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Representation and the Roots of Inequality

THE FRAMERS ESTABLISHED THE UNITED STATES AS A REPUBLIC
(as opposed to a direct democracy) not simply because of logistics. They
offered theoretically grounded arguments about the benefits of this type
of system, which allows citizens to choose representatives to make deci-
sions in government. As we examine the roots and perpetuation of in-
equality in America, we need to focus on the ways that the system has, to
differing degrees throughout our history, allowed relatively few to achieve
economic, political, and social success. As political and social equality has
increased, how has representative democracy played a part? As economic
equality has decreased, to what extent is a failure of the system to blame?
In this chapter, we will explore the intersection of the government and
interest groups as we begin to unpack the complexities of the ways repre-
sentation works in the United States.

Defining (In)Equality

The concept of equality is not a modern creation; philosophers dating
back to antiquity have wrestled with important questions of rights, per-
sonhood, and social power. While space does not permit even a cursory
overview of those treatments here, it is important to be clear about how
"equality" (and, by extension, "inequality") is treated in these pages.

    This book primarily focuses on economic inequality, but it also explores
how social and especially political inequality is related to financial dispar-
ity. However, it is important to understand that injustice related to race,
gender, and sexual orientation is problematic in its own right, not simply

because of resultant economic disadvantage. Nonetheless, I emphasize the contemporary and historic relationships among social, political, and economic status. For example, while it is empirically accurate to note that the majority of poor Americans are white, because most Americans are white, that is a statistical artifact; poverty in America is disproportionately of color. Further, people of color face obstacles that whites with similar socioeconomic status often do not. These latter types of inequality (social, as it relates to our relationships with one another, and political, as it relates to access to power in terms of representation in government) are also examined in this book.

It is important to distinguish between equality of opportunity and equality of outcome with respect to economics.[1] Few voices in American discourse argue for equality of outcome. Rather, those who are concerned about economic inequality point out that many individuals in the United States are disadvantaged from birth. As a result, the ideal of a meritocratic system is undermined because those who achieve success do so either because they had a head start or in spite of significant barriers. If everyone started off with the same opportunity (and did not face structural impediments along the way), inequality of outcome would be acceptable. Put another way, most Americans agree that personal responsibility and initiative are required to achieve success. The disagreement often arises between those who believe that inequality of outcome is largely related to structural inequality of opportunity and those who believe that it is the result of personal failure. That debate is not fully addressed in this book, though it will become clear that systemic disadvantage minimizes opportunities for many Americans and puts pressure on the convenient argument that the poor are struggling economically because of character flaws, laziness, poor choices, or other individual-level characteristics.

On the other hand, the idea of social and political equality is often discussed with respect to outcome—in contemporary society, most agree that fundamental rights need not be earned. As a result, equality of opportunity is the same as equality of outcome: African Americans ought not be denied the right to vote; Latinos ought not be prevented from owning homes; women ought not be kept from certain professions; and so forth. But this issue is also more complicated that it might initially appear to be.[2] As we will see, the concept of representation is complex. Are we to argue, for example, that for women to have equal political rights they must comprise an equal (50 percent) number of state legislators or US

This should sound a bit like the cake argument in Stone

representatives? Or would equality in this regard mean proportionality (in which case, women would hold slightly more seats than men in the Congress)? Or by equal do we mean that the interests women have (to the extent that they can be identified as such) are represented, even if by men, in those political bodies? While these are all worthwhile discussions, they lie beyond the scope of this book. From time to time I will highlight these dilemmas, but for the most part, the reader is invited to make his or her own decisions about what types of equality are most appropriate and under what circumstances. Similarly, readers are encouraged to find ways to address inequality—to the extent that it is considered to be problematic—that are consistent with their own values and beliefs. This book is designed to heighten consciousness by pointing out the places where the realities of twenty-first-century American life are seemingly inconsistent with the core principles outlined by the Framers.

Democracy's Promise: America's Founding Principles

The political reasons that led to the American Revolution are many, and we need to briefly consider some of the most important philosophical principles that guided the Framers as they envisioned a new nation—an experiment in democracy—and drafted a system that they hoped would foster those ideals. In this context James Madison's writing is central. Madison, the "Father of the Constitution," contributed a number of essential elements to that document (see Box 1.1), but his ideas about power dynamics between majority and minority factions provide a unique insight into not only the concerns of the Framers at that time, but also the ways that contemporary American government and culture is equipped to deal with inequality.

In *Federalist 10*,[3] for instance, Madison argues that representative democracy is best suited to deal with what he expected would be an enduring dilemma—how to respect the will of the majority while protecting the rights of the minority. Sometimes called Madison's dilemma, the concern is unique to a system of government where the interests of citizens matter in a meaningful way. In authoritarian regimes, rulers can impose their will on the citizenry, often with perceived legitimacy, with the only consequences coming in the form of a coup d'état. In a democracy, however, each citizen's "opinions and passions" must be permitted to surface without interference. Otherwise the liberty on which the Revolution was based

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BOX 1.1. Representing: JAMES MADISON

The fourth president of the United States, and one of the most important intellectual leaders of America's founding, is a complex historical figure. Not only did he grow up with tremendous privilege on a tobacco plantation in Virginia, but his family's wealth did not stem from the American myth of hard work and fair play. His father inherited wealth and married into a wealthy family, and his wealth was perpetuated through plantation slave labor.

