

I. INTRODUCTION

Many hold that “[t]o be a democrat is to be a majoritarian.”¹ Such claims have been a dominant theme in democratic theory since Aristotle; James Madison, for example, took majority rule to be “the vital principle of republican government,” requiring that “the people govern themselves, and [. . .] of course, the majority govern,” and hence “the majority rule.”² For the majority to rule in this sense is, very roughly, for the majority of voters to control how they are governed.

Much ink has been spilled on whether the majority should rule. But I want to raise a different, under-theorized issue. Modern democracies divide voters into districts. So, if the majority should rule, which majority should rule? Should it be *the popular majority*, or *an electoral majority*? Consider the U.S. presidential elections of 2000 and 2016. Bush and Trump lost the popular vote but won electoral majorities. This affected the perceived legitimacy of both presidents. In public polling, many now object that in the Electoral College, “the winner of the popular vote doesn’t always win the election.”³

My view is that if the majority should rule, the popular majority should rule. This view is not novel and may seem obvious. But it is rarely

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1. Albert Weale, “Three Types of Majority Rule,” *The Political Quarterly* 90, S1 (2019): 64.

2. Madison as quoted by Robert A. Dahl, *How Democratic is the American Constitution?* (New Haven: Yale University Press, 2001), 36–7. For further historical references, see Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 2006), 34–5.

3. John M. Carey et al., “The Effect of Electoral Inversions on Democratic Legitimacy: Evidence from the United States,” *British Journal of Political Science* 52, no. 4 (2021): 1–11; Jeffrey Jones, “Americans Split on Proposals for Popular Vote,” *Gallup*, May 14, 2019, <https://news.gallup.com/poll/257594/americans-split-proposals-popular-vote.aspx>.

defended, and often rejected. Moreover, since the Electoral College is far from alone in failing to guarantee that the winner of the popular vote wins the election, it has surprisingly radical practical implications. So after explaining the issue (Section II), I'll provide two arguments for the view. First, this view about which majority should rule is best supported by the arguments for why the majority should rule; as such, it provides the *most majoritarian* account of majority rule (Section III). Second, any form of rule by an electoral majority leads to verdicts that are arbitrary or perverse; this makes rule by the popular majority the *most democratic* version of majority rule (Section IV). I'll close by considering the implications of this defense of rule by the popular majority for real-world district-based democracies (Section V).

II. THE ISSUE

When voters are divided into districts, popular and electoral majorities can come apart. Mill offered an early (albeit brief) explanation of this problem

Democracy, thus constituted, does not even attain its ostensible object, that of giving the powers of government in all cases to the *numerical majority*. It does something very different; it gives them to a *majority of the majority*, who may be, and often are, but a minority of the whole.⁴

Paradoxically, a majority of majorities can be a minority of the whole.⁵ Here's a simple illustration of the point. Imagine a jurisdiction with 55 voters, divided into five equal districts (A-E). In an election with two options (Blue or Red), possible outcomes include:

4. John Stuart Mill, *Considerations on Representative Government* (London: Longman, Green, and co., 1861/1872) (emphasis added), 54. The same point is independently made by, e.g., Ruth C. Silva, "Relation of Representation and the Party System to the Number of Seats Apportioned to a Legislative District," *Western Political Quarterly* 17, no. 4 (1964): 743; Enid Lakeman, *How Democracies Vote: A Study of Majority and Proportional Electoral Systems* (London: Faber & Faber, 1970), 73-5.

5. See Hannu Nurmi, "Voting Paradoxes and Referenda," *Social Choice and Welfare* 15, no. 3 (1998): 333-50. (1998) and Donald G. Saari, *Decisions and Elections: Explaining the Unexpected* (Cambridge: Cambridge University Press, 2001), chap. 4 on connections to paradoxes, including Simpson's paradox.

Table 1

	District A	District B	District C	District D	District E
Blue	11	10	6	5	5
Red	0	1	5	6	6

Table 2

	District A	District B	District C	District D	District E
Blue	11	11	5	5	5
Red	0	0	6	6	6

Blue is supported by the popular majority in Tables 1 and 2. In Table 1, Blue wins the most votes in the most districts (A–C); in Table 2, Red wins the most votes in the most districts (C–E). To paraphrase Mill, if Red wins the election in Table 2, the powers of government are given to a majority of majorities, who are but a minority of the whole. This is because whether an option wins the popular majority depends only on the number of votes it receives, which is the same in Tables 1 and 2, whereas whether it wins an electoral majority depends on the number of votes it receives *and the efficiency of their distribution across districts*,⁶ which is different in Tables 1 and 2. In a largescale election, Red could receive an electoral majority with just over 25 percent of the overall vote.⁷

This problem has attracted some theoretical attention. Formal work on it dates back to May,⁸ but it garnered more attention after being introduced to social choice theory as “the referendum paradox,”⁹ and to

6. Hence the prominent discussion of “efficiency gaps.” See, e.g., Nicholas O. Stephanopoulos and Eric M. McGhee, “The Measure of a Metric: The Debate over Quantifying Partisan Gerrymandering,” *Stanford Law Review* 70, no. 5 (2018): 1503–68.

7. Many have noted this: see, e.g., John R. Low-Beer, “The Constitutional Imperative of Proportional Representation,” *The Yale Law Journal* 94, no. 1 (1984): 166; Lakeman, *How Democracies Vote*, 39–42. Cf. D.E. Butler, “Appendix III: The Relation of Seats to Votes,” in *The British General Election of 1945*, eds. R.B. McCallum and Alison Readman (Oxford: Oxford University Press, 1947), 291, who accepted that the “English electoral system is unjust and chancy,” as “it allows a party with a minority of votes in the country as a whole to have an absolute Parliamentary majority,” but denied that “it is possible for a party with 40 percent of the total votes to triumph over a party with 50 percent.”

8. Kenneth May, “Probabilities of Certain Election Results,” *The American Mathematical Monthly* 55, no. 4 (1948): 203–9.

9. Nurmi, “Voting Paradoxes.”

broader political science as “election inversions.” The latter are defined as elections where “the candidate (or party) that wins the most votes from an electorate fails to win the most electoral votes (or parliamentary seats) and therefore loses the election.”¹⁰

As this literature demonstrates, election inversions (I’ll stick to that moniker) are not a merely theoretical risk. They are a recurring feature of a wide variety of electoral systems. And while election inversions have had little uptake in political philosophy and normative political theory,¹¹ they raise a critical but neglected issue in democratic theory: if the majority should rule, which majority should rule? My answer is:

POPULAR MAJORITARIANISM If the majority should rule, the option that won the most votes should win, as the popular majority must control how they are governed.

I will defend this view against its most salient rival:

ELECTORAL MAJORITARIANISM If the majority should rule, the option that won the most votes may lose, as an electoral majority may control how they are governed.

We can accept either conditional claim even if we reject their antecedents. This framing lets us isolate the present issue from orthogonal concerns, including from debates about whether or when the majority should rule. Some say democracy requires constraints on majority rule—such as

10. Nicholas Miller, “Electoral Inversions by the U.S. Electoral College,” in *Electoral Systems: Paradoxes, Assumptions, and Procedures*, eds. Dan S. Felsenthal and Moshe Machover (New York: Springer, 2012), 93.

11. To the best of my knowledge, no work in political philosophy discusses “election inversions” or “the referendum paradox.” Neither is mentioned in the Stanford Encyclopedia of Philosophy entries “Voting Methods,” “Social Choice Theory,” or “Democracy.” Eric Pacuit, “Voting Methods,” in *The Stanford Encyclopedia of Philosophy*, Fall 2019 ed., ed. Edward N. Zalta <https://plato.stanford.edu/archives/fall2019/entries/voting-methods/>; Christian List, “Social Choice Theory,” in *The Stanford Encyclopedia of Philosophy*, Spring 2022 ed., ed. Edward N. Zalta, <https://plato.stanford.edu/archives/spr2022/entries/social-choice/>; Thomas Christiano and Sameer Bajaj, “Democracy,” in *The Stanford Encyclopedia of Philosophy*, Spring 2022 ed., ed. Zalta, <https://plato.stanford.edu/archives/spr2022/entries/democracy/>.

“special safeguards against majority tyranny,”¹² or counter-majoritarian institutions like federalism. Some say we should reject majority rule altogether.¹³ This is all consistent with POPULAR OR ELECTORAL MAJORITARIANISM.

Why focus on this issue? For two reasons. One, its potential practical implications are vast. If POPULAR MAJORITARIANISM is true, district-based democracies must be reformed in radical ways if they are to satisfy the principle of majority rule (Section V). Two, this issue is under-theorized. Discussions of majority rule rarely mention it.¹⁴ Even when a stance is taken, too little is said about either POPULAR MAJORITARIANISM or its rival(s).

Consider POPULAR MAJORITARIANISM. Many accept it.¹⁵ Here’s Still: when a “minority of the voters could win control of the legislature if they were distributed in a way giving them majorities in districts electing a majority of the legislators, [. . .] Majority Rule [is] not satisfied.”¹⁶ And here’s James Wilson, the “pre-eminent popular sovereignty theorist” among the Founding Fathers: “The majority of people *wherever found* ought in all questions to govern the minority.”¹⁷ But while many accept it, no one offers positive arguments for the view. My goal in Section III is to fill that lacuna.

12. Elaine Mates Spitz, *Majority Rule* (Chatham: Chatham House, 1984), 181. Cf. Dahl, *Preface*, 36.

13. For a recent defense of federalism and a non-majoritarian view of democracy, see Arash Abizadeh, “Counter-Majoritarian Democracy: Persistent Minorities, Federalism, and the Power of Numbers,” *American Political Science Review* 115, no. 3 (2021): 742–56.

14. For example, the issue of whether the popular or electoral majority should rule is not mentioned by Novak’s “survey of existing studies of majority rule” and “underexplored fields of research.” Stéphanie Novak, “Majority Rule,” *Philosophy Compass* 9, no. 10 (2014): 681. Sean Ingham, *Rule by Multiple Majorities: A New Theory of Popular Control* (Cambridge: Cambridge University Press, 2019), 20, fn. 2, notes related ambiguities about what constitutes “the majority,” only in passing.

15. For examples of others who assume this view, see below, fn. 34 and surrounding text.

16. Jonathan W. Still, “Political Equality and Election Systems,” *Ethics*, 91, no. 3 (1981): 389.

17. Akhil Reed Amar, “The Consent of the Governed: Constitutional Amendment Outside Article V,” *Columbia Law Review* 94, no. 2 (1994): 474, 506 (citing Wilson). Amar glosses Wilson’s position as “a majority within a polity should rule, regardless of geographic distribution,” and provides evidence that other Founding Fathers supported this view. See also Akhil Reed Amar, “The Central Meaning of a Republican Government: Popular Sovereignty, Majority Rule, and the Denominator Problem,” *University of Colorado Law Review* 65, no. 4 (1994): 65; Dahl, *How Democratic?* 37, 46.

What about ELECTORAL MAJORITARIANISM? Many seem to accept some version of this view.¹⁸ But rule by an electoral majority arguably generates *arbitrary* or *perverse* verdicts about who should rule. And crucially, this argument becomes hard to resist once we distinguish the versions of rule by electoral majorities. Since few say which version they endorse, this challenge has not been adequately answered. Or at least, so I argue in Section IV.

