

TYRANNY OF THE ONE

TYRANNY OF THE MINORITY. By Steven Levitsky* & Daniel Ziblatt.** New York: Penguin Random House, 2023. Pp. 371. \$28.99 (Hardcover).

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In *How Democracies Die*, Steven Levitsky and Daniel Ziblatt celebrated two norms of behavior as keys to keeping democracy alive: mutual toleration and institutional forbearance.² Their sweeping historical account showed how important those norms have been in the life of American democracy, and through well-chosen stories from elsewhere, they gave reasons to think those norms have universal value in democratic governance. Mutual toleration is “the understanding that competing parties accept one another as legitimate rivals.” Institutional forbearance is “the idea that politicians should exercise restraint in deploying their institutional prerogatives.”³ Players in the democracy game should not act as though the world will end if they don’t win; intrinsic to democracy is shared acceptance that there will always be another game tomorrow.

Those two norms of American democracy were already imperiled when *How Democracies Die* was published. Things have not improved since. In *Tyranny of the Minority*, Levitsky and Ziblatt lower their sights from identifying general principles of democratic governance to prescribing particular big institutional changes to the American system of government. Those changes are needed, they argue, to ensure that American governments are

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2. STEVEN LEVITSKY AND DANIEL ZIBLATT, *HOW DEMOCRACIES DIE* (Crown, 2018) [hereinafter, LEVITSKY & ZIBLATT, HDD].

3. *Id.* at 9; *see also id.* at 111–112, 217; *Cf.* Mark Tushnet, *Constitutional Hardball*, 37 J. MARSHALL L. REV. 523, 552 (2004).

formed by majority choice and can then actually govern.⁴ Their recommended reforms fall into three categories: protecting the right to vote, changing the ways the President, Congress and state legislatures are chosen to give citizens a more equal say in who will govern, and enabling elected governments to get more done.⁵ Reforms in the first two categories share one virtue so far as they go: they all help stop a minority of voters from imposing their choice of government on a dissenting majority. But the proposed changes do not go far enough, because they do not change the system into one in which mutual toleration and institutional forbearance are actually likely. That is perhaps why the authors see a need for their third category of reforms. Yet those reforms, in making governing easier, may grease the skids for a slide into actual tyranny. This review explains why, and proposes a reform that would do far more to keep tyranny out of our constitutional future.

There is some tension between the two books. In *How Democracies Die*, Levitsky and Ziblatt treated the checks and balances of American government as valuable but not sufficient, and in need of leavening with mutual toleration and institutional forbearance. For example, they saw value in the United States Senate's filibuster rule that lets a minority of Senators block action, but urged that Senators bring forbearance to their use of

4. "Governing majorities undermined democracy in twenty-first century Venezuela and Hungary and are threatening to do so in Israel. But the American political system has always reliably checked the power of majorities. What ails American democracy today is closer to the opposite problem: Electoral majorities often cannot win power, and when they win, they often cannot govern. The more imminent threat facing us today, then, is minority rule" (pp. 10–11).

5. Their detailed recommendations are: a constitutional amendment enshrining the right to vote, automatic voter registration, early voting and easy mail-in options, making election day a Sunday or holiday, letting people convicted of felonies vote after serving their time, reinstating federal oversight of election administration, at least where there is a history of abuse and perhaps everywhere, creating nonpartisan, professional state electoral administration, abolishing the presidential electoral college and replacing it with a national popular vote, reforming representation in the Senate to be more proportional to population, replacing first past the post and single member districts for the House of Representatives and state legislatures with a form of proportional representation in which voters elect multiple representatives from larger districts and parties win seats in proportion to their share of the vote, eliminating partisan gerrymandering by establishing independent redistricting commissions, expanding the House of Representatives in line with population growth, abolishing the Senate filibuster, establishing term limits for Supreme Court Justices (maybe 12 or 18 years), and making it easier to amend the United States Constitution by eliminating the requirement that three quarters of state legislatures must ratify the change, so that two thirds of each chamber of Congress becomes enough to change the Constitution (pp. 230–235).

that veto.⁶ By the time they came to write *Tyranny of the Minority*, they appear to have lost hope of such forbearance, and now favor getting rid of the filibuster altogether. They even favor making the United States Constitution easier to change.

As those recommendations reflect, Levitsky and Ziblatt do not confine their reform agenda to constitutional features that could let a minority prevail over the majority in choosing who will govern, such as the malapportionment of the Senate and the Presidential Electoral College, the gerrymandering of congressional and other legislative districts, and rules that make voting more difficult for some voters than for others. They extend their call for change to some features that are truly just checks and balances, just ways for minorities to share power with majorities, not seize power from them. Governing through such power sharing calls for compromise and consensus. Even at the heights of constitutional amendment, Levitsky and Ziblatt now seem to believe that making change depend on extensive compromise and consensus is asking too much. Yet their title talks about *tyranny*, something worse than dysfunction. And many of the stories they tell in both books highlight the importance of letting minorities check and balance majorities as a way to help prevent a slide into actual tyranny. Early in *How Democracies Die*, they observed: “overreliance on the ‘will of the people’ can also be dangerous, for it can lead to the election of a demagogue who threatens democracy itself.”⁷

Behind both books looms that big worry. We could actually lose our democracy. We could actually fall prey to a tyrant. *How Democracies Die* is full of stories where that very thing happened. A democracy was ambling along, as democracies do, with plenty of disagreement and even some dysfunction, and then someone became popular and was elected and then found ways to change the system. What once for all its flaws was a government of, by, and for the people eventually became a government of, by, and

6. “These informal prerogatives [of United States Senators] are essential checks and balances, serving as both a source of protection for minority parties and a constraint on potentially overreaching presidents. Without forbearance, however, they could easily lead to gridlock and conflict.” LEVITSKY & ZIBLATT, HDD, *supra* note 2, at 133. “The Democrats responded with norm breaking of their own. In November 2013, Senate Democrats voted to eliminate the filibuster for most presidential nominations, including federal judicial (but not Supreme Court) nominees, a move so extreme it was widely referred to as the ‘nuclear option.’” *Id.* at 163.

7. *Id.* at 41.

for the tyrant. What once clumsily and with much disputation aimed to serve the common good, the public interest, ended up all about the narrow self-interest of the tyrant. Of course, the government still *claimed* to serve the public interest, but at the end of this road, all that those in government *do* is what they think the tyrant wants. The people are reduced to his playthings, and whether government treats them benevolently, indifferently, or cruelly turns on his whims. That transformation is on full display in Vladimir Putin's Russia, and is a work in progress in many other places too. It is not a new story. Socrates told it millennia ago, recorded by Plato in a memorable dialogue:

And is it not always the practice of the commons to select a special champion of their cause, whom they maintain and exalt to greatness?

Yes, it is their practice.