Yet within that privileged context, Madison (perhaps unintentionally) contributed ideas that would ultimately support the struggle of descendants of slaves and other oppressed communities in the United States. He did not argue for an end to slavery but insisted on a strong central government that would provide a contrast to the states' rights position that Confederate states adopted during the Civil War and then during the Jim Crow era of legalized racial segregation in the American South. His belief in fundamental human rights, many of which are codified in the Bill of Rights—the first ten amendments to the US Constitution—are at odds with the lived reality that he and his contemporaries (including Thomas Jefferson) imposed on slaves, Native American Indians, and white women. Yet the broad principles that are encapsulated by those ideas have driven not only movements for women's suffrage and black civil rights, but also the rights of a wide range of groups and associations that lack power or support such as the Jehovah's Witnesses, the Ku Klux Klan, communists, gay and lesbian Americans, and the criminally accused.

Characterizing Madison's representation as substantive, as described below, would be improper because many of the groups who have benefited from his ideas did not exist in his time. But the codification (in law and judicial interpretation) of those principles has resulted in support for minority groups far beyond those that were competing for power and consideration in the eighteenth and early nineteenth centuries. In this way, Madison is important to the struggle for racial and economic equality today even though he did not fight for those causes in his day (and very well may not have been willing to do so if he were alive today).[a]

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[a] "The Enslaved Community," James Madison's Montpellier, http://www .montpelier.org/visit/plan-your-visit/enslaved-community; "James Madison," American-Presidents.com, 2011, http://www.american -presidents.com/james-madison; "James Madison: Life Before the Presidency," the Miller Center at the University of Virginia, 2011, http://millercenter.org/president /madison/essays/biography/2.

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would be meaningless. However, such differences in opinions have the potential to destroy the republic, which is what Madison referred to as the "violence of faction."

That is simple enough, but we need to examine Madison's distinction between majority and minority faction. As disruptive as faction could be in and of itself, one could argue that a healthy political community should include rigorous discussion and debate. Madison was more concerned about tyranny, which he feared would result if one faction consistently had its way against the other. Minority faction was less of a concern to Madison because of the principle of majority rule. That is, if a small group of citizens or elected officials wished to impose their will on the masses, they would most likely be outvoted by the majority. It was majority tyranny that presented a greater concern, but Madison argued that the very structure of a republic (in particular, a large republic) would (along with the specific safeguards built into the Constitution, he and his coauthors would later argue) lead to a system that would slow people's passions and protect minority rights.

This problem was relevant in the eighteenth century, and even more so today. The extension (and later protection) of political rights to African Americans and white women, as well as vast waves of immigration, greatly diversified the polity. As a result, there are more "factions," and it appears, at least to the casual observer, that a small minority (the very wealthy) has disproportionate power over the majority. But recall that Madison did not expect this to be a problem. What happened?

Representation: Elected Officials

And here is Jone's perspective!

Representation is a concept that appears to be straightforward, but on closer examination is actually quite complicated. What does it mean to "represent" a person or a group of people or an idea? If a Pittsburgher wears her Steelers jersey on a Sunday afternoon in the fall, she is representing her favorite team, or maybe even her hometown. If a student's institutional affiliation is printed on his nametag at an academic conference, he is representing his college or university. In these ways, representation is symbolic and is not particularly important to the lives of others. On the other hand, if a student is selected to represent her residence hall on the university council, she might make decisions that can influence the lives of others in her dormitory. In that situation, variations in how she chooses to understand the concept of representation can result in very

different outcomes. Now let's consider a ridiculous scenario to demonstrate two prominent theories of representation.

Prior to elections for residence hall council, the administration expressed concerns about students' low energy level during morning classes. The solution: doughnuts. The university president decided that the best way to invigorate students for morning classes would be to infuse them with sugar by offering free doughnuts in classroom buildings. The only problem is that the university's bakery could supply only one type of doughnut in such large quantities. Consequently the hall council would have to choose between cake or jelly-filled doughnuts.

Two candidates threw their hats in the ring. Jessica was a sophomore biochemistry major with a 3.8 GPA. She was in a number of clubs and participated in intramural athletics. Michael was a junior English major with a 3.4 GPA. He was on the swim team and active in campus ministry. During the campaign, Jessica favored cake doughnuts because they were denser and "stuck to your ribs" better. Michael, a fitness nut, noted that since jelly came from fruit, jelly doughnuts would be the better choice. When all the votes are tallied, Michael won by a 12 percent margin. However, before he cast his vote for doughnut, he had a poll conducted in the residence hall to learn what his constituents thought. As it turned out, nearly 60 percent of respondents preferred cake doughnuts.

Michael now has a dilemma of representation. If he perceives himself as a *delegate*,[4] he will vote for cake doughnuts. Even though he knows in his heart that jelly would be better for the students, he believes that his job is to do what they would do if they could be there themselves. If he perceives himself as a *trustee*, however, he will vote for jelly doughnuts—not because he is indifferent to his constituents' wishes, but because he believes that he knows best and feels that the students knew his views on doughnuts when they elected him. Even though they clearly selected him for other reasons, they would not be surprised or disappointed if he voted his conscience. Besides, if they did not like his vote, they could choose to not reelect him next year.