Before proceeding further, four points of clarification are needed to explain key terms and ideas. First, *voters*. I make no assumptions about who may vote—for all I say, it could be all adult citizens of the polity or everyone affected by its policies. I do assume that each voter only casts one vote (i.e., *one vote, one weight*), so I will move between claims about Blue winning the most votes and Blue being supported by the most voters. This assumption is orthodox and simplifies the exposition, though it is not necessary.¹⁹

Second, *options*. I construe these expansively. Depending on the type of election, “Red” and “Blue” can be the names of policies in plebiscites and referenda, candidates in executive elections, or parties or coalitions in legislative elections. Each provides a form of governance. This is important to stress since the issue of whether the popular majority should rule is sometimes conflated with the issue of whether we should have a direct democracy.²⁰ But indirect democracies can involve rule by popular majorities, and direct democracies can involve rule by electoral majorities. For

18. See Robert E. Goodin, and Kai Spiekermann, *An Epistemic Theory of Democracy* (Oxford: Oxford University Press, 2018), 255; Charles Beitz, “How Is Partisan Gerrymandering Unfair?,” *Philosophy & Public Affairs* 46, no. 3 (2019); Niko Kolodny, “What, If Anything, Is Wrong with Gerrymandering?,” *San Diego Law Review* 56, no. 4 (2019): 1020–7; Larry Alexander and Saikrishna B. Prakash, “Tempest in an Empty Teapot: Why the Constitution Does Not Regulate Gerrymandering,” *William and Mary Law Review* 50, no. 1 (2008): 33–9; Benjamin Eidelson, “The Majoritarian Filibuster,” *Yale Law Journal* 122, no. 4 (2013): 996; Weale, “Three Types,” 63–4; Edward B. Foley, *Presidential Elections and Majority Rule: The Rise, Demise, and Potential Restoration of the Jeffersonian Electoral College* (New York: Oxford University Press, 2019), 8. I discuss them all below.

19. As stated, POPULAR MAJORITARIANISM is compatible with Brighouse and Fleurbaey’s “proportionality principle [that is] embodied in a weighted majority rule.” Harry Brighouse and Marc Fleurbaey. “Democracy and Proportionality,” *Journal of Political Philosophy* 18, no. 2 (2008) 142. Many of the arguments below (e.g., the utilitarian argument in Section III) obviously still support the view if we adopt a “proportionality principle.”

20. For example, Goodin and Spiekermann, *Epistemic Theory*, chap. 16, raise the issue as part of their chapter titled “Direct versus Representative Democracy.” See further fn. 63 below and surrounding text.

example, in five of Australia's 45 federal referenda, "Yes" was supported by a popular majority, but lost because it was not supported by a majority of votes in a majority of states. While I use "options" expansively, I assume that each election only has two options. Many issues arise for majority rule in elections with at least three options—most importantly, what does it require when the majority's preferences are intransitive?²¹ Such questions warrant considerable attention, but they've also hogged the spotlight; some even suggest that difficult questions for majority rule only emerge once there are more than two electoral options.²² Election inversions, which can arise without a third electoral option,²³ are thereby ignored. I want to let the issue of whether popular or electoral majorities should rule take center stage. So I treat all elections as if they are binary and leave open how the present discussion extends to elections with more than two options.

Third, *majority rule*. This can refer to a principle in democratic theory and a decision rule in social choice theory. My central concern lies with the former.²⁴ I said earlier that this principle means roughly that the majority of voters control how they are governed. There are many questions about how to make this principle more precise. For example, does it require a simple or relative majority?²⁵ The distinction matters for some of the real-world examples I discuss—neither Trump nor Clinton won a simple popular majority in 2016. But it does not matter when there are only two options, so I take no stand on it. A deeper question is: what is sufficient for voters to control how they are governed? In elections, this control can be exercised directly (by voting for policies) or indirectly (by voting for

21. See List, "Social Choice"; William H. Riker, *Liberalism Against Populism: A Confrontation Between the Theory of Democracy and the Theory of Social Choice* (San Francisco: W.H. Freeman, 1982); Ingham, *Multiple Majorities* divide on whether this problem is solvable.

22. See, e.g., Weale, "Three Types," 75.

23. For example, in 1993 the United Democratic Party (UDP) and People's United Party (PUP) collectively received 99.9 percent of the vote. The UDP won 16 of 29 districts, while the PUP won 51.2 percent of the vote. If the UDP and PUP had been the only parties on the ballot there would still have been an election inversion.

24. Cf. Hélène Landemore, *Open Democracy: Reinventing Popular Rule for the Twenty-First Century* (Princeton: Princeton University Press, 2020), 140, who defends a majoritarian principle rather than a specific decision rule.

25. That is, more than half of the votes, or more votes than any other option. See e.g., Novak (2014: 681).

representatives).²⁶ But governance is temporally extended, while an election is just one moment in time.²⁷ Before the election, the majority may not control the agenda: the majority may get to choose between Red and Blue, without choosing whether these are the electoral options (rather than, say, Purple and Green). After the election, the majority may not control how policy is adopted or administered: the majority may choose a policy in a referendum, without controlling how it is later implemented by officials. For the majority to control whether it is Red or Blue that wins an election, then, is insufficient for the majority to control how they are governed. But I have nothing to say here about what majority rule requires diachronically. The reason why is that the same issue arises regardless of whether we understand majority rule as rule by popular or electoral majorities. Either group of voters may lack control over the agenda, or over how officials use their discretion to adopt or administer policy.

How, then, should we understand these groups of voters? Take the full set of voters who cast ballots for Red or Blue. The popular majority is the subset of these voters who are the majority and voted for the same option. An electoral majority is—at least, until Section IV.B—best understood as any subset of voters who can generate an election inversion.

What about majority rule as a decision rule in social choice theory? This is a function, a mapping from inputs (individual votes) to outputs (collective decisions). You could take the issue at hand to bear on our choice of decision rules in the following way. Suppose we divide voters into districts, as in Tables 1 and 2. We need a function that tells us which option wins in each district. We can use simple majority rule, so Blue wins A and B, and Red wins C–E. But in any tiered system we also need a function from the results in districts to the collective outcome of whether Red or Blue wins overall. We could use simple majority rule again: Blue wins 3 to 2 in Table 1, while Red wins 3 to 2 in Table 2. But there are alternatives. One is to use a form of weighted majority rule, where we weight the results in districts by margins of victory. On one such function, in Table 2 Districts A and B receive weights of 1.7, while Districts C, D, and E receive

26. See, e.g., Ingham, “Three Types,” 3–5; Danielle Allen, *Justice By Means of Democracy* (Chicago: University of Chicago Press, 2023), 68.

27. Thanks to an anonymous reviewer for pushing me on this. For discussion, see James Lindley Wilson, *Democratic Equality* (Princeton: Princeton University Press, 2019), chs. 3–6.

weights of 0.55.²⁸ This weighted majority decision rule yields significantly different verdicts from simple majority rule: Blue now wins the election in Table 2 3.4 to 1.65. POPULAR MAJORITY can be understood to mean that majority rule (the principle) requires something like the latter function, to guarantee that the option that won a popular majority wins overall. ELECTORAL MAJORITY can be understood to mean that majority rule (the principle) permits something like the former function, so that an electoral majority can win overall. Both views must be understood as concerning what mapping(s) are required or permitted to satisfy a putative democratic principle; nothing about the definition of “majority rule” as a function settles which view is correct.²⁹

Fourth, *districts*. I construe this expansively to encompass a variety of electoral divisions in “tiered” electoral systems, where the result in each division bears on which option wins the election overall.³⁰ Districts like A–E are typically geographic, but this is not a necessary feature of a district-based democracy.³¹ Democracies tend to contain multiple-tiered voting systems; voters are divided into districts at federal, state, and local levels.³² These divisions may be used in referenda (as in Australia) and executive elections (as in the U.S. Electoral College), but are most closely associated with legislative elections. Legislative districts vary in “magnitude”: the U.S. House of Representatives uses single-member districts (SMD); Denmark’s Folketing uses multi-member districts (MMD). Electoral systems also use a variety of voting rules to determine which options win in each district: most U.S. House districts use first-past-the-post (FPTP); Denmark’s Folketing uses a party-list system, a form of proportional representation (PR).

28. I discuss this approach more in Daniel Wodak, “The Democratic Imperative to Make Margins Matter,” *Maryland Law Review* 86, no. 2 (2023): 365–442.(2023), and more below. See fn. 120 and surrounding text.

29. I thank anonymous reviewers for their helpful comments on this issue.

30. My use of “tier” is similar to others’; see Felsenthal and Machover on “two-tier systems.” Dan S. Felsenthal and Moshé Machover, *The Measurement of Voting Power: Theory and Practice, Problems and Paradoxes* (Cheltenham: Edward Elgar, 1998), 65. I emphasize that “tiers” are used in many types of elections, and there can be more than two (see Table 3).

31. See Andrew Rehfeld, *The Concept of Constituency: Political Representation, Democratic Legitimacy, and Institutional Design* (Cambridge: Cambridge University Press, 2005), on the democratic case for randomly allocating citizens to “virtual constituencies.”

32. As such, the issue of which majority should rule is distinct from the issue of subsidiarity.

This is a plethora of distinctions, but what matters here is simple. These systems just described all counts as district-based democracies, so they all generate election inversions. This fact has been overlooked in the long-standing debate over so-called “majoritarian” systems (which use SMD and FPTP) and PR. Election inversions are “commonly regarded as an important defect in ‘majoritarian’ systems.”³³ They are said to show that “this system can actually violate the principle of majority rule that it values so much,” and that PR “does a much better job of assuring [. . .] majority rule.”³⁴ This assumes POPULAR MAJORITARIANISM. But it also muddies the waters. The explanation of why election inversions arise once we divide votes into districts does not depend on complications like SMD or FPTP. They arise in Australia’s House of Representatives, which uses preferential voting, not FPTP.³⁵ They often arise in the U.S. Senate, which uses MMD, not SMD.³⁶ They arise in Denmark, which uses MMD and PR.³⁷ Felsenthal and Miller even argue that election inversions are an “unavoidable” feature of current versions of PR.³⁸ So the issue of which majority should rule has no clear connection to this debate over whether to prefer PR.

This last point has a broader upshot. Kolodny treats the claim that the popular rather than electoral majority should rule as a putative

33. Dan S. Felsenthal and Nicholas R. Miller, “What to Do about Election Inversions under Proportional Representation?,” *Representation* 51, no. 2 (2015): 173.

34. Douglas J. Amy, *Real Choices/New Voices: The Case for Proportional Representation Elections in the United States*, 2nd ed., (New York: Columbia University Press, 2002). Here Amy follows Powell, who also regards this special case of “manufactured majorities” as “a disaster from the majoritarian point of view.” G. Bingham Powell, Jr., *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (New Haven: Yale University Press, 2000), 144. Lijphart similarly says such cases are a major “democratic defect” and a failure to put majoritarian principles into practice. Arend Lijphart, “First-Past-the-Post, PR, Michael Pinto-Duschinsky, and the Empirical Evidence,” *Representation* 36, no. 2 (1999): 134; Arend Lijphart, *Thinking About Democracy: Power Sharing and Majority Rule in Theory and Practice* (London: Routledge 2007), 118.

35. In 1998, the Liberal/National Coalition won 80 of its 148 districts, but Labor won 50.98 percent of the vote.

36. In eight of the 15 (53.3 percent) Congresses following 1990, Republicans controlled the Senate despite losing the popular vote, understood as the three-cycle aggregate national vote. See Ed Kilgore, “Republican Senators Haven’t Represented a Majority of Voters Since 1996,” *New York Magazine*, February 25, 2021, <https://nymag.com/intelligencer/2021/02/gop-senators-havent-represented-a-majority-since-1996.html>.

37. Peter Kurrild-Klitgaard, “Election Inversions, Coalitions and Proportional Representation: Examples of Voting Paradoxes in Danish Government Formations,” *Scandinavian Political Studies* 36, no. 2 (2013): 121–136.

38. Felsenthal and Miller, “Election Inversions,” 173.

requirement of PR, rather than of majority rule.³⁹ The U.S. Supreme Court took a similar stance in a key case on gerrymandering. The Court rejected a standard which would “invalidate districting only when it prevents a majority of the electorate from electing a majority of representatives” in part because it supposedly “rests upon [. . .] a right to proportional representation. But the Constitution contains no such principle.”⁴⁰ That is, the claim that the popular majority should rule is treated as if it could only rest on a principle of proportional representation, rather than on a principle that is more plausibly contained in the U.S. Constitution: namely, majority rule.⁴¹

III. THE MOST MAJORITARIAN VIEW

Here’s a natural starting point: to determine *which* majority should rule, we should first ask *why* the majority should rule. I’ll argue in this section that the four most prominent arguments for the principle support POPULAR MAJORITARIANISM and oppose its rival.