Then, obviously, whenever a despot grows up, his origin may be traced wholly to this championship, which is the stem from which he shoots.⁸

The authors' fear of that danger was evident in the pages of *How Democracies Die*, and contributes to their call for major reforms in *Tyranny of the Minority*. The reforms they propose would take away the current electoral advantages of a particular political party that is currently in thrall to a particular person whose return to power might endanger our democracy. But the reforms they propose definitely won't happen before the next election, so any contribution those reforms will make to protecting our democracy will protect us from other would-be leaders at other times. And in those other times, the threats to democracy may come from people who are more popular than anyone else. In those other times, checks on majority power, such as the Senate filibuster rule and the need for most state legislatures to agree before the Constitution can be changed, might play important roles in thwarting a transiently popular person who aspires to change the system and remake it in their image. As Levitsky and Ziblatt and many others have observed,⁹

8. PLATO, *THE REPUBLIC* 299 (bk. 8, 565) (John Llewellyn Davies & David James Vaughan, trans., 3rd ed., 1866).

9. LEVITSKY & ZIBLATT, *HDD*, *supra* note 2, at 3–6, 77. For examples of other recent scholarship discussing how constitutional checks and balances can be degraded slowly and subtly, but no less completely in the end, see TOM GINSBURG & AZIZ Z. HUQ, *HOW TO SAVE A CONSTITUTIONAL DEMOCRACY* 43 et seq. (2018); David Landau,

contemporary deaths of democracies are often by a thousand cuts. Often enough, democracy dies not through ostentatious overthrow but through erosion from the inside. Someone is popular enough to get elected and then uses the tools that their election gives them to slow-cook the system. The reforms proposed in *Tyranny of the Minority* do not do enough to reduce this danger, and may even increase it.

Levitsky and Ziblatt propose a seismic remaking of American government. They emphasize that “[e]ven if many of our proposals are unlikely to be adopted in the near term, it is essential that ideas for constitutional reform become part of a larger national political debate” (p. 237). If major reform is going to be hard to achieve, and if our most pressing and paramount reason for reform is to protect our system from sliding into tyranny, shouldn’t the first item on our reform agenda be the job that would-be tyrants want? Yet Levitsky and Ziblatt propose nothing about the presidency beyond insisting that it should go to the most popular candidate. We have seen over and over again that future tyrants can rise to power inside democracies through their ability to attract a mass following. Many people can become in thrall to a person. No one has ever been in thrall to a committee. If we don’t want one person at the top for life, then how about not having one person at the top at all?

Contests to be president or prime minister provide a platform for those who have the will and the skill to build a devoted following and turn it into an electoral juggernaut that can capture temporary control of government through democratic processes. An emotional bond can grow between a charismatic person and a large audience. They become followers through the psychological dynamic that Max Weber called *charismatic authority*.¹⁰ Elections that directly or indirectly select one chief executive enable the charismatic person to turn transient popularity into concentrated power.

And then the trouble really starts. The office of chief

Abusive Constitutionalism, 47 U.C. DAVIS L. REV. 189 (2013); Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHICAGO L. REV. 545 (2018); Ivan Ermakoff, *Law against the Rule of Law: Assaulting Democracy*, 47 J. LAW & SOCIETY 164 (2020); Tarunabh Khaitan, *Killing a Constitution with a Thousand Cuts: Executive Aggrandizement and Party-State Fusion in India*, 14 L. & ETHICS HUM. RTS. 49 (2020). Jan-Werner Müller aptly calls this process “constitutional capture.” Jan-Werner Müller, *Rising to the Challenge of Constitutional Capture*, EUROZINE, Mar. 21, 2014.

10. Max Weber, *Theory of Social and Economic Organization*, in ON CHARISMA AND INSTITUTION BUILDING: SELECTED PAPERS 46–62 (S. N. Eisenstadt ed., A. K. Henderson & Talcott Parsons trans., 1968 (1947)).

executive hands one person a set of powers tailor-made to subvert a democratic system and turn temporary power permanent. Through the powers to hire and fire and spend and command, the one true leader may use focal status to shape a shadow system, deploying favors and fear to secure the personal loyalty of others in government. Command of the nation's armed forces is just the sharpest item in an ample toolkit. Through the workings of the shadow system, the one true leader may hollow out and occupy the institutions of government that are supposed to share and disperse power and check and balance.¹¹ Government ceases to be about the common good, the public interest, and becomes all about the self-interest of the leader. The forms can stay republican and democratic, while the substance becomes a tyranny. Over the two centuries that American-style presidential and British-style parliamentary forms of government have been widely emulated, we have seen them fail repeatedly in just this way.¹²

In many times and places, contests to be the one true leader have led participants to expect an eventual winner-take-all elimination game, not a lasting dynamic of repeat play. That expectation may be fed both by how often in the past such

11. For example, “[d]utifully performing its role in a highly-choreographed display of political theater, Russia’s highest court . . . approved constitutional changes that opened the way for President Vladimir V. Putin to crash through term limits and stay in power through 2036. . . . Ekaterina Schulmann, a political commentator and former member of Mr. Putin’s human rights council, mocked the Constitutional Court’s ruling . . . as evidence of how cravenly pliant Russia’s nominally independent judicial system had become. ‘It is rare that the spirit of slavery and intellectual cowardice express themselves with such fullness in a written text,’ she said. . . .” Andrew Higgins, *Russia’s Highest Court Opens Way for Putin to Rule Until 2036*, N.Y. TIMES, Mar. 16, 2020.

12. FREEDOM HOUSE, *FREEDOM IN THE WORLD 2022*: “The present threat to democracy is the product of 16 consecutive years of decline in global freedom. A total of 60 countries suffered declines over the past year, while only 25 improved.” Some commentators have emphasized the failures of presidentialism. See, e.g., Juan J. Linz, *Presidential or Parliamentary Democracy: Does It Make A Difference?*, in 1 *THE FAILURE OF PRESIDENTIAL DEMOCRACY* 3-87 (Juan J. Linz & Arturo Valenzuela eds., 1994). Other commentators point out that parliamentary—by which they mean prime ministerial—systems have a high failure rate too. “We have identified twelve presidential regimes and twenty-one parliamentary regimes that have broken down in the twentieth century.” MATTHEW SOBERG SHUGART AND JOHN M. CAREY, *PRESIDENTS AND ASSEMBLIES: CONSTITUTIONAL DESIGN AND ELECTORAL DYNAMICS* 40 (1992). “Parliamentary systems with disciplined parties and a majority party offer the fewest checks on executive power, and hence promote a winner-takes-all approach more than presidential systems.” Scott Mainwaring and Matthew S. Shugart, *Juan Linz, Presidentialism, and Democracy: A Critical Appraisal*, 29 *COMPARATIVE POLITICS* 449, 453 (1997).

contests have ushered in dictators, and by the kind of competitors that such contests attract. Expectations that whoever wins will likely stay are heightened anywhere that this has happened before. An expectation of elimination may feed on itself, as even those who would willingly repeat play forever come to fear they must beat would-be tyrants to the punch.

Even where expectations of repeat play are well-anchored by long experience, having one chief executive undermines democracy's ability to serve the common good. The one true leader model can change the primary reason for political parties to exist and stay united. Instead of being all about promoting policies that they believe are in the public interest, parties can become mainly about capturing the executive, and with it the rewards of executive incumbency, including plum jobs and generous contracts and regulatory accommodations for allies. The one true leader model in this way feeds a drive to dominate and gives party members reason to stay together just so they can dominate. The one true leader model allows a party to dominate without overwhelming popular support because *someone* has to be chief executive. A charismatic leader can get them over the line to claim that prize at a particular moment in time. The prize of executive incumbency may motivate party members to go along with a leader who charts a course to staying dominant long-term without needing broad and diverse public support. They may become participants in building a shadow system that puppeteers the institutions of republican democracy.

The one true leader model hurts us in other ways too. It both nurtures gridlock and dangles tyranny as the solution to gridlock. When contests to be the one true leader fixate our politics on capturing that office rather than on what should actually be done by government, many players in the political system get reasons to want the incumbent government to fail at being a good government. Those players may therefore not want to help the government achieve what would be best for the people. Their playing becomes destructive, not constructive, as they strive to position themselves to be in tomorrow's government. They oppose for the sake of opposing, often seeking to thwart even measures with which they do not really disagree, and which they would try to implement themselves if they were on the inside. Deadlocks and stalemates can make tyranny look tantalizing. Dynamics created by the one true leader model itself become

fodder for candidates for chief executive to claim that the system is broken and “they alone can fix it.”