So which would we prefer? In the silly example above, most of us would say that Michael should act as a delegate. He clearly knows what we want, and he has no (or very little valid) additional information at his disposal. This is an example of what social scientists refer to as *directive* or *restrictive governance*.[5] On the other hand, it is relatively easy to imagine the practical limits of such a preference. Many of the decisions that

government officials make on a daily basis are not particularly salient (relevant to our lives), and many others are very technical. If a member of Congress would take a poll to find out whether her constituents favored or opposed a reduction in the capital gains tax, there would very likely be a lot of "don't know" answers or "non-attitudes."[6] In such an instance, we might very well prefer that our leaders act as trustees—a scenario that is sometimes referred to as *permissive governance*.

Even this level of complexity, though, does not adequately capture the reality of contemporary politics. Yet another dimension has to do with the degree to which the individuals selected to represent us are equipped to do so. At the federal level, at least, most elected officials are wealthier and better educated than the average citizen.[7] In many ways, then, their personal interests ("opinions and passions" to use Madison's language) can be expected to differ from ours. That does not mean, however, that they must (or will) vote for their own personal interests at the expense of the rest of us. They could choose cake doughnuts because they know that is what we prefer, or they could choose jelly doughnuts because information they have (which we may not) indicates they are better for us. Elected officials who ignore the will of their constituents on a regular basis, at least in theory, will have difficulty at the ballot box in subsequent elections. (As we will see below, however, that is not the case with appointed officials.) But that does not ensure that our elected officials will share what are perceived to be important characteristics with their constituents. Can those officials represent their constituents effectively?

Not necessarily. Political scientists differentiate between *symbolic* (or *descriptive*) *representation* and *substantive representation*.[8] The former refers to the degree to which representatives have characteristics (e.g., race, gender, wealth, ideology) that reflect their constituencies, while the latter has to do with whether they vote consistently with constituents' interests, even if they do not look like those whom they represent. This distinction is relevant to understanding why millionaires[9] can be elected and subsequently presumed to provide appropriate representation to hundreds of thousands (or, in the case of many US senators, millions) of individuals who struggle economically. It is why the US Senate—which currently has three African American members, two of whom were appointed rather than elected[10]—can be considered to be representative of a diverse populace. And it is why a body like the US Congress, comprised overwhelmingly of men,[11] can be presumed (correctly or incorrectly) to be attentive to the interests of

BOX 1.2. Representing: DAVID YASSKEY

In 2006, US Representative Major Owens (D-NY), who is African American, decided to retire from his seat representing a Brooklyn district where the majority of voters (about 60 percent) were African American. Four candidates competed for the Democratic Party nomination in the district (which was almost certain to choose a Democrat in the general election), one of whom, David Yasskey, was white.

The seat had been held by an African American member since the 1960s, but the existence of four candidates led to uncertainty as to whether it would remain black. In the midst of the campaign, Yasskey was referred to as a "colonizer" by Owens and further criticized by some African American leaders as trying to take away one of the seats that had come to symbolize important political gains for African Americans in the Congress. There were suggestions that Yasskey, if elected, would seek to join the Congressional Black Caucus (CBC). In a strategy letter to CBC members, former member of Congress (and one of the CBC's founders) William Clay wrote that "it is critical that the Congressional Black Caucus remains an all-black organization," pushing the discussion about symbolic and substantive representation into the contest. When the counting was over, however, it did not matter. Yasskey finished second (26.2 percent) to Yvette Clarke (31.2 percent),

(Continues)

BOX 1.2. *Representing: David Yasskey (Continued)*

with the other two candidates attracting 22.9 percent and 19.6 percent of the vote.

The results were different in Tennessee that year, however. In a district that has a majority of African Americans and had been held for two generations by African Americans, Democrat Steve Cohen, who is white, won his party's nomination in a fifteen-candidate contest (thirteen of whom were African American) and went on to represent the congressional district that includes Memphis. Cohen did not seek to join the CBC.[a]

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[a] Jackson Baker, "Cohen, Hart, and the Schools," *Memphis Flyer*, July 7, 2011, http://www.memphisflyer.com/memphis/cohen-hart-and-the-schools/Content?oid=3014581; "Congressional Black Caucus to Remain an All-Black Organization," EmergingMinds.org, September 8, 2006, http://emergingminds.org/Congressional-Black-Caucus-to-Remain-an-All-Black-Organization.html; Michael Cooper, "Councilwoman Wins Primary for House Seat," *New York Times*, September 13, 2006, http://www. nytimes.com/2006/09/13/nyregion/13cong.html; Jonathan P. Hicks, "Rivals in House Race Debate White Candidate's Motives," *New York Times*, August 25, 2006, http://www.nytimes.com/2006/08/25/nyregion/25brooklyn.html; Jonathan P. Hicks, "Each Candidate Claims the Advantage in a Fierce 4-Way Congressional Race in Brooklyn," *New York Times*, September 2, 2006, http://www.nytimes.com/2006/09/02/nyregion/02brooklyn.html; Shailagh Murray, "Candidacy Fosters a Debate on Race," *Washington Post*, July 6, 2006. A1.