I emphasized above that my goal is not to defend the principle of majority rule, but to defend a conditional claim about what it requires. Given that, I do not take a stand on whether any of the arguments for majority rule considered below are sound. That’s not relevant. What matters is conditional: if the arguments for majority rule are sound, do they support rule by the popular majority or by an electoral majority? I say the former. That’s what makes POPULAR MAJORITARIANISM the most majoritarian view.

Considering each argument in turn will take time, but the core idea here is simple. The popular majority is determined by the number of votes alone; an electoral majority is also determined by the number of

39. Niko Kolodny calls the following “majority proportionality”: “that a party have a majority in the assembly when a majority of the votes cast were for its representatives.” Niko Kolodny, *The Pecking Order* (Cambridge: Harvard University Press, 2023), 362. Kolodny considers whether violations of that principle are “analog[ous]” or “similar to violations of majority rule that people find objectionable”, but never reaches a conclusion on that issue. *Ibid.* at 374–5. Kolodny’s discussion of cases where an electoral rather popular majority rule is concerned with PR.

40. *Vieth v. Jubelirer* 541 U.S. 267, 288 (2004).

41. See, e.g., Akhil Reed Amar, *America’s Unwritten Constitution: The Precedents and Principles We Live By* (New York: Basic Books, 2012), 225, for an argument that violations of “majority rule” are “violative of the deep principle underlying the republican-government clause” in Article IV.

votes and their efficient distribution across districts. The arguments for majority rule provide reasons to care about the number of votes, not their efficient distribution. That's why they support rule by the popular majority.

III.A. *The Procedural Argument*

The clearest case for present purposes is May's procedural argument:

May shows that majority rule for two options and an odd number of voters is the only rule satisfying four elementary conditions: *decisiveness*: for any two options, exactly one must be chosen; *anonymity*: the outcome does not depend on which specific people are for or against an alternative; *neutrality*: no alternative has a built-in advantage according to the procedure; *positive responsiveness*: if the group is initially indifferent between options A and B, and some persons change their minds in favor of (say) A, whereas nobody changes his or her mind in favor of B, then the decision procedure opts in favor of A.⁴²

This is a theorem. If we accept all four conditions, we must support majority rule. And if we accept them, we must accept POPULAR MAJORITARIANISM. If we divide voters into districts and allow electoral majorities to rule, we violate *anonymity* (a.k.a. *symmetry*), which says that which option wins is not determined by the distribution of votes.

Something like this point has been noticed, but misunderstood. While many endorse *anonymity*,⁴³ many others reject it as too demanding. Kolodny says anonymity requires that "two profiles of votes should deliver the same outcome if we swap the party support of any two voters," so it "rules out district systems."⁴⁴ Suppose we start with Table 1 then swap a

42. Mattias Risse, "Arguing for Majority Rule," *The Journal of Political Philosophy* 12, no. 1 (2004): 44–5.

43. See Still, "Political Equality," 382; Thomas Christiano, *The Rule of the Many: Fundamental Issues in Democratic Theory* (New York: Routledge, 2018); Eliora Van der Hout and Anthony J. McGann, "Proportional Representation Within the Limits of Liberalism Alone," *British Journal of Political Science* 39, no. 4 (2009): 735. These authors all follow Kenneth O. May, "A Set of Independent, Necessary and Sufficient Conditions for Simple Majority Decision" *Econometrica* 20, no. 4 (1952): 681, in treating anonymity as a requirement of political or liberal equality.

44. Kolodny, *Pecking Order*, 363; Kolodny, "Rule II," 325, fn. 41. See also, e.g., B. Grofman, "Fair and Equal Representation," *Ethics* 91, no. 3 (1981): 478.

Blue voter in B with a Red voter in C to get Table 2. This changes which option wins a majority of votes in a majority of districts. Using a similar example, Beitz claims it shows that “a structural feature of single-member districting” is that “a district map can violate symmetry at the level of the entire jurisdiction.”⁴⁵

Hopefully, the mistake here is clear. Switching the two voters generates an election inversion: Blue still wins the most votes overall; Red now wins the most votes in the most districts. But this only violates anonymity if the electoral majority will rule. Anonymity does not rule out district systems. It rules out ELECTORAL MAJORITYISM.

III.B. Utilitarian Arguments

Utilitarian arguments for majority rule typically assume that votes express preferences over electoral outcomes. They often also include a simplifying assumption about the intensity of preferences such as: if you vote for Red and Red rule you get a utility of 1, but if Blue rule you get a utility of 0. On this basis, majority rule is argued to maximize expected utility,⁴⁶ individual utility,⁴⁷ aggregate utility,⁴⁸ or some other value.⁴⁹

Any such argument for majority rule supports POPULAR MAJORITYISM. What matters is maximizing the *number* of voters who get the option they want. I won't belabor this. The point is familiar: utility maximization is insensitive to distribution. It is also obvious. We just saw that we can move from Table 1 to Table 2 by swapping a Blue voter in District B with a Red

45. Beitz, “Partisan Gerrymandering,” 334. Beitz's discussion, like much of the discussion of anonymity and districting, focuses on legislative elections using SMD. But the same issue arises with referenda and executive elections.

46. See Douglas W. Rae, “Decision-Rules and Individual Values in Constitutional Choice,” *The American Political Science Review* 63, no. 1 (1969): 40–56; Michael Taylor, “Proof of a Theorem on Majority Rule,” *Behavioral Science* 14, no. 3 (1969): 228–31; Annick Laruelle and Federico Valenciano, *Voting and Collective Decision-Making: Bargaining and Power* (Cambridge: Cambridge University Press, 2008), 74–8.

47. Michael Seidman, “Ambivalence and Accountability,” *Southern California Law Review* 61, no. 6 (1988): 1582.

48. E.g., Dahl's point that majority rule maximizes aggregate utility on the assumption that “each citizen in the majority will gain at least as much benefit. . . as each citizen in the minority will lose.” Robert A. Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), 142–4.

49. For related “maximization” arguments, see Risse, “Majority Rule,” 44; Dahl, *Critics*, 138; Jeremy Waldron, “Legislation, Authority and Voting,” *Georgetown Law Journal* 84, no. 6 (1996): 2185–214.

voter in District C. If it is utility maximizing for Blue to win in Table 1, why would it become utility maximizing for Red to win in Table 2?

III.C. Epistemic Arguments

Epistemic arguments typically assume that votes express judgments about electoral outcomes, which can be (in)correct:⁵⁰ e.g., a vote for Red expresses a judgment that Red should rule, which is correct if Red should rule. The core idea in epistemic arguments is that we should prefer majority rule because the majority's verdict is likely to be correct.

The most famous epistemic argument relies on Condorcet's jury theorem (CJT):

Suppose n agents choose between two options; that each has a probability of $p > 1/2$ of being right; and that their probabilities are independent of each other (that is, they make up their minds for themselves). Then, as n grows, the probability of a majority's being right approaches 1.⁵¹

Many doubt the applicability of these conditions to real-world elections. But CJT has been generalized to realistic conditions, such as when many voters' decisions are not independent.⁵² In any case, our concern is not whether this epistemic argument is any good. It is whether the argument supports POPULAR MAJORITARIANISM.

There are two ways to see why CJT must support POPULAR MAJORITARIANISM. First, the likelihood that a collective verdict is correct depends on the number of votes, not their distribution.⁵³ We can aggregate all voters into one collective decision. Suppose there is a nation of 10,000 voters, each of whom is 51 percent likely to be correct and decides independently whether Red or Blue should rule, and the popular majority votes for Blue.

50. See Bernard Grofman, Guillermo Owen, and Scott L. Feld, "Thirteen Theorems in Search of the Truth," *Theory and Decision* 15, no. 3 (1983): 261-78; Christian List and Robert E. Goodin, "Epistemic Democracy: Generalizing the Condorcet Jury Theorem," *Journal of Political Philosophy* 9, no. 3 (2001): 277-306.

51. Risse, "Majority Rule," 44.

52. See Goodin and Spiekermann, *Epistemic Theory*; Christiano and Bajaj, "Democracy."

53. At least, *ceteris paribus*. The distribution matters if it correlates with changes in voter reliability.

It is 99.97 percent likely that Blue should rule.⁵⁴ This is true even if Red voters were more efficiently distributed, such that Red wins a majority of the nation's districts. Boland provided a general proof of this point.⁵⁵

Second, ELECTORAL MAJORITARIANISM deviates from a core commitment of CJT. Suppose two juries reach independent verdicts on the same civil trial. One decides unanimously for the plaintiff. The other decides narrowly for the defendant. Who is right? Instead of aggregating *all jurors'* verdicts into one collective judgment, we can compare the reliability of *each jury's* verdict. (That is, instead of aggregating all voters into one verdict, we can compare the reliability of each district's collective verdict.) On CJT, the probability that a majority is correct depends on the absolute margin of victory.⁵⁶ *Ceteris paribus*, the landslide verdict is more likely to be right than the nail-biter. ELECTORAL MAJORITARIANISM gets this wrong. *Electoral majorities are insensitive to margins of victory*. They depend on how many districts Red won, regardless of how much Red won them by, so they equate landslides with nail-biters. This matters. Election inversions only arise due to variation in margins of victory. This is illustrated in Table 2: Red wins the most districts despite Blue winning the most votes because Red wins in nail-biters in Districts C-E while Blue wins in landslides in A and B.

These points show why epistemic arguments must support POPULAR MAJORITARIANISM. Which is, in a way, unsurprising. Suppose we grant that the verdict of both the popular *and* electoral majority in Table 1 is most likely correct: Blue should rule. Then we swap the locations of two voters, so Red wins an electoral majority in Table 2. There's no clear reason why a collective verdict that Red should rule would now be likely to be correct.

Yet proponents of epistemic arguments for majority rule have not seen that this is where their arguments lead. The only discussion of the issue I've found is *An Epistemic Theory of Democracy*, where Goodin and Spiekermann grant that "there is bound to be some epistemic loss that comes simply from bunching voters into constituencies," citing Boland. But they say this loss is very "minimal."⁵⁷

54. This calculation is provided by Christiano and Bajaj, "Democracy."

55. Philip J. Boland, "Majority Systems and the Condorcet Jury Theorem," *Journal of the Royal Statistical Society* 38, no. 3 (1989): 187.

56. Christian List, "On the Significance of the Absolute Margin," *British Journal for the Philosophy of Science*, 55, no. 3 (2004): 521-44.

57. Goodin and Spiekermann, *Epistemic Theory*, 255.

Their reasoning is as follows. In a two-tier system, we apply CJT “twice”: “First we use it to calculate the probability that the majority of constituents” reaches the correct verdict; we “then use the CJT formula for a second time to calculate the probability that a majority of [districts] “will reach the correct collective decision.” On this basis, they calculate the probability that if 1001 voters (each of whom is 0.55 likely to be correct) are divided into 11 equal districts, the popular majority is 0.999 likely to be correct, and the electoral majority is 0.995 likely to be correct, so the former is “only marginally” more reliable than the latter.⁵⁸ This gap diminishes drastically when districts have on average 40,000 voters (in the U.K. House of Commons) or at least 250,000 voters (in the U.S. Electoral College). So “we should expect the CJT to take full effect, not just in the electorate nationwide but also at the level of each state” or district; in other words, CJT says “large constituencies will reach correct decisions with near-certainty,” so each district *and* the electorate nationwide are near-certain to separately reach the correct decision.⁵⁹ On this basis, they conclude that at least when districts “are of the size we typically see in real-world mass politics,” “there is virtually no epistemic difference” between rule by popular and electoral majorities.⁶⁰

The upshot of this reasoning is that according to CJT, election inversions will be rare. Unfortunately, election inversions are quite common.⁶¹ So if CJT entails otherwise, this suggests a significant reason to doubt its applicability to “real-world mass politics.”⁶²

More importantly, their reasoning does not show why the epistemic loss, however “minimal,” is acceptable. Suppose a hospital is deciding between diagnostic tests A and B; they are near-certain to agree, but when they disagree A is near-certain to be correct. *Ceteris paribus*, the epistemic cost of B is not acceptable. By Goodin and Spiekermann’s lights, this is analogous to the relationship between rule by popular and electoral majorities. They reason that according to CJT the two are near-certain to

58. *Ibid.*

59. *Ibid.* at 332, 256.