Put people in any game and most will experience a strong psychological pull to play according to the perceived nature of the game, with as much competition or cooperation as success in the game requires. *If we want to change the way people are playing a game, we need to change what counts as winning.* Emphasizing reasons to want more cooperative behavior has value primarily not in persuading people to be more virtuous but in helping to shift or sharpen people’s understanding and expectations about the nature of the game. It helps to urge mutual toleration and institutional forbearance if and only if those are necessary qualities for success at playing the game we are in. And those are indeed necessary qualities for success at playing a *power sharing* game. They are not necessary qualities for success at playing to become the one true leader. We can call for those qualities all we want; if the game is a contest to be the one true leader, the most our injunctions will achieve is unilateral disarmament by the very people we wish would succeed.

Our experience under democratic systems that try merely to check and balance singular chief executives shows that sharing power matters as much inside institutions as between them. We have long seen the value of giving big decisions about what our laws should be to multi-member, multi-chamber representative assemblies, and giving big decisions about what our laws mean to multi-member appellate courts. If the executive branch of government can also affect what our laws turn out to be, and how those laws will apply to us, then shouldn’t we share power inside the executive too?

THE ROAD NOT TAKEN

Alongside his famous separation-of-powers account of England’s constitutional monarchy,¹³ Montesquieu acknowledged that having one chief executive is not *republican*. In a republic, “the sudden rise of a private citizen to exorbitant power produces monarchy, or something more than monarchy.” If one person pulled that off in a republic, it would be by manipulating the formal system in some way against which that formal system had

13. 1 CHARLES-LOUIS DE SECONDAT, BARON DE MONTESQUIEU, *THE SPIRIT OF THE LAWS*, bk. 11, ch. 6, 151–62 (Thomas Nugent trans., rev’d ed., 1900) (1748).

not made adequate provision. Then “the abuse of this power is much greater, because the laws foresaw it not, and consequently made no provision against it.”¹⁴

Montesquieu argued that republican government could work only in a “small territory.”¹⁵ Group decision-making logistics would have been a plausible reason for taking that view when Montesquieu wrote, because long-distance transport and communication were so slow back then. But Montesquieu articulated a reason for thinking republics had to be small that might still be relevant now. In a small community, he argued, “the interest of the public is more obvious, better understood, and more within the reach of every citizen; abuses have less extent, and, of course, are less protected.”¹⁶

In a small community, it is more obvious when those in leadership try to diverge from serving the public interest and instead seek to serve their own narrow self-interest. Such moves can be easy to spot and stop in small group decision making, whether in town councils or school boards or homeowners’ associations. In a large and complex society, “the public good is sacrificed to a thousand private views.” In a large and complex society, people may well feel that they are being treated unfairly, but they will have trouble knowing who or what to blame. That makes them ripe for suggestion. It makes them susceptible to someone whose privileged circumstances provide a platform to stir people up with stories about how they came to be so unfairly treated, someone who promises to rescue them and restore them to better times. Someone may maneuver his way into leadership who “soon begins to think that he may be happy and glorious, by oppressing his fellow-citizens; and that he may raise himself to grandeur on the ruins of his country.”¹⁷ George Washington echoed Montesquieu in his Farewell Address to the American people, observing that political parties are predisposed

to become potent engines by which cunning, ambitious, and

14. *Id.* at bk. 2, ch. 3, 14.

15. *Id.* at bk. 8, ch. 16, 120.

16. *Id.* Jacob Levy identifies three interrelated strands to Montesquieu’s small republic argument: first, that increased size causes citizens’ interests to diverge; second, that increased size obscures from citizens their shared, public interest; and third, that large size involves a large military whose leadership would eclipse and ultimately displace a truly republican government. See Jacob T. Levy, *Beyond Publius: Montesquieu, Liberal Republicanism and the Small Republic Thesis*, 27 *HIST. POL. THOUGHT* 50, 50–56 (2006).

17. MONTESQUIEU, *supra* note 13, at bk. 8, ch. 16, 120.

unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government, destroying afterwards the very engines which have lifted them to unjust dominion. . . . The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result gradually incline the minds of men to seek security and repose in the absolute power of an individual; and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation on the ruins of public liberty.¹⁸

But might not the *shared* decision making of truly republican government help protect against one person getting such a foothold, even in a large nation? Thomas Paine met Montesquieu's small republic thesis with incredulity, and alleged that Montesquieu was not sincere about it. "Montesquieu, who was strongly inclined to republican government, sheltered himself under this absurd dogma; for he had always the Bastille [sic] before his eyes when he was speaking of Republics, and therefore pretended not to write for France."¹⁹

THE SWISS EXPERIMENT

In 1848, Switzerland took a chance on a constitutional design that looked good in theory but had yet to succeed in a modern nation state. They chose not to have one true leader. They insisted that seven people share in leading the nation. The first Federal Council represented both Protestants and Catholics. It included members from the German-speaking majority and from the French-speaking and Italian-speaking minorities.²⁰ A principle of power sharing born amid religious and ethnic conflict now

18. President George Washington's Farewell Address, first published in *Claypoole's American Daily Advertiser* on September 19, 1796, available at <https://www.georgewashington.org/farewell-address.jsp>.

19. 3 THE WRITINGS OF THOMAS PAINE, 350 (Moncure Daniel Conway, ed., 1895), reprinting Paine's 1797 pamphlet *The Eighteenth Fructidor*.

20. For helpful background, see OLIVER ZIMMER, *A CONTESTED NATION: HISTORY, MEMORY AND NATIONALISM IN SWITZERLAND 1761-1891* (2003); see also CLIVE H. CHURCH, *THE POLITICS AND GOVERNMENT OF SWITZERLAND* (2003); *THE MAKING OF MODERN SWITZERLAND 1848-1998* (Michael Butler, Malcolm Pender, and Joy Charnley, eds., 2000).

preserves and promotes diversity and inclusion in other ways too. In electing the Council, the Federal Assembly keeps a range of diversity considerations in mind. At least three women are now expected among the seven. Each of the largest cantons expects to be represented. Switzerland's plural executive enables the Swiss people to feel far more fully represented than they would under a one true leader model.²¹

The seven members of Switzerland's Federal Council administer the nation *together*. Each heads a department of the government, but all the big decisions of government are made collectively by the seven of them. The Constitution requires them to act as a collegial body. Council members are expected to support the Council's decisions even when those decisions are not exactly what they individually wanted.²²

The seven members of the Federal Council are equals. Each year the Federal Assembly elects one Council member to chair meetings. For that one year, the chosen person represents the nation in formal settings where one person needs to do so. They cannot be reelected to that role in the following year.²³

Proportional representation helps to ensure that many political parties have seats in the Swiss Federal Assembly.²⁴ None has a majority of the seats. Choosing members of the Federal Council requires that members of the Assembly vote across party lines—if each party just voted for its own, no one would attract enough support to be elected.²⁵ The Swiss system concentrates conflict over governing policy in the legislature, and gives

21. See, e.g., *Politicians unite in calling to elect two more women to Federal Council*, SWI, September 30, 2018. SWITZERLAND CONST. art. 174 cl. 4: "In electing the Federal Council, care must be taken to ensure that the various geographical and language regions of the country are appropriately represented." HANSPETER KRIESI & ALEXANDER H. TRECHSEL, *THE POLITICS OF SWITZERLAND: CONTINUITY AND CHANGE IN A CONSENSUS DEMOCRACY* 79 (2008).