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women, who comprise more than half of the nation's population. As long as officials take the "opinions and passions" of their constituents into consideration—even if those do not match their own—they can be substantively representative, even if they are not symbolically representative. However, one could certainly argue that a lack of symbolic representation can be concerning, particularly because there is a widespread and historic absence by members of particular groups in some positions.[12]

Representation: The Courts

So far this discussion has centered on elected officials. But many of the people who represent us in government are appointed. Some of those appointments are limited in their power, but others, such as members of the federal judiciary, are quite powerful. In all cases, though, the concept of representation is similar, though its manifestation can be quite different. While bureaucrats at a number of agencies (Health and Human Services, Housing and Urban Development, etc.) can have direct relevance to issues relating to racial and economic inequality, the judicial branch has arguably been the most important tool for members of historically disadvantaged groups to achieve public policy success. As we will see, the courts have, on occasion, made decisions in favor of minority interests that elected officials would have had a hard time making (for fear of reprisal at the ballot box). In this way, the courts illustrate Madison's belief that the protection of minority rights is an essential element of democracy.

Though Alexander Hamilton famously referred to the judiciary as the "least dangerous" branch of the federal government,[13] the power of judicial review has resulted in a system wherein the last word on a particular issue is often handed down from appeals courts. Because courts can declare laws passed by Congress and signed by the president to be unconstitutional (and thus void), there are often concerns that such activism is undemocratic. That is only true, however, if we define democracy as majority rule. The 535 members of the US Congress and the president of the United States must appeal to the majority (or at least a plurality of their constituents) in order to win a seat and keep it. This is particularly true with members of Congress, who have no term limits, and specifically members of the House of Representatives, who face election every two years. As a result, it is very difficult for members to take unpopular positions.

Members of the federal judiciary, however, serve life terms (though they can be impeached and removed from office for particularly egregious behavior) and are not elected. This design is a function of the Framers' desire to allow one branch of government to make decisions that are immune from direct public pressure. If we understand democracy to mean respect for majority will and protection of minority rights, it is more appropriate to refer to judicial action that cuts against popular opinion as being countermajoritarian, rather than undemocratic.

The US Supreme Court often abstains from making overtly political decisions if it can avoid it (see the Court's action in *Bush v. Gore*,[14] however, as a notable exception to this rule), but every governmental decision affects people and is a reflection of power differences in society. In that way, everything the Court does is political, and even what the Court does *not* do is political. Unlike the legislative and executive branches, members of the judiciary cannot technically set their own agendas; they must wait until a case comes before them, and even then, they are somewhat limited in terms of the scope of the decision they can make. However, because the Supreme Court cannot possibly entertain arguments for the several thousand cases that are petitioned to be heard each term, the justices' choices of which to hear and which to deny (thus rendering the lower court decision as final) is also a political action.

As we consider the various types of inequality that exist in America today, we will be attentive to times when court decisions have contributed to or challenged inequality. At this point, though, it is important to consider some Supreme Court decisions that directly relate to the notion of representation.

One Person, One Vote

Fundamental to the broadest notions of democratic theory is the idea that each citizen has an equal chance to influence government. As always, however, the devil is in the details. What does "equal" mean? Certainly it does not mean that each citizen has the same amount of money to donate each year to political campaigns. At a minimum, it means that each citizen gets the same amount of power at the voting booth. This can be achieved in a number of ways, but in the United States, we have settled on the one person, one vote model that was clearly affirmed by the Supreme Court in *Baker v. Carr*[15] and *Reynolds v. Simms*.[16]

In *Baker v. Carr* (1962), the Court considered whether it could address a political question such as the one brought forward by a Tennessee man named Charles Baker who complained that the state had not been dutiful in redrawing US House district borders following each census, even though there was significant movement within the state. At the time the case was filed, the district in which Baker lived (near Memphis) had nearly ten times the population of some of Tennessee's rural districts. Consequently Baker argued that he had less representation than someone who lived in a less populated district. The Court ruled that such questions were appropriate for courts to decide (a departure from earlier rulings), which opened the door for similar questions in the following years.

In *Reynolds v. Simms* (1964), the Court was asked to decide the constitutionality of an Alabama law that state legislative districts could not cross county borders. Consequently one state senate district had about forty-one times the population of another by the time the suit was filed. Although that number is very large, it was not unusual at the time for districts to vary greatly in population, as many rural districts featured sparse population and state laws regarding redistricting that were in place before urbanization led to vastly disproportionate representation for areas with higher populations. In *Reynolds*, the Court established the one person, one vote principle, which means that the power of each of us to affect government by having our representatives be responsive must be relatively equal.[17]

It might seem surprising that it took 175 years into the nation's existence under the current Constitution to officially establish a fundamental

principle of democracy. Such is the nature of the way our brains process information. For instance, it also seems ridiculous to many of us that it took the same amount of time to pass a federal law that prohibited states from excluding citizens from voting based on their race, or that it took 133 years to guarantee white women the right to vote. It is only because we take these rights as common sense today that we can be critical of past generations for not acting sooner, but, conversely, it is because the actions were taken that we now see those rights as nonnegotiable. It is difficult to predict what standards future generations will have that will cause them to judge us harshly (the right for gay couples to marry might be an example). We are still, for instance, not settled on the one person, one vote standard in practice. While few would argue that anyone should be in a district with a few thousand people while someone else in the same state should be in a district with a few million, the mechanism we use to count citizens—the census—is imperfect, and questions remain about who in fact is counted.