60. *Ibid.* at 256, 331–2.

61. Again, in the U.S. Senate, election inversions have been more common than not since 1990. See fn. 36.

62. Indeed, the situation is worse than that. By Goodin and Spiekermann’s reasoning, when each district is as large as those in the United States and United Kingdom, each is near-certain to reach the correct verdict. So, districts should typically converge on the same verdict. But such electoral results are rare.

agree; but they grant Boland's point that when the two disagree, the former is near-certain to be correct. If so, epistemic arguments for majority rule should support POPULAR MAJORITARIANISM, unless we can locate some significant epistemic benefit to rule by electoral majorities.

Goodin and Spiekermann provide no evidence of such an epistemic benefit.⁶³ And there is a generalizable reason for pessimism about the prospects of finding one. Epistemic arguments for majority rule are beset by epistocratic challenges: if what matters is reaching the correct verdict, why not prefer rule by the wise few to rule by the *hoi polloi*? Responses stress the epistemic virtues of rule by the many overrule by the few. But rule by electoral majorities is just *rule by the efficiently distributed few*—Red could win the most districts with just over 25 percent of the overall vote. So epistemic arguments for majority rule, in opposing epistocracy, should not support rule by electoral majorities.

III.D. Egalitarian Arguments

This leaves us with several egalitarian arguments for majority rule. The most prominent concern *equal influence* or *equal voting power*—i.e., whether all voters are equally likely to change the electoral outcome.⁶⁴ The basic idea is that majority rule is needed for each voter to be equally likely to change which option wins the election.

There's a simple reason to think this egalitarian argument supports POPULAR MAJORITARIANISM. Consider Ben Saunders's discussion of the egalitarian argument:

63. Notably, their discussion is framed as a comparison between “delegate-style representative government and direct democracy” (Goodin and Spiekermann, *Epistemic Theory*, 256). As with Boland, “Majority Systems,” this framing conflates POPULAR MAJORITARIANISM with direct democracy, which is not an innocuous error. Goodin and Spiekermann then appeal to epistemic benefits of indirect democracy (*Epistemic Theory*, chap. 16), but these points do not support rule by electoral majorities.

64. I am setting aside others that support POPULAR MAJORITARIANISM for reasons already discussed. This includes arguments from anonymity, which is understood as an egalitarian ideal. It also includes Bruner's defense of majority rule by appealing to “the level of inequality present in the distribution of voter satisfaction after an election.” Justin P. Bruner, “Inequality and Majority Rule,” *Analysis* 80, no. 4 (2020): 618. Since “*equality and satisfaction maximization go hand in hand*,” *ibid.*, 620 (original emphasis), and the latter supports POPULAR MAJORITARIANISM, equality must too.

It is unclear [. . .] whether majority rule always does treat all persons equally. Simply giving everyone an equal vote is not enough if some votes are worth more than others. One reason this might be so is if district sizes were greatly unequal. Another is if one person's vote was more likely to be pivotal than another's, simply because of how others vote.⁶⁵

To see Saunders's point, take the 2022 US midterms. Voters in Georgia, Nevada, and Pennsylvania were more likely to decide which party controls the Senate than voters in, say, California. This is partly because California is larger (districts are greatly unequal). And it is partly because it is deep blue, whereas Georgia, Nevada, and Pennsylvania are purple (so a Californian's vote is less likely to be pivotal than a Georgian's, because of how others vote). But these are not problems with majority rule *per se*. They can only be problems for majority rule if we accept ELECTORAL MAJORITARIANISM.

Both problems disappear if we accept POPULAR MAJORITARIANISM. The likelihood that your vote is pivotal in changing *which option wins the most districts* depends on the relative competitiveness of your district. But the likelihood that your vote is pivotal in changing *which option wins the most votes* is the identical regardless of the competitiveness of your district. So, in Table 2, it is the same in Districts A and E, and in the U.S. midterms it is the same in Georgia and California. This egalitarian argument, then, supports POPULAR MAJORITARIANISM. Voters can have equal influence on which option wins a popular majority, but not on which option wins an electoral majority.

III.E. Two Objections

One important objection concerns the egalitarian argument we just considered. Some egalitarians endorse a priori measures of voting power.⁶⁶ A priori measures exclude any information about how others will vote; they

65. Ben Saunders, "Democracy, Political Equality, and Majority Rule," *Ethics* 121, no. 1 (2010): 155.

66. E.g., Kolodny, *Pecking Order*, 354–5. This is the usual terminology. See also Morriss' distinction between ability and ableness. Peter Morriss, *Power: A Philosophical Analysis*, (Manchester: Manchester University Press, 2002), 156.

assume “that each citizen votes at random.”⁶⁷ A priori, Districts A–E do not differ in competitiveness. This undermines the reasoning above. Voters in A and E have equal voting power—they are equally likely to change which option wins the most districts. So if an egalitarian argument for majority rule appeals to a priori equality of influence, it does not require rule by popular majorities. It permits rule by electoral majorities.

Here’s the concessive response. In Sections III.A–III.D, I put forward a case for why each argument for why the majority should rule supports POPULAR MAJORITARIANISM and opposes its rival. But a weaker conclusion would be sufficient. Suppose we grant that some of these arguments support POPULAR MAJORITARIANISM while others are arguably neutral between this view and ELECTORAL MAJORITARIANISM. If so, the cumulative force of these four arguments still gives us a strong majoritarian case for POPULAR MAJORITARIANISM, and no majoritarian case for its rival. That still supports the conclusion that rule by popular majorities is the most majoritarian version of the democratic principle.

Here’s the less concessive response. It is a mistake for egalitarians to appeal to a priori equality of influence. The main problem with a priori measures is familiar: they are unrealistic, as voters do not vote at random.⁶⁸ Kolodny grants that the assumption of random voting is “utterly artificial,” but offers a reason why egalitarians should make it all the same. The reason is based on Kolodny’s “compossibility principle”: “Equal opportunity for X-ing should not be understood in such a way that whether equal opportunity for X-ing obtains among individuals depends on how any of those individuals exercises the opportunity to X.”⁶⁹ You do not have less opportunity to get a job because “if I exercise my like opportunity and apply for it, I decrease your chances for it.” Likewise, you do not have less opportunity to influence electoral outcomes by voting because of how I exercise my own opportunity to do the same. But influencing outcomes by voting is different from getting a job. Imagine

67. Zach Barnett, “Why You Should Vote to Change the Outcome,” *Philosophy & Public Affairs* 48, no. 4 (2020): 430.

68. E.g., Alvin I. Goldman, “What Is Democracy (and What Is Its Raison D’Etre)?,” *Journal of the American Philosophical Association* 1, no. 2 (2015): 245. Andrew Gelman, Jonathan Katz, and Joseph Bafumi, “Standard Voting Power Indexes Do Not Work: An Empirical Analysis,” *British Journal of Political Science* 34, no. 4 (2004): 657–74 provide an extending, damning version of this objection.

69. Kolodny, *Pecking Order*, 355–6.

being an unpopular kid at a school dance. Your opportunity to moonwalk is not diminished by how others exercise their opportunity to do the same. But your opportunity to dance the rumba is diminished by how others exercise their opportunity to do the same. You can keep dancing on your own, but you have less opportunity to dance *with a partner* if prospective partners will not exercise their opportunity to dance with you. The compossibility principle may be true when we can X on our own, but it is false when we can only X with others. And influencing electoral outcomes by voting is something we can do—a power we can exercise—only with others.⁷⁰ This is only a *prima facie* case against appealing to a priori equality of influence. Much more can be said on the issue.⁷¹

The second objection concerns epistemic arguments for majority rule that do not appeal to CJT. Do these provide a reason to endorse rule by electoral rather than popular majorities? The most influential alternative to CJT—from Landemore—appeals to *cognitive diversity*.⁷² Let's grant that "majority rule is more epistemically reliable" because decisions are made by a more cognitively diverse group.⁷³ Are electoral majorities expectedly more cognitively diverse? And if so, does that make rule by electoral majorities more epistemically reliable than rule by popular majorities?

To illustrate the issues, suppose "Red" and "Blue" are presidential candidates and voting is understood as "placing predictive bets on which candidate will maximize the national change in annual real discretionary

70. See especially Arash Abizadeh, "The Grammar of Social Power: Power-to, Power-with, Power-despite and Power-over," *Political Studies* 71, no. 1 (2023): 9–13.

71. Kolodny's is not the only egalitarian argument for using an a priori measure. The other is that "it makes sense when the objective is *not to assess a particular voting situation but the voting rule itself*, keeping any further information behind a 'veil of ignorance.'" Laruelle and Valenciano, *Collective Decision-Making*, 61, (original emphasis). See also Felsenthal and Machover, *Measurement of Voting Power*, 37–8. For critical discussion see, e.g., Arash Abizadeh, "A Recursive Measure of Voting Power with Partial Decisiveness or Efficacy," *The Journal of Politics* 84, no. 3 (2022): 1654. I raise other objections to egalitarian appeals to a priori equality of influence in Daniel Wodak, "One Person, One Vote," (unpublished manuscript).

72. Hélène Landemore, *Democratic Reason* (Princeton: Princeton University Press, 2012); Hélène Landemore, "Yes, We Can (Make it Up on Volume): Answers to Critics," *Critical Review* 26, no. 1–2 (2014): 184–237.

73. Landemore, *Democratic Reason*, 146. For expository convenience, I am simplifying Landemore's nuanced discussion of the epistemic merits of majority rule see e.g., *ibid.*, 166, and setting aside many critical questions about Landemore's appeal to cognitive diversity, see e.g. Goodin and Spiekermann, *Epistemic Theory*, chap. 7, esp. fn. 12.

income” (RDI), as an accepted proxy for competence.⁷⁴ There are distinct factions of voters, each using a different set of mental tools (e.g., heuristics or models) to make predictions. The electoral outcome is like Table 2; Blue wins the most votes, Red wins the most districts.

Should we expect the electoral majority to be more diverse than the popular majority? Not by default. The latter is larger, and for that reason alone it is likely to be more diverse. (That is Landemore’s general link between rule by the many and cognitive diversity.) Given this, we could infer that the electoral majority is more cognitively diverse—i.e., that because Red won the most districts, it was likely to be supported by a more cognitively diverse voter group—only if there is some specific relationship between districting and cognitive diversity. Whatever that is, why should we expect the wide variety of real-world districting schemas discussed in Section II to instantiate this relationship?⁷⁵ Why would we expect Kansans and Kentuckians, or Keralites and Karnatakans, to each use distinctive sets of heuristics for predicting changes in RDI?

But suppose the electoral majority is more diverse. Would that make rule by the electoral majority more reliable? No. It would make the electoral majority just another version of the diverse few, while the popular majority remain the many. Landemore argues that “rule of the many is epistemically superior to *any version* of the rule of the few,⁷⁶ including “rule by a diverse few.”⁷⁷ Leaving aside Landemore’s reasons for this, we can add another from Section III.C: margins of victory matter. For CJT, a landslide jury verdict is more likely to be correct than a nail-biter. The same point applies here. *If* Kansans use a distinct set of heuristics from

74. Landemore, “Critics,” 204.

75. What specific relation is required? This is complicated by the fact that measures of relative group *cognitive* diversity are technical, and not closely related to relative group *identity* diversity, Daniel J. Singer, “Diversity, Not Randomness, Trumps Ability,” *Philosophy of Science* 86, no. 1 (2019): 179–81; the latter undergirds perennial concerns about popular majorities and subordinated geographically concentrated minorities. But two general points explain why real-world districting schemas do not guarantee that electoral majorities are more diverse in either sense. First, such schemas are territorial, but far too many issues, interests, and identities are non-territorial. See Nadia Urbinati and Mark E. Warren, “The Concept of Representation in Contemporary Democratic Theory,” *Annual Review of Political Science* 11, no. 1 (2008): 390. Second, as suggested above, districts are not homogenous; as such, rule by electoral majorities can subordinate geographically concentrated minorities within districts. Dahl, *Preface*, 114–5.

