority' (regardless of the specific measures itself that induce it).