Everybody Counts

The Constitution requires a census every ten years, and because the US House of Representatives has members from states in proportion (roughly) to the size of their population, a process of reallocation of House seats and subsequent redrawing of district boundaries follows. Put another way, it would be impossible to appropriately apply the Court's standards from *Reynolds v. Simms* without a clear picture of how many people live in each state and where (within the state) they live.

After the 2000 census, Utah lost a House seat as a result of a decline in population over the previous decade. Believing that the loss was due to the Census Bureau's process of "imputation" in some states, which involves estimating population by way of statistical procedures when questions remain after all attempts to contact citizens have been exhausted,[18] officials in Utah sued[19] to have the imputed numbers removed from the allocation. The Court rejected Utah's arguments, effectively affirming the process of imputation.

Imputation matters in this context because citizens who have less power are more likely to be difficult to count in the census than those who have access to power. These hard-to-count groups include renters (as opposed to homeowners), racial and ethnic minorities,[20] and homeless persons. If

we can assume similarities in at least some characteristics based on geography (a proposition that I will question below), then an undercounting of citizens in this category could result in less formal representation for them in government. If we consider the cyclical effects of reduced representation for Americans who are already struggling, we understand how these seemingly obscure questions come to life.

Symbolic Representation and Racial Minority Voting

Compared to many other nations, the United States is characterized by one of the largest gaps in voter turnout between rich and poor citizens.[21] The reasons for this are not straightforward, but at least some of it is likely attributable to race. In this section, we explore the importance of electing members of racial minority groups to public office and the related issue of voter turnout by and suppression of minorities.

After the Civil War, a number of African Americans achieved elected office, particularly in areas where the majority of citizens were nonwhite. After Reconstruction, however, the efforts to disenfranchise black Americans by way of literacy tests, white primaries, grandfather clauses, and poll taxes in the South made it difficult for blacks to run for office. As northern urban centers attracted black citizens during the Great Migration (1910–1930), African Americans began to concentrate in cities, which eventually led to electoral victories. In 1965 Congress passed and the president signed the Voting Rights Act, which abolished Jim Crow–era voter suppression and mandated federal oversight of elections in states with a history of such activity. With the passage of the Voting Rights Act, African American members of the United States Congress from Atlanta, Houston, Memphis, and New Orleans joined representatives from urban areas in the North such as New York, Chicago, Detroit, Philadelphia, and St. Louis (as well as Los Angeles). The overwhelming majority of black elected officials today are still selected from so-called majority-minority districts.

To understand the importance and history of majority-minority districts to representing the interests of black and Latino voters, it is helpful to broaden our definitions of "majority" and "minority." In the Madisonian sense, we can limit our understanding to the mathematical conceptualizations with which we are already familiar. A majority is 50 percent plus one. Anything less than 50 percent is a minority. But political scientists use these terms to refer to power as well as numbers. Perhaps the

most vivid example is the system of apartheid in South Africa, which legally established whites as the dominant social, economic, and political group, even though they comprised only 10 percent of the population. In that situation, it does not make sense to talk about "the minority white" government in South Africa because whites comprise a power majority. Similarly, women are considered a "minority" in the United States because they have been disproportionately denied access to the levers of power (though they constitute a majority of the total population).[22]

Majority-minority districts are those in which a numerical majority of voting-age citizens are nonwhite. Some of these districts do not have a clear numerical majority in terms of racial or ethnic groups (e.g., the plurality may be African American and the percentage of Hispanics combine to form more than 50 percent of the population), but the designation is meaningful because the majority of the citizens in the area are not a part of the racial group that disproportionately has access to power in the nation.

The establishment of majority-minority districts is linked both to the notion of symbolic representation discussed earlier in this chapter and to the historic reality that white voters generally do not vote for candidates of color.[23] Accordingly, the idea is that in order to make sure that people of color are represented in the national legislature, states that have a significant number of blacks, Hispanics, or Asians can, because of the concentration in housing patterns (discussed in Chapter 4), draw district lines for the House of Representatives such that a majority of the voters are nonwhite, with the expectation that they will elect a nonwhite person to represent them.

The Supreme Court has upheld majority-minority districts, though their utility is subject to criticism from several perspectives. For example, a number of states redrew congressional district lines with attention to this issue after the 1990 census (see Figure 1.1). Five white voters in North Carolina argued that the oddly shaped boundary of the Twelfth District (stretching some 160 miles, much of which was down an interstate highway) violated their rights because it took race into account at the expense of creating a cohesive geographical district.[24] The Supreme Court held that racially gerrymandered districts should be judged by the legal standard of "strict scrutiny" to determine whether a citizen's rights are violated on the basis of race. For a law to satisfy this standard, it must be deemed to have been made to further a compelling government interest and be narrowly