22. SWITZERLAND CONST. art. 177. See KRIESI & TRECHSEL, *supra* note 21, at 76.

23. SWITZERLAND CONST. art. 176.

24. See MAURICE DUVERGER, *POLITICAL PARTIES: THEIR ORGANIZATION AND ACTIVITY IN THE MODERN STATE* (Barbara & Robert North, trans., 1954); DOUGLAS W. RAE, *THE POLITICAL CONSEQUENCES OF ELECTORAL LAWS* (1967); William H. Riker, *The Two-Party System and Duverger's Law: An Essay on the History of Political Science*, 76 *THE AMERICAN POLITICAL SCIENCE REVIEW* 753–66 (Dec. 1982). For a recent American proposal to introduce proportional representation, see LEE DRUTMAN, *BREAKING THE TWO-PARTY DOOM LOOP: THE CASE FOR MULTIPARTY DEMOCRACY IN AMERICA* (2020).

25. SWITZERLAND CONST. arts. 157, 175. The need for broad support promotes choosing moderate candidates. See KRIESI & TRECHSEL, *supra* note 21, at 80.

everyone reason to confine the executive to *executing* policies decided in the legislature. That allows collegiality among Federal Council members to flourish, despite the diversity of their party backgrounds. And that is what led parties in the legislature to agree, many decades ago, on a “magic formula” by which representatives from each of the major political parties are elected to the national executive.²⁶

Power sharing in the national executive fortifies the multi-party composition of the national legislature in a virtuous feedback loop, because parties in the legislature are not preoccupied with capturing executive office from one another. Their success as parties depends on persuading the Swiss people that their ideas are better than those of their rivals, uncompromised by an orthogonal need to impress voters with a candidate for chief executive. As no one needs to cobble together enough support to win the executive, parties do not need to be dominant to be successful. Parties can afford to be more authentically about policies than personalities. They can commit wholeheartedly to the battle of ideas without jeopardizing the stability of governance.²⁷ And voters can afford to vote for ideas they really believe in, uncompromised by the quite different question of who would make the least bad administrator.

The Swiss system does not give anyone reasons to want Swiss government to fail. The one true leader model often does give those who hope to lead tomorrow a reason to hope that government fails today. When we remove that glittering prize, opposition to government really does become about

26. “The election of two Social Democrats to the Federal Council in 1959 established the so-called ‘Magic Formula’ 2-2-2-1, which meant two cabinet seats each for the Radicals, Christian Democrats and Social Democrats, and a single seat for the People’s Party. This arrangement remained stable for more than 40 years. The sharing out of cabinet seats was in effect just a reflection of the proportional strength of the main parties in parliament. The growing power of the People’s Party in the past two legislatures has led to a realignment of the 2-2-2-1 system, with Christian Democrats having to cede one of their seats to the People’s Party after the 2003 elections.” *One for seven, seven for one*, SWI, May 26, 2007. On the path to the magic formula, see KRIESI & TRECHSEL, *supra* note 21, at 76–79.

27. “While Swiss institutions thus limit the power of any individual cabinet member and counteract monarchical or dictatorial tendencies, the separation of survival is crucial for stabilizing Swiss concordance. It liberates the assembly majority from the task of keeping the cabinet in office, so that different legislative coalitions can be formed on different issues.” STEFFEN GANGHOF, *BEYOND PRESIDENTIALISM AND PARLIAMENTARISM: DEMOCRATIC DESIGN AND THE SEPARATION OF POWERS* 24 (2021).

disagreement over ideas, not about opposing in hopes of replacing. With the same discerning eye that caused him to coin the “laboratories of experiment” metaphor for policy initiatives in the American states,²⁸ James Bryce saw that keeping the Swiss executive out of party politics was keeping Swiss legislators focused on policy, not on trying to become the executive. “[S]trife for office and the sweets of office felt as always present in the background of debates in the assemblies of England, France, and other parliamentary countries, finds little place in the Swiss legislature.”²⁹

Early in the twenty-first century, the Swiss model underwent a stress test. Calling for Switzerland to cut back on immigration and keep its distance in international relations, billionaire businessman Christoph Blocher almost singlehandedly transformed a sleepy rural party into a powerhouse that regularly received more votes than any other party in Swiss national elections.³⁰

Swiss democracy translated Blocher’s electoral success into seats in national and regional assemblies. Swiss democracy also let Blocher advance policies he believed in through referenda, which allow the Swiss people to decide for themselves how they will be governed in matters large and small. But Swiss democracy never gave Blocher a chance to become chief executive, as he had so successfully been in the business world. Blocher could gather popular support to change government *policies*. But Blocher could not ride that passing popular support to capture government and remake it in his image.

The Federal Assembly elected Christoph Blocher to a four-year term on the Federal Council. Stories of simmering tensions, of collegiality in jeopardy, soon began to appear.³¹ After an awkward four years, the Federal Assembly did not reelect him. It was only the second time in a century that a Federal Councillor had run for reelection and been denied. The job is a bad fit for a charismatic leader, and refuses to be reshaped in their image. The

28. 2 JAMES BRYCE, *THE AMERICAN COMMONWEALTH* 1219 (1888), echoed in *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

29. 1 JAMES BRYCE, *MODERN DEMOCRACIES* 347 (1921).

30. See *Swiss Election Upsets Traditional Stability*, DEUTSCHE WELLE, Oct. 10, 2003; Mathieu von Rohr, *A Limited Victory for Blocher*, SPIEGEL INTERNATIONAL, Oct. 22, 2007; Elizabeth Olson, *A Billionaire Leads the Campaign to Keep Switzerland Apart*, N.Y. TIMES, Feb. 24, 2002.

31. *Rifts appear in power-sharing government*, SWI, October 4, 2004.

job not only fails to give them a bully pulpit, but officially deprives those who were party leaders of the one they'd had. Collective decision making precludes any one Councillor from empire building. The collegiality principle frustrates any one Councillor's aspirations to stand out. For someone who ran on shaking things up, playing along with the team may look weak and ineffectual to their supporters. The Swiss Federal Council is a showboater's nightmare. It is a place where dreams of dominance, of being the great national savior, go to die.

"I'm torn between relief, disappointment and outrage," Blocher declared.³² If the Assembly would not keep him in the Council, then his party would leave the government and become an opposition, using the tools of direct democracy to rally support. But being "in opposition" proved to be a dissatisfying experience for Blocher's party.³³ The system offered them no route to replacing the government. Swiss civic culture has internalized the value of sharing power, of not letting any one person lead. The plural executive model helps steer people away from cults of personality; it offers no avenue to messianic ambition. The Swiss value their right to override their leaders on policy, but no one who galvanizes the Swiss people into doing so should delude themselves that they could talk the people into bowing down to one true leader. Blocher's party ultimately agreed to nominate two people to fill a later vacancy on the Federal Council. One of them was Christoph Blocher. The Federal Assembly chose the other person. Blocher's party slunk back into government.³⁴ The system had seen him off.

WHY ONLY SWITZERLAND?

The plural executive model had been in intellectual fashion half a century before the Swiss tried it.³⁵ But the French Directory

32. Derek Scally, *Ousted politician leads party into Swiss opposition*, IRISH TIMES, Dec. 14, 2007; see also Nick Cumming-Bruce, *Swiss parties eject far-right leader Blocher from cabinet*, N.Y. TIMES, Dec. 12, 2007.