76. Landemore, *Democratic Reason*, 166 (emphasis mine).

77. Landemore, “Critics,” 185.

Kentuckians, and a slim majority of Kansans predict Blue will increase RDI while Kentuckians almost unanimously predict Red will increase RDI , then *ceteris paribus* we should expect Red to increase RDI . Ignoring margins of victory in comparing groups' predictions is akin to ignoring levels of confidence in comparing experts' predictions.⁷⁸ So even if electoral majorities were expectedly more diverse, it is still hard to see why any epistemic argument for rule by the many would support rule by electoral majorities.

IV. THE MOST DEMOCRATIC VIEW

Some may be unpersuaded by this positive case for POPULAR MAJORITARIANISM. If so, it is also supported by the second argument, which is an independent, largely negative case against its rival(s). My core contention is rule by an electoral majority generates *arbitrary or perverse* verdicts, making rule by the popular majority the most democratic account of majority rule.⁷⁹ This argument indirectly supports POPULAR MAJORITARIANISM. And the argument does not depend on whether we accept that democracy requires majority rule. Instead, it depends on our accepting the uncontroversial point that majority rule is a putative democratic principle. If rule by popular majorities better aligns the democratic and majoritarian points of view than rule by an electoral majority, that makes it a more plausible account of majority rule as a putative democratic principle.

IV.A. Arbitrariness

I'll start with the simplest example, which involves redistricting. This is not the strongest case for present purposes; in fact, it is arguably the weakest, as some may find it question-begging. But it will help to lay some foundations for this discussion.

78. For a formal treatment of why levels of confidence matter in such contexts, see Sascha Meyen et al., "Group Decisions Based on Confidence-weighted Majority Voting," *Cognitive Research: Principles and Implications* 6, no. 1 (2021): 1–13.

79. Could one grant that rule by electoral majorities generates arbitrary and perverse verdicts, but say this is irrelevant to the democratic *bona fides* of majoritarianism? Perhaps. But that would swim against strong currents. It is common to endorse democratic principles in order to rule out perverse and arbitrary verdicts, and to regard the justification of democracy as being threatened if it results in arbitrary or perverse outcomes. For discussion, see, e.g., Jules Coleman and John Ferejohn, "Democracy and Social Choice," *Ethics* 97, no. 1 (1986): 18; Ian Shapiro, *Democracy's Place* (New York: Cornell University Press, 1996), 111.

Suppose we have 55 voters, and 37 support Blue while 18 support Red. They can be divided into five equal districts in myriad ways. One is Table 1. Another is Table 2. This is the simplest case because on any version of ELECTORAL MAJORITARIANISM, Blue wins an electoral majority in Table 1 and Red wins an electoral majority in Table 2. Should such changes to the distribution but not the number of votes change which option wins?

The most notorious instance of this problem is partisan gerrymandering, which refers to the manipulation of the boundaries of (single-member) districts to favor political parties in legislative assemblies. Many object that gerrymandering is undemocratic;⁸⁰ one natural explanation for why is that it violates the principle of majority rule, so long as it requires rule by the popular majority.⁸¹ But gerrymandering introduces complications. One is the role of parties as options (see Section V). The other is the role of the intentional manipulation of district boundaries. Neither is a necessary feature of the issue posed by Tables 1 and 2. Like other examples above, these elections were described at a high level of abstraction; ‘Red’ or ‘Blue’ can be the names of policies in referenda, candidates for executive office, or parties in legislative assemblies. Moreover, we could randomize redistricting,⁸² and thereby produce a change from Table 1 to 2, or vice versa.

Suppose, then, that in a jurisdiction a referendum was held, with the result in Table 1. The same vote was taken again the next year. Following randomized redistricting, we get the result in Table 2. No one changed how they voted. Only two voters, can we suppose, even changed districts. Should Blue go from winning to losing due to such minor redistricting? This would not be an example of gerrymandering. But to me, it is intuitively undemocratic. If nothing makes the districting schema in Table 2 democratically preferable to alternatives like the districting schema in

80. Even in *Vieth*, Justice Scalia wrote that the majority in the Court “do not disagree with [the] judgment” that “partisan gerrymanders [are incompatible] with democratic principles,” 541 U.S. 267 (2004).

81. Alexander and Prakash, “Tempest,” 13; Beitz, “Partisan Gerrymandering,” 335, and Kolodny, “Gerrymandering,” 1027, all consider and reject versions of this complaint. But as their citations attest, it is commonly made. And Kolodny writes that it is also a natural “explanation of why many protest against partisan gerrymandering.” *Ibid.*, 1027.

82. Again, see Rehfeld, *Concept of Constituency*, for a defense of randomizing (non-territorial) electoral districts.

Table 1, but changing the districts changes the electoral outcome, the electoral outcome is arbitrary.

Many endorse stronger claims, suggesting that all election inversions are undemocratic,⁸³ at least to some extent and subject to certain constraints.⁸⁴ Indeed, the moniker “election *inversion*” suggests that such outcomes are objectionable. If this is right, then any form of rule by electoral rather than popular majorities is too arbitrary to be democratic, which supports POPULAR MAJORITARIANISM.

But as I noted, this argument has weaknesses. Some may say it is question-begging: the premise that election inversions in examples like Table 2 are undemocratic is not identical to the conclusion that ELECTORAL MAJORITARIANISM is false, but it is similar. Others may simply not share the intuition that it is arbitrary for Red to rule because of redistricting alone. This is not a hill I want to die on. Deeper challenges for ELECTORAL MAJORITARIANISM lie in store. Consider the problem of redistricting a mere appetizer.

One deeper challenge also concerns arbitrariness. Call it the problem of *sub-districting*. We can illustrate it with a simple hypothetical example. Suppose we have a jurisdiction with three equal districts, Q, R, and S, each of which has three equal subdistricts. Blue wins the most votes in the jurisdiction as a whole, in S, and in the most subdistricts (Q1, Q2, R1, R2, S1, and S2). Red wins the most votes in the most districts (Q and R):

Table 3

<i>Jurisdiction</i>								
<i>District Q</i>			<i>District R</i>			<i>District S</i>		
<i>Q1</i>	<i>Q2</i>	<i>Q3</i>	<i>R1</i>	<i>R2</i>	<i>R3</i>	<i>S1</i>	<i>S2</i>	<i>S3</i>

83. See, e.g., Christiano, *Rule of the Many*, 225.

84. If majority rule is constrained, overall verdicts about whether election inversions are undemocratic depend on contingent details such as whether the popular majority supports an option that violates liberal rights, or whether the electoral majority arises due to measures to protect provincial interests. For example, in the election inversions in Denmark in 1971 and 1990, one implicated federalism (resulting from the over-representation of Greenland and the Faroe Islands), but the other did not (resulting from “threshold” effects in its party-list system): see Kurrild-Klitgaard, “Election Inversions.” Those who hold that democracy requires the majority should rule subject to the constraints of federalism may treat these cases differently.

Here's a concrete illustration of the same problem. In the U.S., two states—Nebraska and Maine—allocate some Electoral College votes to whichever option wins the most votes in their congressional districts. We could adopt a system where the winner of a presidential election is the candidate who won the most votes in the most congressional districts. This would often generate a different outcome. In 2012, it was Romney, rather than Obama, who won the most votes in the most congressional districts.⁸⁵

These illustrations raise a simple question for ELECTORAL MAJORITARIANISM. When voters are divided into districts, they are typically divided into multiple nested levels of districting; each is used for determining electoral majorities in some elections. Any defense of rule by electoral majorities in general must (at least in principle) be applicable to districting at every level in a structure like Table 3. It must be able to justify rule by whichever option wins the most districts in Q-S *and* by whichever option wins the most districts in Q1-S3. But then we can ask: Which level of districting should matter for an electoral majority in any given election? There are no obvious resources left to explain why in any given election, the winner of the election in Jurisdiction should be the option that won the most districts in Q-S rather than in Q1-S3.

An example may help. Consider diversity-based epistemic arguments once more. I noted in Section III.D that these arguments require some relationship to hold between districts and cognitive diversity. If this is to defend rule by electoral majorities in the Senate, that relationship must hold for Kansas, Kentucky, and so on. If it is to defend rule by electoral majorities in the House, that relationship must also hold for KA-01-04, KY-01-06, and so on. Why, then, should the winner of the *Presidency* be the candidate who won the most votes in the most districts at the higher level rather than at the lower level? It is hard to see how any appeal to cognitive diversity could provide an answer. But without an answer, this appeal to cognitive diversity cannot explain why the collective verdict that is most likely correct is that Obama should rule in 2012 rather than Romney.

85. More generally, if we determined who won elections for President or for the Senate by considering who won the most votes in the most Congressional districts, this would favor Republicans. See David Wasserman, "The Congressional Map Has A Record-Setting Bias Against Democrats," FiveThirtyEight, August 7, 2017, <https://fivethirtyeight.com/features/the-congressional-map-is-historically-biased-toward-the-gop/>.

I have no proof that this problem is insoluble, but it is hard.⁸⁶ The onus is on proponents of ELECTORAL MAJORITARIANISM to solve it by finding a unique, non-arbitrary answer to which level of districting should determine the electoral majority in any given election.

IV.B. Perversity

For simplicity, so far I've focused on examples where voters are divided into exactly equal districts (at the same level of districting). But of course, when voters are divided into districts, they are often profoundly unequal. Once we consider such examples, we must distinguish two versions of ELECTORAL MAJORITARIANISM. As we shall see, either version leads to perverse verdicts, violating democratic commitments.

Let's start by bringing the distinction into focus. In "Three Types of Majority Rule," Albert Weale says that on "the traditional view" in the U.K., "majority rule means government by the party that can secure a majority of seats in the legislature whether or not it has secured a majority of votes in the country." Weale allows that one type of majority rule includes cases like the 1951 U.K. general election, where the Conservative party won more than half of the seats in the legislature even though they lost the popular vote to the Labor party.⁸⁷ Likewise, in *Presidential Elections and Majority Rule*, Foley notes that a candidate may lose the popular vote while winning "a majority of the popular vote in the states that create the Electoral College majority," and describes this system as a "compound form of majority rule."⁸⁸

There is a structural difference between the U.K. Parliament and U.S. Electoral College. In the former, unequal districts count equally toward an electoral majority. An electoral majority in U.K. Parliament requires winning the most seats, regardless of population. The average population of Welsh constituencies is 20 percent smaller than the average population of English constituencies, but each seat counts equally

86. Two things make the problem hard. First, we cannot punt and let the local laws determine the answer, for they may also be indeterminate—as is true with the Electoral College in many states. Second, it resembles the problem posed by majority cycles, even though it arises with only two electoral options. One electoral majority prefers A over B; another prefers B over A. Which electoral majority should rule? Given the connection to concerns about cyclicity, taking this to be a problem is not question-begging.

87. Weale, "Three Types," 63–4.

88. *Ibid.*, 8.

toward an electoral majority in Parliament. But in the Electoral College, by contrast, districts are weighted by population. Because California is more populous than Wyoming, winning California counts more toward a victory in the Electoral College than winning Wyoming. More generally, we should distinguish whether the winner of the election is the option that: (a) won the most votes; (b) won the most votes in the most districts; or (c) won the most votes in the most districts weighted by their populations. In Tables 1 and 2, (a) comes apart from (b) and (c). But once district populations are unequal, (b) and (c) come apart. If we are to reject (a)—i.e., rule by the popular majority—should we accept (b) or (c)? Here’s another way to put the question. How should we define an electoral majority? In a national election, is the electoral majority the group of voters who support the same electoral option and constitute the majority of voters in the majority of nation’s districts? Or is it the group who support the same electoral option and constitute the majority of voters in districts that contain the majority of the nation’s population?

I’ll argue that unequal districts create a dilemma for ELECTORAL MAJORITY. For unequal districts to count equally generates perverse verdicts that violate *one person, one vote* (OPOV). For unequal districts to count unequally generates perverse verdicts that violate *monotonicity*. So rule by electoral majorities is inevitably democratically perverse.