FIGURE 1.1. Challenged Congressional Districts in the 1990s
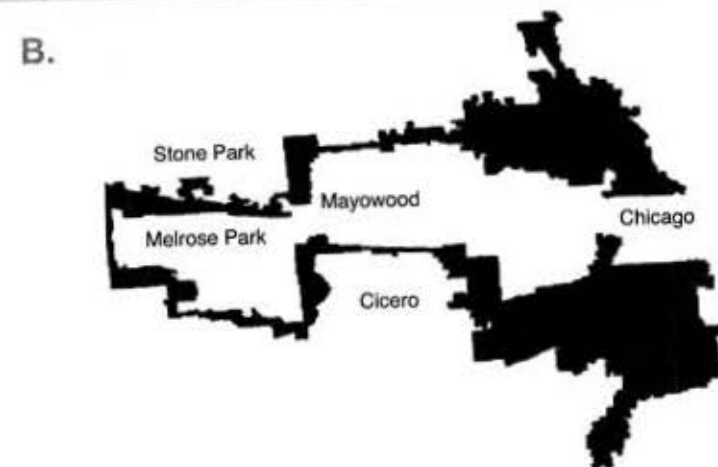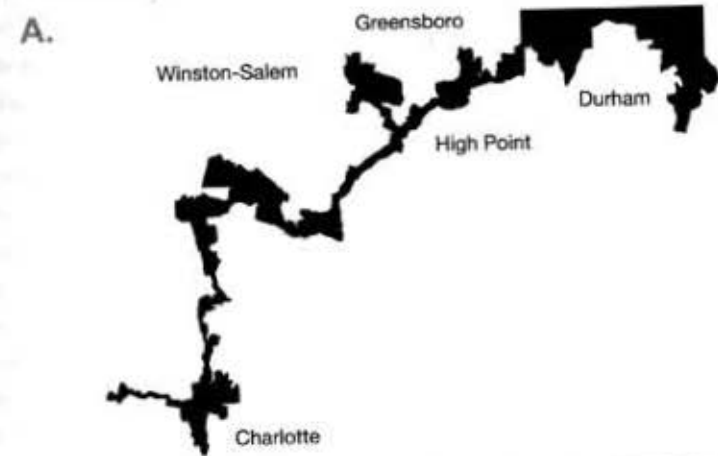
A. "I-85" District: The 12th Congressional District in North Carolina, post–1990 census. This district was designed to create a majority-minority district for African Americans. These lines were overturned in *Shaw v. Reno* (1993).

B. "Ear Muff" District: 4th Congressional District in Illinois, post–1990 census. This district was designed to create a majority-Hispanic district without diluting African American voting in nearby districts. These lines were upheld upon challenge because they were deemed to be "narrowly tailored" to addressing a compelling state interest (of not violating the Civil Rights Act of 1965).

Source: Peter S. Wattson, "How to Draw Redistricting Plans that Will Stand Up in Court," State of Minnesota Senate, 2000. http://www.senate.leg.state.mn.us/departments/scr /REDIST/Draw/Draw992web.htm. Reprinted by permission from Election Data Services, Inc.

tailored to achieve that interest. In other words, while it is permissible to draw majority-minority districts, a state must be attempting to avoid violation of the Voting Rights Act of 1965, and the district lines should be drawn in a way that takes other factors besides race into consideration so that white voters' interests are also protected. Justice Sandra Day O'Connor wrote the opinion of the Court in this case, which found that the district violated the Fourteenth Amendment rights of the white voters who brought suit. O'Connor affirms the importance of states taking race into consideration as they draw district lines, but argues that the boundary in this particular case, while created with intentions to guarantee the rights of the minority (African Americans) in North Carolina, ultimately violated the rights of the majority (whites). Further, she argues in the opinion that African Americans might also be offended by the district as drawn because it makes assumptions about them based on their race that would be considered to be impermissible in other contexts:

> A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group—regardless of their age, education, economic status, or the community in which the live—think alike, share the same political interests, and will prefer the same candidates at the polls. We have rejected such perceptions elsewhere as impermissible racial stereotypes.[25]

Yet exit polls show that African Americans, as well as Latinos from certain backgrounds, while not monolithic entities, do tend to vote similarly[26] and view their interests as linked (if not across racial and ethnic boundaries, at least within them).[27]

Voting by African Americans and Latinos, however, cannot be taken for granted. There have been significant efforts to disenfranchise African Americans throughout American history. Voting was prohibited to slaves, and many states—particularly those in the South—took extraordinary efforts (e.g., literacy tests, poll taxes, white primaries, grandfather clauses) to keep blacks from voting during the Jim Crow era.[28] Much of that changed after passage of the Voting Rights Act of 1965 (VRA),[29] but recent elections have seen renewed concerns about racial minority

voters being inappropriately purged from voting rolls,[30] reportedly being stopped at police checkpoints on the way to the polls,[31] facing disproportionate ballot challenges,[32] and being asked to wait in unusually long lines in some urban precincts.[33] Recently Shelby County, Alabama, challenged portions of the VRA that required nine states (and portions of six others) to obtain US Department of Justice clearance prior to making any changes in their election procedures. In the summer of 2013, the US Supreme Court agreed that the provisions of the law (which was reauthorized by Congress in 2006) requiring clearance were unnecessary at this time. Writing for a 5–4 majority, Chief Justice John Roberts argued that "our country has changed" and that these states are being unfairly punished for their mistreatment of racial minority voters in the past. Justice Ruth Bader Ginsburg disagreed, noting that the Justice Department blocked over seven hundred changes between 1982 and 2006, which suggested to her that there was still reason for concern about the targeting of minority voters.[34] The decision left open the possibility of Congress writing legislation to require clearance, as long as the rationale was based on current evidence of discrimination.