33. See Clive H. Church and Adrian Vatter, *Opposition in Consensual Switzerland: A Short but Significant Experiment*, 44 GOVERNMENT AND OPPOSITION 412–37 (2009).

34. *Id.* at 412, 423–26.

35. See, e.g., ANTOINE CLAUDE DESTUTT DE TRACY, A COMMENTARY AND REVIEW OF MONTESQUIEU'S SPIRIT OF LAWS, 131 (Thomas Jefferson trans., 1811): "the authority of a single person is, as we have seen, essentially progressive; when confined to a limited period of years, it advances to possession for life, and from thence to hereditary power."

was so traumatized by the aftershocks of the Terror and so swiftly ended by Napoleon Bonaparte's coup³⁶ that for a time thereafter constitution designers had to doubt whether shared leadership could work. Switzerland took a leap of faith, encouraged by history and circumstances that made them uniquely averse to the one true leader model. By the twentieth century, the success of Swiss government vindicated their choice and redeemed the reputation of government by committee. Yet still hardly anyone copied them.³⁷ Why not? Two reasons loom largest: the allure or expectation of exalted office and the claim that having one true leader brings to leadership more "energy dispatch and responsibility."³⁸

A. EYES ON THE PRIZE

When James Wilson proposed to the Philadelphia Convention "that the Executive consist of a single person,"³⁹ silence descended on the room. Eventually the person in the chair asked if they were ready to vote. According to James Madison's notes, 81 year old Benjamin Franklin then "observed that it was a point of great importance and wished that the gentlemen would deliver their sentiments on it before the question was put." Another delegate commented on "the shyness of gentlemen on this and other subjects. He said it looked as if they supposed themselves precluded by having frankly disclosed their opinions from afterwards changing them, which he did not take to be at all the case."⁴⁰

The true source of the founders' "shyness" was clear enough, though not tactful to say. Everyone knew that if they went with

36. For a helpful history of the French Directory, see DENIS WORONOFF, *THE THERMIDOREAN REGIME AND THE DIRECTORY 1794-1799* (1984).

37. On Uruguay's attempts to emulate aspects of the Swiss model, see David Altman, *Collegiate Executives and Direct Democracy in Switzerland and Uruguay: Similar Institutions, Opposite Political Goals, Distinct Results*, 14 *SWISS POLITICAL SCIENCE REVIEW* 483-520 (2008). "[T]he 'back and forth' of collegial or semi-collegial governments in Uruguay has more to do with short-term political configurations than truly consociational arrangements, as seen in Switzerland." *Id.* at 509. See also AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES: A COMPARATIVE EXPLORATION*, 212-16 (1977).

38. 1 *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* (Max Farrand ed., 1911), 65 (Madison's notes, June 1, 1787) (James Wilson).

39. *Id.*

40. *Id.*

one great national leader, it would be George Washington.⁴¹ “Every delegate who knew him well must have understood that Washington would neither consent to serve as one member of an executive triumvirate nor be suited for such a post.”⁴² How to condemn the *role* of chief executive without disrespecting the revered man who would surely fill it first? Washington was right there in the room, the elected president of the convention. Virginia’s Edmund Randolph nonetheless finally spoke. Creating one great national leader would, he declared, be “the foetus of monarchy.” He “could not see why the great requisites for the Executive department, vigor, despatch & responsibility could not be found in three men, as well as in one man.”⁴³

The Virginia delegation was in a pickle. Randolph had taken his stand against creating space for a great national leader. George Mason and John Blair agreed with that stand, Mason writing in speech notes that true republicanism “preserves the freedom and independence of the Swiss Cantons in the midst of the most powerful nations.”⁴⁴ Yet also in the delegation was George Washington, ready to take the role, were it created. Only James Madison and one other Virginia delegate were willing and able to vote for that. Madison subsequently told Thomas Jefferson that the process of deciding on the executive “was peculiarly embarrassing.”⁴⁵ The other state delegations split 6–3 in favor of a single chief executive. Virginia joined the majority to create the American Presidency, but to get there, the vote had to happen when Mason was out of the room, and Washington had to vote for himself.⁴⁶ In later debate that day over executive powers,

41. “Since everyone presumed that Washington would become the new government’s first executive, no one could conceive of the position without thinking about him in it.” EDWARD J. LARSON, *THE RETURN OF GEORGE WASHINGTON* 141 (2015). “All testimony concurs in assuring us that an office of this magnitude would not have been created unless Washington had been intended to fill it.” W. B. Lawrence, *The Monarchical Principle in Our Constitution*, 131 N. AMER. REV. 385, 390 (Nov. 1880). “The Duke de Rochefoucauld, in a letter to Dr. Franklin in 1789, expresses his surprise, in view of the attempts made in France to restrain the powers of the monarch, that we should have given such unlimited scope to an elective Chief Magistrate, especially to one whose reelection for life was possible.” *Id.* at 392.

42. LARSON, *supra* note 41, at 144.

43. 1 RECORDS, *supra* note 38, at 66.

44. *Id.* at 112–14.

45. 3 RECORDS, *supra* note 38, at 132 (letter from James Madison to Thomas Jefferson, Oct. 24, 1787).

46. “On the question for a single Executive <it was agreed to> Massts. ay. Cont. ay. N.Y. no. Pena. ay. Del. no. Maryd. no. Virg. ay. (Mr. R & Mr. Blair no—Doctr. Mc. Cg. Mr.

Franklin ruefully concluded: “The first man, put at the helm will be a good one. No body knows what sort may come afterwards. The Executive will be always increasing here, as elsewhere, till it ends in a monarchy.”⁴⁷ Reflecting after the convention on what they had done in creating the American Presidency, another delegate wrote:

His Powers are full great, and greater than I was disposed to make them. Nor, Entre Nous, do I believe they would have been so great had not many of the members cast their eyes towards General Washington as President; and shaped their Ideas of the Powers to be given to a President, by their opinions of his Virtue. So that the Man, who by his Patriotism and Virtue, Contributed largely to the Emancipation of his Country, may be the Innocent means of its being, when He is lay'd low, oppress'd.⁴⁸

George Washington’s Farewell Address focused on the complicity of political parties in a slide from democracy to tyranny, recognizing that they could become “potent engines” enabling a “cunning, ambitious, and unprincipled” person to enslave the nation and establish “the absolute power of an individual.”⁴⁹ Washington chose not to focus on a fateful choice that was more directly responsible for exposing his nation to that risk: the choice to have one true leader.

The gatherings that draft new constitutions in times of national transition tend to be dominated by the most likely leaders of the systems they are devising. A predictable obstacle to truly republican reform is the personal ambition or expectation of the reformers. Thomas Paine recognized what an unusual accomplishment it was that French reformers had managed to converge, even for a moment, on the short-lived constitution of the French Directory: “Those who formed the Constitution cannot be accused of having contrived for themselves. The Constitution in this respect is as impartially constructed as if those who framed it were to die as soon as they had finished their

M. & Gen W. ay. Col. Mason being no, but not in house, Mr. Wythe ay but gone home). N. C. ay. S.C. ay. Georgan. ay. [Ayes—7; noes—3.]” 1 RECORDS, *supra* note 38, at 97 (Madison’s notes, June 4, 1787).

47. *Id.* at 103.

48. 3 RECORDS, *supra* note 38, at 302 (Letter Pierce Butler to Weedon Butler, May 5, 1788).