Start with the first horn. To see why it leads to perverse verdicts, take Table 1 and imagine that three of its districts are collapsed into one more populous district:

Table 4

	District ABC	District D	District E
Blue	27	5	5
Red	6	6	6

In Table 1, Blue won A-C, and so Blue won the most votes in the most districts. But in Table 4, A-C are collapsed into District ABC. Red now wins the most votes in the most districts. If unequal districts count equally, Red wins an electoral majority.

The most notorious instance of this problem is known as malapportionment: districts with divergent ratios of voters to legislators. The

U.S. Senate is “extremely malapportioned,” and malapportionment is rife in many other counties, especially in Africa and Latin America.⁸⁹ Many regard it as democratically perverse.⁹⁰ As with gerrymandering, malapportionment introduces complications. But the problem posed by unequal districts counting equally is not confined to legislative elections. In Australia, a referendum must win a majority of votes in a majority of states; New South Wales and Tasmania count the same, though the population of the former is sixteen times larger. The Electoral College could also count unequal districts equally; winning California could be worth as much as winning Wyoming in U.S. presidential elections. The explanation for why malapportionment is undemocratic is that it violates OPOV. This explanation applies equally to these non-legislative elections. So if the electoral majority is the option that won the most districts, and unequal districts count equally, then rule by the electoral majority leads to perverse verdicts that violate OPOV. From the democratic and majoritarian points of view, this is clearly a problem.⁹¹

Some may respond that federalism justifies some deviations from OPOV. Perhaps it provides a basis for accepting malapportionment in the U.S. Senate (“the State’s House”) but not in the House of Representatives (“the People’s House”). But if federalism is a *constraint* on the majority rule, this is consistent with the challenge I am pressing here. And besides, rule by electoral majorities can generate verdicts that are perverse even in contexts where they are not plausibly justified by considerations such as federalism.

89. See David Samuels and Richard Snyder, “The Value of a Vote: Malapportionment in Comparative Perspective,” *British Journal of Political Science* 31, no. 4 (2001): 659, *passim*. See also Kai Ostwald, “How to Win a Lost Election: Malapportionment and Malaysia’s 2013 general election,” *The Round Table* 102, no. 6 (2013): 521–32, on malapportionment in Malaysia.

90. Kolodny, *Pecking Order*, 371.

91. While “OPOV” is not always clearly defined, it is arguably best understood in terms of equal voting power, e.g., Felsenthal and Machover, *Measurement of Voting Power*, 86. For unequal districts in to count equally in legislative or non-legislative elections violates equal voting power, even on a priori approaches (Section III.D). It is inconsistent with commitments of procedural, utilitarian, epistemic, and egalitarian arguments for majority rule. Notably, a concern in the malapportionment cases was that it enables minority rule. See, e.g., *Reynolds v. Sims*, 377 U.S. 533, 565–6 (1964); Low-Beer, “Proportional Representation,” 177; Amar, “Central Meaning of Republican Government”, 754.

Others may respond that we can endorse rule by electoral majorities while requiring districts to be equal. But this response seeks to avoid rather than answer the question of what majority rule requires *if* districts are unequal. And we cannot avoid that question, as district inequalities are inevitable. In the U.S. House, OPOV requires that districts be roughly equal. But rough equality is not strict equality. And because the apportionment of House districts occurs within state boundaries, interstate malapportionment is significant: Delaware's at-large district has almost the same population as MO-01 and MO-02 combined. The same problem arises in other district-based systems, such as in Australia. For this reason, many argue that OPOV requires unequal districts to count unequally for an electoral majority in legislative bodies.⁹²

So much for (b). What about (c)? As a cure for malapportionment, some U.S. legislative bodies were formed so that representatives' votes are weighted by the populations of the districts they represent.⁹³ This makes them structurally like the Electoral College, insofar as the option that wins is the one that won the most votes in the most districts weighted by population. Of course, these systems vary, and there are many ways to weight districts by population.⁹⁴ But those differences will not matter for our purposes. What matters instead is why (c) leads to perverse verdicts. It violates *monotonicity*, which is the intuitive requirement that "winning alternatives remain winners when their support increases *ceteris paribus*,"⁹⁵

92. Jurij Toplak, "Equal Voting Weight of All: Finally 'One Person, One Vote' from Hawaii to Maine?," *Temple Law Review* 81, no. 1 (2008): 123–75; Ashira Pelman Ostrow, "One Person, One Weighted Vote," *Florida Law Review* 68, no. 6 (2016): 1839–82.

93. For critical discussion, see John F. Banzhaf III, "Weighted Voting Doesn't Work: A Mathematical Analysis," *Rutgers Law Review* 19, no. 2 (1965): 317–44; Bernard Grofman & Howard Scarow, "Weighted Voting in New York", *Legislative Studies Quarterly*, 6(2) (1981): 287–304, and Keith R. Wesolowski, "Remedy Gone Awry: Weighing in on Weighted Voting," *William and Mary Law Review*, 44, no. 4 (2003): 1883–912.

94. Different weighting formulas can be used. See Felsenthal and Machover, *Measurement of Voting Power*, 66–7, on the case for Penrose's square root rule. Different definitions of "population" can be used (voters, citizens, residents), too. See e.g. *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016). This makes versions of rule by electoral majorities proliferate further. But the main point in this subsection does not depend on these finer details.

95. Dan S. Felsenthal and Hannu Nurmi, *Monotonicity Failures Afflicting Procedures for Electing a Single Candidate* (Cham: Springer, 2017).

including when we hold fixed how everyone else votes and add voters for the winner.⁹⁶

To illustrate, recall Table 2. Red won the most districts, and district populations were equal. Suppose ten new Red voters are added to Districts A and B:

Now Blue wins the most districts weighted by population. If that is sufficient for an electoral majority, we have made an electoral winner lose an election solely by adding votes in their favor. Red went from winning in Table 2 to losing in Table 5, and the only difference was that we added new Red voters to Blue districts. This is perverse.

Here's a more realistic illustration. On February 25, 2021, Tucker Carlson ran a segment titled "Democrats are importing migrants to expand voting base."⁹⁷ Of course, a party can no more "import migrants" than it can "add votes." But imagine a party attracts large numbers of immigrants and fast-track their citizenship before an election. Even if these new citizens all voted for Democrats, adding them to the electorate could help Republicans win. In the 2000 presidential election, Bush won Montana by over 100,000 votes; "importing" a vast number of Democratic voters to Montana could have helped Bush by increased its value in the Electoral College without flipping it from red to blue. From the democratic and the majoritarian point of view, this is clearly a problem.⁹⁸

96. This is how Felsenthal and Nurmi, *ibid.*, define monotonicity conditions such that it applies to *fixed* and *variable* electorates. Some define it more narrowly, such that it only applies to the former. This is one technical complication with the present discussion. Another is that Felsenthal and Nurmi, like many others, define monotonicity to only apply to elections of single candidates, such as the Electoral College, but not to the systems referred to in fn. 93; cf. David Austen-Smith and Jeffrey Banks, "Monotonicity in Electoral Systems," *American Political Science Review* 85, no. 2 (1991): 531–7. But little hangs on this. The discussion below is also sufficient to show that rule by the option that wins the most districts weighted by population violates the monotonicity-related condition of *participation*. I discuss this in Daniel Wodak, "The Perversity of Weighted Voting," *The Journal of Politics* (forthcoming).

97. You can see Carlson's remarks here: <https://www.youtube.com/watch?v=gogCccQsum4>. Tucker Carlson, "Democrats Are Importing Migrants to Expand Voting Base," from *Tucker Carlson Tonight*, Fox News, premiered February 24, 2021. Similar remarks are documented in Nicholas Confessore and Karen Yourish, "A Fringe Conspiracy Theory, Fostered Online, Is Refashioned by the G.O.P.," *The New York Times*, May 15, 2022, <https://www.nytimes.com/2022/05/15/us/replacement-theory-shooting-tucker-carlson.html>.

98. Many hold that democracy requires that voting procedures be monotonic, as I discuss below. And non-monotonic voting procedures are at odds with commitments of core motivations for the principle of majority rule, such as the procedural, utilitarian, and epistemic arguments from Section III.

Table 5

	District A	District B	District C	District D	District E
Blue	11	11	5	5	5
Red	10	10	6	6	6

Inequalities in the number of voters per district are inevitable. But they generate a serious dilemma for rule by electoral majorities. The dilemma is in no way question-begging. The case for why rule by electoral majorities generates perverse verdicts does not rest on the fact that its verdicts depart from rule by the popular majority. It rests on independent, fundamental democratic commitments: OPOV and monotonicity. OPOV is well-known, and its status is sometimes described as a “fixed point” in democratic theory, akin to “the injustice of chattel slavery.”⁹⁹ Monotonicity is less well known, but it has been described as “the essence of democracy.”¹⁰⁰ Violations of monotonicity are considered to be “the most serious pathology that may afflict voting procedures”¹⁰¹ and “the worst possible sin an electoral system can commit.”¹⁰²

IV.C. Taking Stock

Let’s recap. I’ve argued that ELECTORAL MAJORITARIANISM leads to arbitrary or perverse verdicts, making POPULAR MAJORITARIANISM the most democratic account of majority rule. The charge of arbitrariness rests on concerns about redistricting and sub-districting. The charge that rule by electoral majorities leads to perverse outcomes rests on OPOV and monotonicity. These are independent problems. If we dismiss some of them, the remainder is likely sufficient to discredit ELECTORAL MAJORITARIANISM. Alternatively, it may show that all but one version of rule by electoral majorities should be considered undemocratic—which would be a form of progress in itself.

I’ll close on two final notes. The first is clarificatory. I characterized ELECTORAL MAJORITARIANISM as follows: If the majority should rule, the option that won the most votes may lose, as an electoral majority may control

99. Kolodny, *Pecking Order*, 291.

100. Robert E. Goodin and Christian List, “Special Majorities Rationalized,” *British Journal of Political Science* 36, no. 2 (2006): 218.

101. Felsenthal and Nurmi, *Monotonicity Failures*, 4.

102. Riker, *Liberalism*, 106.

how they are governed. This is because to reject POPULAR MAJORITARIANISM, it is sufficient to say that majority rule *permits* deviations from (a), including (b) or (c). And typically, proponents of this rival view say no more than this. Weale and Foley do not say that majority rule *requires* rule by an electoral majority, or requires (b) rather than (c), or vice versa. Instead, both say there are many legitimate “types” or “forms” of the principle of majority rule.¹⁰³

This permissive approach still generates the problems above. It provides little solace to stress that ELECTORAL MAJORITARIANISM only *allows* for violations of OPOV and monotonicity, but does not *require* violations of these basic democratic commitments. That said, I think this permissive approach is mistaken. Majority rule allows for ties, but they should be rare. In 2017 a statewide race in Virginia made news because it was decided by a coin flip after the vote count turned out to be tied.¹⁰⁴ If majority rule is permissive, it will often be *indecisive*—given the same number and distribution of votes, it will not generate a unique outcome as to which option wins the election.¹⁰⁵ Whenever the results of (a)–(c) diverge, majority rule will be equally compatible with rule by Red or Blue. And if it is permissive about the level of districts that should be used in any given election, majority rule will be equally compatible with Blue or Red winning in Table 3. On this view, after the votes were counted, we could have flipped a coin to decide whether Obama or Romney was President in 2012. This is hard to square with the idea that majority rule means that the majority of voters control how they are governed. And it is hard

103. Note that if these claims concerned “majority rule” understood as a function, they would be true. But both Foley, *Presidential Elections*, 1 and Weale, “Three Types,” 65, are explicitly concerned with “the principle of majority rule” or “the majority principle,” not with the name of a family of functions from social choice theory. Weale even says the principle is justified by “democratic fairness”: “Because *the majority principle takes decisions only by reference to the numbers* favoring one side rather than another, it captures the principle of the equality of participants” Weale, “Three Types,” 65 (emphasis added). The italicized claim should now look odd, given Section III.

104. See Philip Bump, “That Coin-Toss Election in Virginia? Dramatic. But It Pales in Comparison to Other Historic Contests,” *The Washington Post*, December 22, 2017, <https://www.washingtonpost.com/news/politics/wp/2017/12/22/that-coin-toss-election-in-virginia-dramatic-but-it-pales-in-comparison-to-other-historic-contests/>.