The American Anomaly

In many ways, the dilemma that persists is a result of the relative uniqueness of the way we elect officials in the United States, where geography tends to matter more than political attitudes.[35] Without a comparative perspective, it is easy to lose sight of explanations for and potential solutions to inequality in America. The way that we conceptualize and operationalize representation is an important component of the way we think about government officials' responsibilities and responsiveness to our collective needs. We are constrained by the system in which we were raised, and we generally believe that it is the only way to "do" democracy. A thorough discussion of different types of democratic governance is not possible here, but we will consider a few of our idiosyncrasies that are most relevant to understanding representation of majority and minority interests.

Americans generally think about voting as a choice between two individuals for one position. Because we have a two-party system in the United States, that choice is usually between a Democrat and a Republican. We understand that primary elections or other selection mechanisms (such

as the congressional party caucus) can be used to determine what candidate represents each of those parties in the general election, but for the most part, we view elections like tennis matches—someone will win and someone will lose. That sort of electoral system, known as single member district plurality (SMDP),[36] tends to lead to two-party competition (or a system where only two parties have a reasonable chance to control a branch of government). In a pluralistic society such as the United States, each of the parties is thus left attempting to appeal to a broad range of interests in order to cobble together a coalition that will lead to electoral success. The result is that poor Americans do not have a party dedicated to representing their interests; Democrats have been successful in attracting union workers and racial minorities, while Republicans have attracted whites in rural areas. Of course, both parties must also be responsive to the wealthier members of their coalitions, and because the wealthy are more likely to be active (not to mention donate funds to electoral campaigns), it is difficult for the poor to have proportionate influence over either party and thus government.

Most democracies feature electoral systems that encourage multiple parties. Most prominent among these is proportional representation (PR) where voters choose parties, rather than individuals, to serve them in public office. As opposed to the winner-take-all (or first-past-the-post) nature of SMDP, each party that receives a minimum level of support is awarded seats in the legislature in proportion to the votes it receives. For instance, if there are one hundred seats available, and Party X receives 51 percent of the vote, Party Y receives 32 percent of the vote, and Party Z receives 17 percent of the vote, Party X would get fifty-one seats, Party Y would get thirty-two seats, and Party Z would get seventeen seats. In an SMDP system, if this electoral result occurred in each of the one hundred districts, Party X would end up with all one hundred seats. While such an outcome is unlikely, what is equally unlikely is that Party Z would ever get a seat in an SMDP system, and if it did find some natural constituency in a limited regional area, the elected member would have no power in a legislature dominated by Parties X and Y. As a result, voters who support Party Z would be best served by voting for candidates from Parties X or Y, which means that those parties would have to broaden their focus to appeal to those citizens. That scenario, of course, quite neatly describes the Democratic and Republican parties in the United States.

The result is that these two parties, who must attract broad coalitions to assemble a numerical majority, are unable or unwilling to address the needs of power minorities in the United States. As noted above, elected officials, particularly at the federal level, are disproportionately white and male, and they are better educated and wealthier than the average American.[37] While district lines can be redrawn to increase symbolic representation on the basis of race and ethnicity, there is no way to rectify the gender disparity in elected bodies within the confines of our current system. After all, housing in the United States is not segregated by gender but by socioeconomic status. As discussed further in Chapter 7, women, then, are unable to have their underrepresentation addressed through political or legal action beyond prohibition of overt discrimination. Because of these unique characteristics, we must bear in mind that our system of elections (rather than simply voter preference) contributes to the underrepresentation of minorities.

Alternatives to Our Current System

Though the SMDP system is not mandated by the US Constitution, it is difficult to imagine Americans embracing proportional representation after two centuries of selecting leaders under this system. Consequently the two-party system is probably here to stay. And, as we will see later in the book, Americans tend to oppose the notion of quotas, so a system of racial or (as France instituted in 2000)[38] gender quotas is unlikely to attract support. There are, however, other alternatives to electoral choice that could work within the existing structure. These too are dramatic departures from what Americans have come to expect, but discussing them allows us to come closer to understanding the systemic barriers to racial and economic equality in the United States.

Legal scholar Lani Guinier[39] has argued that a cumulative voting system could be more advantageous to power minorities in the United States. Cumulative voting would violate the one-person, one-vote standard established by the US Supreme Court, but it is not undemocratic because each citizen retains the same voting power as every other citizen. It works like this: rather than casting a single ballot in an election, under a cumulative voting system, each voter has a number of votes equal to the number of candidates in the race and can cluster them as he or she sees fit. For

instance, if the race for US Senate features seven candidates, each voter has seven votes for that contest. A voter who really liked the Republican candidate could cast all seven votes for him or her. If she likes the Republican candidate but sort of likes the Tea Party candidate too, she can split her votes between them in a variety of ways (six for the Republican candidate and one for the tea partier, four and three, etc.). During tabulation, the candidate with the most votes wins the seat. A voter who prefers a minor party candidate can vote for that candidate without "wasting" her vote because she can also give some of her votes to a major-party candidate. This type of system could encourage minor parties to run on platforms that focus on issues relevant to racial minorities and low-income Americans in ways that the big tent parties cannot.