49. Washington, *supra* note 18.

work.”⁵⁰ We have evidence that aspirations to exalted office played a pivotal role in the American founders’ long and ferocious fight over the composition of the Senate. Small state political leaders insisted on equal access to Senate seats, arguing that the Senate needed to represent state governments. Yet most of them agreed with their large state counterparts that Senators should have long terms and personal votes, rather than belonging to true state government delegations whose members would have had short terms and would have exercised their state’s voting power collectively, as they had under the Articles of Confederation.⁵¹ Truly shared governance that keeps individuals out of the spotlight is not so appealing to many likely leaders, and that should be part of its appeal to the rest of us. In Socrates’ words, “[t]hat city in which the destined rulers are least eager to rule, will inevitably be governed in the best and least factious manner.”⁵²

How do we structure government to improve the odds of it being all about those who are governed, not all about those who govern? Government by committee may be as close as we can realistically get. The Swiss system supplies an array of effective principles to lower the profile of executive members, from the collegiality requirement to the secrecy of deliberation to the insistence on solidarity in defending decisions publicly. Leadership is made more technocratic, more likely to attract thinkers than theatrics. Yet the Federal Assembly’s control over who is elected to the Federal Council and whether Councillors are re-elected maintains the executive’s accountability to the Swiss people.

B. ENERGY, DISPATCH, AND RESPONSIBILITY?

“[G]iving most energy dispatch and responsibility to the office,” was James Wilson’s flagship reason for proposing one chief executive to the American Founders.⁵³ In doing so, he echoed Montesquieu’s account of English constitutionalism as a separation-of-powers ideal: “The executive power ought to be in the hands of a monarch, because this branch of government, having need of despatch, is better administered by one than by

50. 3 PAINE, *supra* note 19, at 349.

51. See Laurence Claus, *The Framers’ Compromise*, 67 AMER. J. COMP. L. 677 (2019).

52. PLATO, *supra* note 8, at 242.

53. 1 RECORDS, *supra* note 38, at 65 (Madison’s notes, June 1, 1787) (James Wilson).

many.”⁵⁴ Were they right?

Leading in battle may require snap decision-making. Proponents of one chief executive at the American Founding pressed on the military analogy, one observing that sharing executive leadership “would be a general with three heads.”⁵⁵ Democratic republics may need to provide for singular leadership under battlefield conditions.⁵⁶ But when battlefield conditions call for singular leadership, that leadership is needed from a commander in the field, not a distant national chief executive. The American founders’ own experience with General Washington’s command exemplified that fact. They took the wrong lesson from that experience. Away from the immediacies of battle, the rest of life allows for, and benefits from, much more deliberation. At the American Founding, and too often since, the battlefield tail wagged the governance dog.

Decision making processes can be clear and quick without being confined to the workings inside one head. Of course we need clear procedures for deciding even when particular people are not available to decide – that is true whether the decider is one person or three or seven. Of course we need reliable means of communication to let people act in concert. Those means are needed for implementing decisions anyway, regardless of how many minds actually decide. Now that multi-way long distance communication is reliable and easy, the same means of communication that are used to elicit cooperation in implementing decisions can easily be used to let multiple minds share in the actual decision-making. We can readily rely on group decision-making in executive matters as surely as in legislative and judicial. And we can hold the members of group executives just as individually responsible for their contributions to decisions as we hold legislators and judges. The Swiss Federal Assembly held Christoph Blocher responsible for his performance on the Federal Council when they chose not to extend his time in office.

National presidents and prime ministers have varied greatly in the energy and dedication they brought to the job. Members of

54. MONTESQUIEU, *supra* note 13, at bk. 11, ch. 6, 156.

55. 1 RECORDS, *supra* note 38, at 97 (Madison’s notes, June 4, 1787) (Elbridge Gerry).

56. Switzerland’s Constitution provides for the United Federal Assembly to put one person in charge of the armed forces if war breaks out: SWITZERLAND CONST. arts. 157, 168.

a committee will also vary in energy, but the most energetic and conscientious members will likely push the others and help to hold them accountable in ways that presidents' and prime ministers' cabinets and staffs cannot. The ever-acerbic Thomas Paine put it this way:

An individual by election is almost as bad as the hereditary system, except that there is always a better chance of not having an idiot. But he will never be any thing more than a chief of a party, and none but those of that party will have access to him. He will have no person to consult with of a standing equal with himself, and consequently be deprived of the advantages arising from equal discussion. Those whom he admits in consultation will be ministers of his own appointment, who, if they displease by their advice, must expect to be dismissed. The authority also is too great, and the business too complicated, to be intrusted to the ambition or the judgment of an individual. . . .⁵⁷

A particular leader's energy and dispatch depend on vagaries of character and health—our history is littered with examples of singular leaders who were propped up by their staff in triage mode. A collective leadership, with the right procedures and incentives, can encourage one another to be better, can look out for one another, and can help keep one another honest.⁵⁸

Switzerland's Federal Council has shown that a modern plural executive can act with energy and as much dispatch as the circumstances really require. When long-simmering separatist sentiment exploded into violent agitation in the Jura region, the Federal Council was able to help deploy democratic processes to handle it. A new canton was created. Individual villages were able to choose where they wished to belong. Switzerland's apparatus of direct democracy resolved the issue in a way that maximized the satisfaction of the disputants.⁵⁹

The Swiss Federal Council's operations may sometimes seem inefficient and slow. For that we can at least partly blame the

57. PAINE, *supra* note 19, at 347–48.

58. On the dynamics of committee decision making, see KENNETH C. WHEARE, *GOVERNMENT BY COMMITTEE: AN ESSAY ON THE BRITISH CONSTITUTION* (1955).

59. See Michel Bassand, *The Jura Problem*, 12 *J. PEACE RESEARCH* 139–50 (1975); Carole Villiger, *Political Violence: Switzerland, A Special Case?*, 25 *TERRORISM & POLITICAL VIOLENCE*, 672–87 (2013); *Separatist Swiss canton celebrates 30 years*, *SWI*, Sept 24, 2008; *Switzerland's German town votes to join French-speaking side*, *AFP*, Mar. 28, 2021.

bureaucratization that pervades governments everywhere. As our own experience amply shows, having one chief executive does not dispel bureaucratic inertia. When compared with actual governance elsewhere in the world, Swiss government is not especially inefficient and slow.⁶⁰ And even if it were, might not that be a price worth paying for a government much more likely to keep its people free? That has always been what we in democracies have told ourselves about self-government. Tyranny may be more efficient. But we would rather be free.

We don't just care about avoiding slow decisions. We also care about avoiding bad ones. For even the most time-sensitive big decisions that national leaders might need to make, such as how to respond to a hostile nuclear missile launch, would we really ever want one person to decide without any conversation with others? If we want other wise heads in the room, or on the call, why wouldn't we want multiple minds in the actual decision, not just advising and trying to sway one mind? Why would we want one person to have the option of just ignoring everyone else and going with personal flights of fancy? Has the record of decision-making by our presidents and prime ministers been so breathtakingly astute and timely that we couldn't possibly want more people involved?