105. Here I’m following how Risse, “Majority Rule,” 44–5, quoted above, characterizes decisiveness. But Risse arguably mischaracterized *May’s* condition. May, “Simple Majority Decision,” 681, said decisiveness requires that a method must always “specify a unique decision (even if this decision is to be indifferent) for any individual preferences.” The problems with majority rule being often *indifferent* are sufficient for my purposes here.

to square with the procedural, utilitarian, epistemic, and egalitarian arguments for majority rule from Section III. If I'm right about this, there is a stronger onus on proponents of ELECTORAL MAJORITARIANISM to tell us which specific version of rule by electoral majorities is required by majority rule, and confront its vices.

Second, this argument has been mostly negative. But it is worth stressing that POPULAR MAJORITARIANISM not only avoids the vices of its rival. It also explains why it would be undemocratic for an option to win due to redistricting or sub-districting or malapportionment, and it explains why adding new Red voters should not make Red cease to be the winner. The explanation is simple: who wins should depend on the number of votes, but not on their distribution across districts or levels of districting. Democratic principles earn their keep in part by explaining why certain outcomes are (un)democratic, so it is a significant advantage of POPULAR MAJORITARIANISM that it allows the principle of majority rule to offer this parsimonious, unified explanation.

V. WHITHER DISTRICTING?

Once we divide voters into districts, the question arises: if the majority should rule, *which* majority should rule? I've argued that it should be the popular majority, and should not be any electoral majority. What are the real-world implications of these arguments? Do they mean we should stop dividing voters into districts in elections?

Maybe. Consider calls to reform the Electoral College through the aptly named National Interstate Popular Vote Compact. In the *Election Law Journal*, now Congressman Raskin argued that we should adopt it because rule by the popular majority is necessary for "a national election for president based on principles of majority rule and political equality of all citizens."¹⁰⁶ The argument in Section III supports this position by defending the assumption that majority rule requires rule by the popular majority, and the argument in Section IV supports it by providing a novel case against the Electoral College based on monotonicity rather than majoritarianism. But while the Compact leaves the Electoral College in place, it also makes it otiose: "if the Electoral College winner always

106. Jamie B. Raskin, "Neither the Red States nor the Blue States but the United States: the National Popular Vote and American Political Democracy," *Election Law Journal* 7, no. 3 (2008): 194.

corresponded to the popular vote winner, we might be more properly inclined to wonder whether or not the College served any particular purpose that would not be achieved by direct popular election.”¹⁰⁷ When the president is elected based on a national popular vote, electoral districts no longer play a role.

Many may see this as no great loss. Defenses of district-based elections in referenda and in the Electoral College have turned on the merits of federalism,¹⁰⁸ and many regard federalism as an “an irredeemably anachronistic doctrine.”¹⁰⁹ But at the same time, many defend legislative districting—it is often said to enable stable governing coalitions and make representatives responsive to geographic populations.¹¹⁰ By this reasoning, it would be a great loss if rule by the popular majority were incompatible with legislative districting.

And many say the two are incompatible. Consider the U.S. House of Representatives. It often generates election inversions.¹¹¹ It almost did so again in 2022: Republicans won the popular vote 51 percent to 48 percent, but Democrats came within fewer than 7,000 votes of winning an electoral majority.¹¹² Some say coming up with a districting schema that would not

107. Bradley A. Smith, “Vanity of Vanities: National Popular Vote and the Electoral College,” *Election Law Journal* 7, no. 3 (2008): 198.

108. On federalist arguments *apropos* referenda, see Amar, “Central Meaning,” 766–8. Smith notes that “federalism and majoritarianism” are “the two key arguments usually made for and against the College.” Smith, “Vanity,” 197.

109. Kolodny, “Rule II,” 331.

110. See, e.g., Kolodny, “Gerrymandering,” 1024–9. This dialectic is messy in several respects, but two concerns about this reasoning are worth flagging. First, Kolodny explicitly compares “district systems” with “proportional systems”, and cites what are often held to be advantages of SMD over PR. As before, this muddies the waters (see fn. 39). As Häggrot notes, many defenses of legislative districting are really defenses of SMD or arguments against PR. Marcus Carlsen Häggrot, “Geographic Legislative Constituencies: A Defense,” *Political Theory* 51, no. 2 (2023): 301–30. Second, the democratic case for legislative districting is not clearly superior to the democratic case for federalism—see e.g. Abizadeh, “Counter-Majoritarian Democracy”—as a basis for district-based referenda and executive elections.

111. For examples from the House in 1994, 1996, 1998, and 2000, see Amy, *Real Choices/ New Voices*, 45–6.

112. If Democrats had won five more seats, they would have won control of the House; the total vote margin of the five closest districts won by Republicans (CO-3, CA-13, MI-10, NY-17 and IO-3) was fewer than 7,000. See e.g. Julia Mueller, “How close were House races? A few thousand votes could have swung control”, *The Hill*, November 28 2022, <https://thehill.com/homenews/campaign/3753349-how-close-were-house-races-a-few-thousands-votes-could-have-swung-control/>.

produce such outcomes would be extremely difficult.¹¹³ Others say it is impossible. There's no way for a district-based systems to guarantee that the party that wins the election also wins the most votes.¹¹⁴ Electoral inversions are an insoluble problem in district-based systems, so rule by the popular majority requires the end of districting. After all, as with the Electoral College and the Interstate Compact, if we had rule by the popular majority, what further role could electoral districts play in the system?¹¹⁵

It is instructive here to consider Lijphart's discussion of the issue that "elections can lead to seat victories for parties that are mere runners-up in vote totals" in district-based legislatures using SMD and FPTP.¹¹⁶ Lijphart called out the

utter lack of interest in remedying this problem—although such a remedy can be instituted by the simple device of allocating additional seats to the party with the most votes in order to guarantee that it is also the winner of the most seats.¹¹⁷

Lijphart's remedy can be illustrated by the use of surplus seats in Germany.¹¹⁸ In Table 2, Blue wins 64 percent of the votes but Red wins 3 of 5 districts; if Blue get two surplus seats, they have a majority. The

113. *Vieth v. Jubelirer* 541 U.S. 267, 289 (2004): "requiring judges to decide whether a districting system will produce a statewide majority for a majority party casts them forth upon a sea of imponderables."

114. Felsenthal and Machover, *Measurement of Voting Power*, 87. See also, *inter alia*, Lakeman, *How Democracies Vote*, 76.

115. I think this is the best version of the point made by Alexander and Prakash, *Tempest*, 38, though they overstate their case: "if the Constitution demands that the views of the majority of the voting public always (or usually) prevail, why bother with a republican government at all?" Like others (see fn. 47 above), they conflate rule by the popular majority with direct democracy. There are ten at-large or single-district national legislatures (e.g., in Israel), and at-large executive elections are the norm.

116. Lijphart, "First-Past-the-Post," 134. Again, while Lijphart focuses on SMD and FPTP, the same problem arises under many forms of PR.

117. *Ibid.*

118. Though this example also illustrates problems with the remedy itself. Lopsided election inversions require a lot of surplus seats—Germany required 111 surplus seats in 2017, generating much criticism, as these surplus representatives are not responsive to any specific locality. See Philipp Weinmann and Florian Grotz, "Reconciling Parliamentary Size with Personalized Proportional Representation? Frontiers of Electoral Reform for the German Bundestag," *German Politics* (2020): 1–21.

details aren't important. What matters is that while there's no way for a district-based legislative system to guarantee that the party that wins the most votes *wins the most districts*, there is a way to guarantee that it *wins the most power*. In other words, district-based legislatures can guarantee that the popular majority rule.

The point that election inversions only seemed insoluble due to the lack of interest in finding a solution is reinforced once we note that there are alternative remedies for the same problem.¹¹⁹ The one I prefer was mentioned earlier: weighting the votes of representatives by margins of victory. This can also be used to ensure that the party who wins the most votes wins the most power. In Table 2, we can give the two Blue representatives 1.6 votes each and the three Red representatives 0.6 votes each, so that Blue has 64 percent of the votes in the legislature. Versions of weighted voting by margin of victory were independently defended as solutions to the problem of election inversions in majoritarian systems (like the U.S. House) and in PR (like the Danish Folketing).¹²⁰

Notice that in both remedies, districts do not become otiose. They still have local representatives, with a voice on legislation. Indeed, weighting representatives' votes by margins of victory arguably retains and enhances the virtues of districting. Representatives and parties are still responsive and accountable to localities. Indeed, they are plausibly more responsive and accountable in uncompetitive districts, as they have reason to care about each vote—every vote changes the margin of victory, and hence representatives' and parties' total power in the legislature. So, if rule by the popular majority requires we adopt such a system, its implications are radical, but they are not incompatible with districting or its democratic virtues.

There is, however, a further complication posed by some district-based legislatures. Suppose we guarantee that the party that won the most votes

119. Michel Balinski, "Fair Majority Voting (or How to Eliminate Gerrymandering)," *The American Mathematical Monthly* 115, no. 2 (2008): 100–101, defends a different remedy: when Blue wins the most votes overall, all votes for Blue should be "scaled up" (i.e., reweighted) so that Blue candidates win a majority of districts. This faces an obvious problem in scenarios like Table 2 as Blue's vote share is uniform in Districts C–E. Any uniform reweighting of all votes for Blue makes the Blue party win *either* two districts *or* all five districts.

120. It was defended at length for majoritarian systems in Wodak, "Democratic Imperative," and for PR in Felsenthal and Miller, "Proportional Representation," 179–81. There are significant questions about how such a solution can work in both systems.

governs. Is that guaranteeing rule by the popular majority? To see the issue here, consider Beitz’s discussion of whether gerrymandering violates majority rule:

We only get a violation of majority rule if we take the entire jurisdiction as the unit of analysis, with all the voters considered as a single electorate and the set of winning candidates as, in effect, its single, collective representative. But it is a basic fact about SMD that the competition for seats takes place separately in each district. No candidate or set of candidates contends for votes in the whole jurisdiction. This means that the votes actually cast are in a formal and often in a functional sense responses to the campaigns conducted by individual contenders within the environments of their own individual districts.¹²¹

Lowenstein and Steinberg made a similar argument: “There is no statewide vote in this country for the House of Representatives or the state legislature. Rather, there are separate elections between separate candidates in separate districts, and that is all there is.” By its nature, this “district system of legislative elections looks to a number of separate contests and is thus fundamentally opposed to any concept of adding up national or statewide vote totals.”¹²² Lowenstein and Steinberg weren’t consistent on this point,¹²³ but Justice Scalia endorsed their argument in *Vieth*.¹²⁴

The argument turns on how we think about options. In Section II, I said that depending on the type of election, “Red” and “Blue” can be the names of policies, candidates, or parties. Each of these is an option in

121. Beitz, “Partisan Gerrymandering,” 335. An interpretative aside. Beitz is here responding to, and cites, Anthony J. McGann et al., *Gerrymandering in America: The House of Representatives, the Supreme Court, and the Future of Popular Sovereignty* (Cambridge: Cambridge University Press, 2016), who explicitly claim that gerrymandering violates “the majority rule principle.” *Ibid.*, chap. 3, 197–8. For that reason, Beitz’s claims here should be understood to concern majority rule understood as a principle, not as a function.

122. Daniel H. Lowenstein and Jonathan Steinberg, “The Quest for Legislative Districting in the Public Interest: Elusive or Illusory,” *UCLA Law Review* 33, no. 1 (1985): 59, 52.

123. Lowenstein and Steinberg also wrote that “there is much to be said for providing the majority with a disproportionately large majority of seats”—e.g., giving a party that won 51 percent of the vote 55 percent of the seats in the legislature. This seems to assume that we can add up national or statewide vote totals. *Ibid.*, 52.