Two other possibilities for changing electoral systems to encourage third-party involvement are Borda voting and instant runoff voting (IRV). Both of these systems ask voters to rank order their preference of candidates in a contest. A voter who liked the Republican candidate the most would place a number 1 next to that candidate's name. Unlike first-past-the-post voting, though, the voter would rank the other candidates in order of preference. The Borda system assigns weight to those preferences (e.g., four points for a first-place vote, three points for a second-place vote, etc.) and adds up all the points to determine a winner.[40] With IRV, after all first-place votes are tabulated, if no candidate receives a majority of votes cast, the candidate in last place is removed from the race, and the second-place votes for all those voters who chose him or her are redistributed to the other candidates in a process that continues until one candidate has a majority of support.[41]

These models encourage support for minor-party candidates because a vote for them is not "wasted." Even if they have little chance of winning, support for them is registered and the voter has a hand in choosing among the major-party candidates. With a highly polarized party climate like the one in twenty-first-century America, a gain of even a handful of seats by minor parties could force the Democrats and Republicans to notice the needs of small parties that represent minority interests. This could shift the balance of representation—perhaps significantly—away from the powerful. However, Americans are generally skeptical of this type of fundamental change. Even if such procedures were adopted, there is no guarantee that addressing these procedural matters will lead to more substantive equity or justice. Moreover, the current system of representation

should not be viewed as inherently inadequate to address the needs of those with little power. Through substantive representation by elected leaders, potentially counter-majoritarian courts, and through the work of organized interests, ordinary Americans can affect government and politics in meaningful ways.

American Pluralism

America is pluralistic in the sense that it is characterized by all sorts of diversity (economic, gender, age, racial, geographic, ideological, etc.). The pluralist model of democracy emerged as a response to the elitist model, which was put forth in the 1950s by sociologist C. Wright Mills.[42] The elitist perspective did not argue that America should be controlled by elites, but rather observed that it is. Mills noted that a small group of important people (and families) have access to a disproportionate amount of power and thus are responsible for much of the formal and informal decision making in the United States. In such a system, it is difficult for individuals who are not born into the elite class to gain entrance. Consequently members of the elite are able to maintain their power generation after generation. Pluralism,[43] on the other hand, while not denying the existence of an elite class in the United States (it would be hard to argue that such a class does not exist), paints a more optimistic picture of American democracy by noting that individuals are in fact able to influence government through interest groups. These groups put pressure on the elites and consequently affect public policymaking in ways not available to individuals. From this perspective, the power minority—who are the numerical majority (or, as the Occupy Wall Street folks put it, the 99 percent)—is represented through the collective strength of voices, ballots, and pooled economic resources. In some cases, this approach has taken the form of social movements (such as the African American civil rights movement, the women's movement, the Chicano civil rights movement, the Native American civil rights movement, and the immigrant rights movement), while in other instances it has resulted in advocacy groups such as those we will encounter in the following chapters.

This brings us full circle to where we began this chapter. Recall that Madison warned of the potential "violence of faction" in *Federalist 10*, a concern that he certainly would have applied to the prevalence of organized interest groups in contemporary politics. The paradox, then, is how

the pluralist model of democracy—which allows less powerful individuals to have their needs addressed through interest groups—can operate in a way that does not realize Madison's fears. Complicating the issue, powerful elements of American society such as wealthy individuals and corporations also (appropriately so) have the ability to form interest groups to pressure leaders to make decisions that will benefit them.[44] This marketplace of competition results in similarly skewed access because wealthier individuals and groups gain disproportionate access and exert disproportionate influence in a political system where money (by way of organized lobbying and campaign contributions) matters. As we will see in the following chapter, this reality has resulted in a gap between those who have and those who do not have or "have too little."[45] This gap has existed for generations but has grown very rapidly over the past couple of decades.

Summary

James Madison was among the elite in his day, and his concern to protect minority interests stemmed, at least in part, from a desire to protect the powerful few from the passions and preferences of the masses. But America has made great strides in opening the political system to more and more citizens in the past two hundred years, and the Framers' ideas and words have often grounded those struggles. Yet as Patricia Ireland, former president of the National Organization for Women astutely notes, "progress is not equality."[46] It would be difficult for a reasonable person to argue that America is not a more equal place than it was even a generation ago; it would be just as difficult for a reasonable person to argue that America's promise of equality has been fulfilled. Capitalism assumes a certain amount of inequality with respect to wealth, but democracy promises each citizen some degree of control over his or her life. As we will see in the next chapter, it will be uncomfortable to hold onto the myth that Americans start off more or less on equal footing and that those who play by the rules and work hardest succeed. Further, it is impossible to deny that poverty in America is disproportionately African American and Hispanic. We need to examine the root of that reality and ask why, nearly fifty years after the passage of landmark civil rights legislation and nearly 150 years after the end of the Civil War, such a racial gap continues to exist. We also need to examine the ways that gender is related to both racial and economic inequality. Activists and public officials from across

the ideological spectrum and from both parties have recognized systemic inadequacies that give tremendous advantages to some Americans while deeply disadvantaging others. This book offers insight into the nature of those problems and highlights just a few of the individuals who have worked hard to solve them.

Ultimately, we need to address the paradox of compromise as a guiding principle of American democracy. We generally celebrate the willingness of officials to work together to get things done, but incremental changes have not led to meaningful improvements in the lives of the poorest Americans. We must consider the importance of holding firm to values such as justice and equality, as well. As we move through this volume, we must repeatedly ask when it is appropriate to be unyielding in our desire to move toward increased social and economic justice and when it is important to work with those who seek to solidify or otherwise preserve the current structures that have led to and perpetuate injustice.