We want leadership laser-focused on the common good, the public interest, not preoccupied with or distracted by narrow *self*-interest. Genuine group deliberation coaxes participants toward the common good by pushing them to express themselves in those terms. When a group of independent decision makers have all sworn to act in the public interest, their need to talk the talk improves their prospects of walking the walk. Why would we let major decision making happen in the private space of one mind,

60. See, e.g., KRIESI & TRECHSEL, *supra* note 21, at 81–83. “[I]n 1999, the situation in Switzerland was still better than in the majority of the fifteen EU member states: with regard to trust in government, Switzerland comes fifth in this comparison.” *Id.* at 83; see also THOMAS A. BAYLIS, *GOVERNING BY COMMITTEE: COLLEGIAL LEADERSHIP IN ADVANCED SOCIETIES* (1989); *THE NEW SWITZERLAND: PROBLEMS AND POLICIES* (Rolf Kieser & Kurt R. Spillman, eds., 1995); *THE SWISS LABYRINTH: INSTITUTIONS, OUTCOMES, AND REDESIGN* (Jan-Erik Lane, ed., 2001); WOLF LINDER & SEAN MUELLER, *SWISS DEMOCRACY: POSSIBLE SOLUTIONS TO CONFLICT IN MULTICULTURAL SOCIETIES* (4th ed., 2021), particularly 167–203. “Institutionally, consensus democracy has proven its worth in stormy weather. Surveys show that consensus democracy gets rising popularity and is even more appreciated by ordinary citizens than by the Swiss elites . . . [I]n the near future, one should not expect the Swiss to be willing to abandon consensus democracy in favour of a majoritarian system with less direct democracy.” *Id.* at 202–03.

when we know how often empowered minds turn to tyranny? If our history tells us that “absolute power corrupts absolutely,”⁶¹ shouldn’t the power to decide be shared?

TYRANNY BY COMMITTEE?

Without one true leader, it is hard to derail a democracy. Without one true leader, it is hard to stay a tyranny. Democracies with one true leader are playing on tyranny’s turf. Tyrannies that share ultimate power are playing on democracy’s turf. In their recent analysis of the empirical evidence, political scientists Barbara Geddes, Joseph Wright, and Erica Frantz observe: “[s]everal studies have shown that dictatorships led by somewhat collegial groups of officers (juntas) end sooner than other kinds of dictatorship.”⁶² They make a compelling case that *personalizing* dictatorship makes it more durable and damaging.⁶³

Tyranny by committee tends to be transitional, a bridge either to democracy or to one true tyrant. We can make sense of this when we see such collective decision making through the eyes of the individual participants. Each knows that others within the group may harbor ambition to subordinate them and become the one true leader. Why wouldn’t they? What reason is there for members of the governing group to bridle their narrow self-interest? Lack of a purpose higher than self-interest is destabilizing to a group. That sense of instability creates a yearning to introduce to their deliberations a concept of the common good and something resembling a rule of law that really succeeds in restraining the use of force. Where’s the fun in sharing in power if one must constantly fear a knife in the back?⁶⁴

61. Lord Acton, *Letter to Bishop Mandell Creighton*, April 5, 1887. F. Engel de Janösi, *The Correspondence between Lord Acton and Bishop Creighton*, 6 CAMBRIDGE HIST. J. 307, 316 (1940).

62. BARBARA GEDDES, JOSEPH WRIGHT, AND ERICA FRANTZ, *HOW DICTATORSHIPS WORK: POWER, PERSONALIZATION, AND COLLAPSE* 226 (2018).

63. *Id.* at 225–26; 232; *see also* RUTH BEN-GHIAT, *STRONGMEN: MUSSOLINI TO THE PRESENT* 12 (2020): “Personalist rulers can be the most destructive kinds of authoritarians because they do not distinguish between their individual agendas and needs and those of the nation.”

64. “The instability of power-sharing is a consequence of the distinctive, dismal conditions under which authoritarian power-sharing takes place. Authoritarian elites cannot rely on an independent authority to enforce their agreements about sharing power, they may use violence to resolve mutual conflicts, and they typically operate under a shroud of secrecy.” MILAN W. SVOLIK, *THE POLITICS OF AUTHORITARIAN RULE* 81 (2012).

Members of a tyranny by committee will often see that a better place for themselves and their families can be reached by shifting toward a government that is actually for the common good. In such circumstances, we see governing start to emerge from the shadows and to integrate with or restore a nation's formal institutions of republican democracy. The institutions become more than window dressing. They begin to become real.

Of course, there is another road that could be taken. Someone could become the one true leader. Then tyranny can settle in for the long haul.⁶⁵ Success at steering a regime that is unaccountable to its people comes from those in government having a shared sense of what is wanted at some focal point. Such a sense is much easier to cultivate if there is one person at that point. It is the leader who supplies the focal point for shared expectation. Singular leadership allows for underarticulated signaling of expectations.⁶⁶ Governing is about what's best for the leader, which well-situated participants in the system are rewarded for being adept at figuring out.⁶⁷ One true leader can and often does create an incentive structure that lets tyranny last. China's shadow system seemed to be on a path to integrating with its formally democratic governing institutions during the years when that shadow system began to share power among many minds. As Xi Jinping has consolidated the reins of power again in one pair of hands, we have watched hopes for accountability to the Chinese people and a real rule of law fade away.⁶⁸

65. "[T]he reasons for the emergence of personal autocracy are structural. . . . Rather than an accident of history, the emergence of personal autocracy is a systematic phenomenon." *Id.* at 55.

66. "In the comparative literature on authoritarianism, dictators employ one central communication technique to let others know what they want them to know: *signaling*." ANDREAS SCHEDLER, *THE POLITICS OF UNCERTAINTY: SUSTAINING AND SUBVERTING ELECTORAL AUTHORITARIANISM* 386 (2013). "Political actors are able to form convergent expectations about the future behavior of others to the extent that their environment provides clear clues, that is, clearly visible and clearly relevant clues." *Id.* at 387.

67. "[T]he astounding absurdity of personality cults fails to undermine their effectiveness. . . . On the contrary, it serves to reinforce the political message behind personality cults: 'In this regime, only one person counts!'" SVOLIK, *supra* note 64, at 81.

68. See, e.g., Elizabeth C. Economy (interviewee), *Is China Committed to Rule of Law?* COUNCIL ON FOREIGN RELATIONS, Oct 28, 2014: "We have seen very clearly that Xi has amassed a lot of power in a very short amount of time—more power than anybody since Mao Zedong. He has instilled significant fear and concern throughout party ranks, from the very bottom up through to the very top." Michael Schuman, *China's 'Very Dangerous Trajectory'*, THE ATLANTIC, June 21, 2022: "The change has been percolating for some time, but it is also inseparable from the rise of Xi Jinping. He has concentrated

CONFINING CHARISMA

Charismatic leadership is singular. It draws on our capacity to grow emotional bonds to particular people, to become devoted to them. What Max Weber called charismatic authority helped grow us from small groups to large nations.⁶⁹ That exhilarating psychological dynamic between leader and followers became a familiar feature of human life, because it conferred an advantage in the struggle to survive.⁷⁰ Relations among ancient human groups all too often played out on a battlefield. On a battlefield, swift decisive leadership can make the difference between victory and destruction. On a battlefield, inspiring leadership can call forth vigor and determination that surprises even the fighters themselves.

When we move from battlefields to national capitals, the benefits of singular leadership recede and the risks rise. Volodymyr Zelenskyy's current leadership of the Ukrainian people is inspiring, but its singularity is not its virtue. Were he just the most inspiring member of a leadership team who took turns to address the nation and made the big decisions together, his words would still be uplifting, and he would have a smaller target on his back. Shared leadership better secures continuity in wartime governance, by making wartime government harder to decapitate and protecting national morale from becoming hostage to the fate of one person. Sharing leadership can give it greater depth and resilience. And shared leadership even better illuminates the moral chasm between combatants in a conflict between democracy and tyranny. Volodymyr Zelenskyy's ability to inspire does not depend on being the only one in the room with a vote. Vladimir Putin's ability to terrorize *does* depend on exactly that.

more political power in his own hands than any other Chinese leader in decades, in the process upending the more balanced, government-by-committee approach that has predominated since the 1980s, thus leaving the most important decisions of the state—and the future of the world's most populous country—dependent on one man and his ideas, ambitions, and political calculations.”