124. *Vieth v. Jubelirer*, 541 U.S. 267, 288–9 (2004).

some electoral systems; for example, in legislative elections that use party list PR, parties are options. But in elections in the U.S. House, ballots are, Beitz says, formally and functionally cast for individual candidates, not for parties. If the voters' options are a district-specific slate of individuals, votes in different districts are incommensurable. We cannot add up vote party totals. Hence, requiring rule by the popular majority—taking “the entire jurisdiction as the unit of analysis”—is incompatible with what Beitz calls a “basic fact” about elections in the House.¹²⁵

This is a complex issue. I'll restrict myself to making brief remarks about the two key questions it raises. First, should we accept that in the House voters' options are individual candidates, not parties? Second, if so, what does this mean for majority rule?

On the first, Beitz's key claim is that votes are “in a formal and often in a functional sense” for individual candidates. This is open to interpretation. The claim could be that the formal *effect* of voters' ballots in House elections is to determine which individual candidate wins in a district. But this concern overgeneralizes, suggesting we cannot add up the national votes for Biden and Trump in the Electoral College. It is a basic fact about the Electoral College that in each district the formal effect of votes is to determine which Elector(s) will represent that district. Electors then elect the president, just as Congresspeople then elect the Speaker of the House; both are two-tier systems.

Perhaps the formal difference between the House and the Electoral College lies in what is listed on ballots. In 2020, “Biden” and “Trump” appeared on ballots in each district; that's why we can aggregate the national presidential vote. But in House elections, a separate slate of individual candidates is listed on the ballot in each district, which is why votes in the House are in a formal sense only cast for these separate individuals. This seems more promising, but it mischaracterizes House elections. Ballots are cast in each district for a slate of candidates *listed with their party affiliations*. In this sense, the options are not just individuals, but for individual members of collective groups. This characterization of district-based House elections does not seem “fundamentally opposed” to any concept of adding up the national or statewide vote totals for parties.

125. Beitz says it is a basic fact about SMD. But the same reasoning applies to the Senate, which uses MMD.

Even if there is no formal difference, it may still be the case that *functionally* votes are cast for individual candidates. Voters may be responding to those candidates' specific characters, policies, and campaigns, and not to their party affiliation. But Beitz rightly does not claim that this is always true. There are plenty of elections in district-based legislatures where the majority of ballots were cast for an individual candidate about whom voters knew little besides their party affiliation (especially at local levels).¹²⁶

These points are not intended to be the last word on how we should think about options in elections in the House. They are just meant to show that it is far from clear whether or why we should accept the view that in such elections there are separate elections between separate candidates in separate districts, and that is all there is.

But suppose we accept the view. What follows for majority rule? Perhaps it follows that while majority rule requires rule by the popular majority in referenda and executive elections and many legislative elections, it requires or permits rule by an electoral majority in systems that resemble the House.¹²⁷ This would not be a lethal blow to POPULAR MAJORITARIANISM, but it would significantly restrict its scope.

I fear, however, that what follows is more dramatic: the principle of majority rule turns out to be incompatible with district-based legislative systems like the House. Why? Because majority rule means that the majority of voters control how they are *governed*—in Madison's words, this vital principle means that "the majority govern." If there are separate elections between separate candidates in separate districts and that is all there is, the majority in each district control how they are represented, but that's it.

The basic point here is simple. The only ways to explain why the majority govern themselves in the House rely on some form of inter-district aggregation, but if in systems like the House there are separate elections between separate candidates in separate districts, and that's all there is, we cannot have any inter-district aggregation.

126. In a 2021 state senate election, Edward Durr (R) beat Stephen Sweeney (D) in an upset. Durr was a truck driver with no name recognition, and Durr's election campaign spent \$153.

127. Such a view need not be ad hoc. If we deny that parties are options in elections for the House, it is less clear that the arguments for majority rule in Section III support rule by the popular majority in the House.

One influential argument for why the majority of voters control how they are governed in systems like the House turns on the claim that voters cast ballots *for parties*,¹²⁸ not just for individuals. If this is right, then in systems like the House parties are still options; so we can aggregate the total vote for parties, and the popular majority can rule.

An alternative position is that we should aggregate not the *votes* cast for each party's candidates, but the *populations* of the districts that they won. Eidelson endorsed this in relation to the U.S. Senate: "why look to the population represented by a senator, rather than the number of people who actually voted for that senator? Simply because a person's senators are her representatives in the Senate whether she voted for them or not."¹²⁹ Many similarly describe the Senate as involving "majority rule" or "minority rule" depending on whether or not the party that controls the chamber represents the most people in this sense.¹³⁰ Similar reasoning has been applied more generally to all legislative bodies like House.¹³¹ I am skeptical of it. The fact that my senator is my representative in the Senate whether I voted (for them) seems either trivial or false; either way, it cannot explain why we should look to the population represented by a

128. The argument is as follows. Under many PR systems, voters can directly vote for parties but governments require coalitions that are formed after votes are counted, which "make[s] it impossible for [voters] to choose a government at all"; by contrast, under SMD "at least one knows that *the party one is voting for* will take the reigns of government if it wins." Christiano, *Rule of Many*, 235 (emphasis added).

129. Eidelson, "Filibuster," 996.

130. The difference between representing the most people and winning the most votes in the Senate is rarely noted. See fn. 36 for an exception. As Kilgore depicts, the two standards come apart in 1994 and 1996.

131. Downs seems to appeal to it. Downs defines democracy to require that "The party [. . .] winning a majority of votes gains control of the governing apparatus until the next election"—i.e., rule by the popular majority. But Downs says this definition is satisfied "in systems in which the legislature selects the government" when the following is true: "each member [of the legislature] represents the same number of citizens" and "a majority of [. . .] members" is needed to govern, so the government has "the indirect support of a majority of voters." Anthony Downs, "An Economic Theory of Political Action in a Democracy," *Journal of Political Economy* 65, no. 2 (1957): 137–44. Instead of aggregating the votes cast for parties (as per Downs' definition), we aggregate the populations of the districts their elected members represent.

senator rather than the votes cast for a senator.¹³² Plus, the position leads to a version of rule by electoral majorities that is non-monotonic (Section IV.B).

But what matters most here is that if we embrace this alternative position, we are embracing inter-district aggregation. This position aggregates the populations of districts won by parties' candidates, rather than the votes cast for parties' candidates. But this still requires us to view candidates as part of national or statewide coalitions. And it thereby undermines the underlying picture that in the House or Senate there are separate elections between separate candidates in separate districts, and that's all.

Let me put this two-pronged response differently. As I said, the argument from Beitz et al. turns on how we think about parties as options. There is no consensus on this issue. "Contemporary scholarship views a party as a team of politicians whose paramount goal is to win electoral office," Bawn et al. explain.¹³³ As they note, on this "rosy assessment" it is "easy to see how such parties might serve democracy":

Voters can give more effective direction to government by supporting a team's program rather than an individual's. By holding entire parties rather than individual politicians accountable for what government does, voters create an incentive for responsible governance that might not otherwise exist.

Bawn et al. go on to reject this view, at least in the United States. They take parties to be "coalitions of interest groups and activists seeking to capture and use government for their particular goals," with the implication that "parties are no great friends of popular sovereignty."¹³⁴ My response seeks to avoid siding with either the rosy view or its detractors. If we accept the rosy view that parties are putative governing coalitions,

132. Christiano considers and rejects similar reasoning in a penetrating discussion. Christiano, *Rule of Many*, 225-7. See also Low-Beer, "Proportional Representation," 176, fn. 63. It is also worth noting the similarities between this reasoning and populist inferences from what the majority support to what the whole people support. See Nadia Urbinati, "Populism and the Principle of Majority," in *The Oxford Handbook of Populism*, eds. Kaltwasser et al., (Oxford: Oxford University Press, 2017), 579.

133. Kathleen Bawn et al., "A Theory of Political Parties: Groups, Policy Demands and Nominations in American politics," *Perspectives on Politics* 10, no. 3 (2012): 571.

134. *Ibid.*, 571-72.

POPULAR MAJORITARIANISM is applicable to bodies like the House as votes are for plausibly for parties. But if we reject the rosy view, it is unclear how the principle of majority rule or any form of popular sovereignty is compatible with House elections.

Where does that leave us? At the highest level of abstraction, the main take away is that my defense of POPULAR MAJORITARIANISM has fairly radical implications, but they are not too radical. It provides support for electoral reform in all district-based systems, but it is not incompatible with districting *per se*, or with SMD in particular.

At a more granular level, the main takeaway is that weighting representatives' votes by margins of victory lets majoritarians have their cake and eat it too. The popular majority in the federal polity determines who governs in the federal legislature, but the popular majority in each district still determines who represents that district in the legislature. In other words, the popular majority can rule in each tier in a two-tier system.¹³⁵

VI. CONCLUSION

If majority rule is essential to democracy but democracies divide voters into districts, which majority should rule? I've argued that majority rule requires rule by the popular majority (since that is what the arguments for majority rule support) and not rule by an electoral majority (since that leads to verdicts that are arbitrary or perverse).

Crucially, though, I've only argued for a view about what the principle of majority rule requires. This is compatible with many different views about what democracy requires. Consider Allen's recent defense of a structural feature of Congress:

Concurrence of opinion on legislation is required between the Senate and the House; this means that laws can be passed only when both a

135. Given the preceding discussion of electoral options, it is worth stressing that such a system can respect the fact that under SMD, votes are cast for a party *and* for a specific individual. The relative power of a political party is determined by the votes cast in its favor, and the relative power of representatives within that party is determined by the votes cast in their favor. If you voted for Lauren Boebert (R-CO 3), that changes the weight of Boebert's vote in the legislature, and hence Boebert's power in party negotiations over, say, who will be Speaker. The same holds if you voted for, e.g., Young Kim (R-CA 40). Votes cast for Boebert and Kim are for the same party, but they are not treated as interchangeable.

majority of the people (via representation in the House) and a majority of the states (via representation in the Senate) agree.¹³⁶

Call this feature “federalist bicameralism”: legislative power should be shared between the people’s house and the state’s house. This is a familiar idea. And nothing I have said is in tension with it. But the discussion so far adds two important points of clarity about how federalist bicameralism should be understood. First, it forces us to recognize that federalist bicameralism systematically departs from majority rule. At best, it combines majority rule with federalist constraints by making a majoritarian institution share power with a minority-protecting institution.¹³⁷ It does not, *contra* Weale, offer a way of “combining different principles of majority rule in one functioning system.”¹³⁸ Second, I’ve questioned whether there is a distinctive sense in which governing in the House requires the support of “a majority of the people.” Perhaps bicameralism should be used to make majoritarian and minority-protecting institutions share power; but currently it only makes two minoritarian institutions share power. The House and Senate, in other words, are both ruled by electoral majorities, which may only have the support of an efficiently distributed minority of voters.

Why is this so often missed? Why is the question of which majority should rule so widely neglected? Despite decades of work on election inversions, the phenomenon has been largely ignored in political philosophy and normative political theory. And in public discourse, election inversions have—aside from cases like Bush and Trump—mostly flown under the radar. Amy wrote that they are a “hidden problem”: the media “rarely even provide the public with the crucial statistic—the total vote that the parties win in local, state, and federal legislative elections—that people need to determine” whether an election inversion has occurred, and the information needed for that statistic was not even “readily available”; it had to be manually tabulated.¹³⁹ That’s a bleak picture. But it’s less accurate two decades later, in our age of data-driven journalism. We

136. Allen, *Justice*, 75.

137. *Ibid.*, 68.

138. Weale, “Three Types,” 74.

139. Amy, *Real Choices/New Voices*, 42. This is arguably a bigger problem in PR—hence the importance of work like Kurrild-Klitgaard’s. Kurrild-Klitgaard, “Election Inversions.”

now see headlines like: “In at Least Three States, Republicans Lost the Popular Vote but Won the House.”¹⁴⁰ Election inversions are still a problem, but they are no longer hidden. So hopefully there’ll be less disinterest in finding a solution.

NOTES ON THE CONTRIBUTOR

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140. Christopher Ingraham, “In at Least Three States, Republicans Lost the Popular Vote but Won the House,” *The Washington Post*, November 13, 2018, <https://www.washingtonpost.com/business/2018/11/13/least-three-states-republicans-lost-popular-vote-won-house/>.