69. WEBER, *supra* note 10, at 46–62. Weber opined that leadership likely emerged among early humans through their recognizing and appreciating some persons' “exceptional powers or qualities. These are such as are not accessible to the ordinary person, but are regarded as of divine origin or as exemplary, and on the basis of them the individual concerned is treated as a leader.” *Id.*, at 48.

70. *Cf.* CHARLES DARWIN, *THE ORIGIN OF SPECIES* 153 (1859) (describing natural selection as preserving “variations in some way advantageous, which consequently endure”).

What about just separating the head of state from the head of government, as many parliamentary systems do? Is that enough to confine charismatic leaders and protect democracy from sliding into tyranny? Each of the three Axis powers had a separate head of state when their heads of government turned them into tyrannies. Hungary does now.

What about involving both a president and a prime minister in active governance, as France does, or having co-presidents?⁷¹ That may actually set off a subversion race, as Tunisia's recent turn to tyranny exemplifies. These models make each individual a focal point for following by giving each an exalted profile that may let them succeed in securing the personal loyalty of enforcers. That stirs both fear and temptation—fear that the other person will act to subvert the system, and opportunity to preempt them by making the first move. The current Tunisian president used his command of the military to take complete control. A would-be tyrant in the prime ministership could have used the police to oust the president.⁷²

Effective, stabilizing power-sharing does not make individuals into focal points for following. We need enforcers in the military, the police, the intelligence services, and elsewhere to have a depersonalized loyalty to their democratic republic. No individual person should be situated to put their face on the nation, to take that loyalty for themselves. Power sharing atop the executive, like power sharing atop the judiciary, can be made highly effective without giving any one person a salience that lets them turn the enforcers in our democratic republics against republican democracy itself.

All too often, singular leaders who fill national needs in times of crisis overstay, convinced of their own indispensability. A true democratic republic can distinguish between the value of charismatic messengers and the value of group decision-making, and can choose to have both in *all* its branches. We can truly integrate those who inspire us within group decision-making. When someone uniquely rises to the occasion in a moment of

71. Cf. DAVID ORENTLICHER, *TWO PRESIDENTS ARE BETTER THAN ONE* (2013).

72. The dictator ousted by Tunisians in the Arab Spring had relied on the police rather than the military for domestic oppression. "Though Ben Ali himself had been a general before he became president, he relied on the police, not the military, to maintain power and silence opponents." Radwan A. Masmoudi, *Keep Tunisia's Military Out of Politics: President Kais Saied has broken a 65-year taboo*, FOREIGN POLICY, Sept. 2, 2021.

crisis, we need a system that celebrates their stepping up, but both stops them stepping too high, and sets their stage for stepping down, because a good life is not lived perpetually in crisis. For all the time we spend and hope to spend in peace and prosperity, we are best led in another way.

KEEPING THE PROMISE OF DEMOCRACY

Writing when the Swiss way of sharing power was quite new and its durability less certain, A.V. Dicey observed:

But the question whether parliamentary government necessarily means party government, is one to which cautious thinkers would be slow to give an off-hand answer. There is some reason for thinking that the success or failure of democratic institutions may ultimately turn on the possibility of keeping up representative institutions without creating the popular agitations and the fluctuations of policy which appear to be an unavoidable part of government by party. If this be so, the Swiss Constitution presents at lowest an ingenious attempt to obtain the merits of government by parliament without falling into the worst evils of government by faction.⁷³

Swiss democracy reliably deflects attempts to undermine it, by giving the players in the democracy game ample space to promote policies but little space to promote themselves. Swiss democracy cultivates leadership that is competent, diligent, diverse, and inclusive. Swiss democracy shows us that effective leadership can actually be self-effacing. Swiss democracy is so much the stronger because it does not indulge egoistic exhibitionism. Swiss democracy shows we can achieve accountable and energetic government without one true leader. Democracies with one true leader survive however long they do mainly through the happenstance of actually virtuous incumbents: actually virtuous chief executives and actually virtuous occupants of other offices who are brave enough to risk their careers and more to thwart unvirtuous chief executives. The Swiss model does far more to protect players in its version of the democracy game from dismal choices between career and country. It does not trap its people in slavish subgames of follow-the-leader. When it comes to seeing off demagogues, the one true leader model relies on luck; the Swiss model relies on science.

73. Albert Venn Dicey, *The United States and the Swiss Confederation*, *THE NATION*, 297, 298 (No. 1058, Oct. 8, 1885).

In the final chapter of *Tyranny of the Minority*, Levitsky and Ziblatt observe:

The most powerful weapon against change is silence. When an idea is viewed in mainstream circles as impossible, when politicians never mention it, when newspaper editors ignore it, when teachers don't bring it up in class, when scholars stop talking about it for fear of being seen as naive or out of touch—in short, when an ambitious idea is “unthinkable”—the battle is lost. Non-reform becomes a self-fulfilling prophecy.

Just because an idea is not taken seriously today doesn't mean it shouldn't be taken seriously—or that it won't be taken seriously in the future. During the early nineteenth century, the idea of ending slavery was considered unthinkable in mainstream America, and abolitionists were dismissed as dreamers. When the women's suffrage movement was born in the 1840s, no country in the world granted women the right to vote. Well into the twentieth century, mainstream America considered the idea of women's suffrage absurd. And for decades after the Civil War, the pursuit of racial equality and civil rights was seen as impracticable, if not impossible. In each case, the mainstream view changed radically. But for that to happen, someone had to start a public conversation (pp. 237–38).

Let's do that now. Some of the world's most celebrated democracies have long flourished under constitutions that are hard to change in the formal way. If a national constitution lets itself change only when there is overwhelming support for the change, then support must be sought across the spectrum of the nation's political life. That poses an especially formidable obstacle to any change against which some large faction is already dug in. If bipartisan or multipartisan support is needed for change, then proposals for change that would remove or confer some partisan advantage are especially unlikely to move us forward. But what of a change that comes out of left field? What of an idea that bypasses our preexisting set-piece squabbles and returns our minds to debates long forgotten? What of a conversation that invites us to imagine anew what self-government looks like? There might be a more receptive audience for that. And if reform is going to be a heavy lift, it surely helps to know that seeing it through could truly make a big difference to our prospects of staying a free people. Bringing power-sharing to every part of our government holds that promise.

We are on the edge of a constitutional crisis. If the crisis

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comes, we may end up in a constitutional moment,⁷⁴ when many things may be up for grabs. We should talk about that moment now, so that when it comes, we know what to reach for. And when we talk about what it takes to prevent tyranny, the conversation is not just about us; it's about people everywhere who are trying to do constitutional democracy and how often the one true leader model has poisoned their prospects of having a government of, by, and for the people.

No Big Brother's face fills news screens⁷⁵ in Switzerland. For almost two centuries the Swiss have performed the clinical trial for democracy without one true leader, and proven that it works. For the rest of us, it is an idea whose time has yet to come. We can help prepare for that time now.

74. See BRUCE ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* (1991).

75. GEORGE ORWELL, *NINETEEN EIGHTY-FOUR* (1949).