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Rebuilding Democratic Infrastructure

An Analytical Framework

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We are dedicated to renewing America by continuing the quest to realize our nation's highest ideals, honestly confronting the challenges caused by rapid technological and social change, and seizing the opportunities those changes create.

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The Political Reform program works towards an open, fair democratic process, with equitable opportunities for full participation, in order to restore dynamism and growth to the American economy and society.

About Participatory Democracy Project

American democracy today is in a state of crisis. Many of our core democratic institutions suffer from declining trust and legitimacy, undermined by pervasive concerns that government institutions are ineffective or unresponsive. Yet we also live in a moment of diverse, creative—and above all, urgent—efforts to revitalize and reinvent democratic institutions, from cities to rural communities, among grassroots organizers, minority communities, workers, technologists, and many other constituencies. The Participatory Democracy Project draws on these efforts to identify new approaches to reinventing our democratic institutions.

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Introduction

Democracies across the globe are facing foundational questions about if and how democracy is in retreat. Global incidence of democratic instability and the rise of right-wing populism in the United States, Europe, South Asia, and elsewhere has led to a renewed concern about democratic backsliding, as scholars explore the factors that accompany or provoke the collapse of democratic regimes into authoritarianism.[1] The United States is grappling with many of these questions as our current political moment reveals the underlying and in some times long-standing weaknesses in our own democratic infrastructure. From increasingly anxious concerns about Executive power, to persisting gridlock between parties and between Congress and the White House, to concerns about voter access and the modern media environment, this democratic dysfunction manifests in many different forms.

This debate among scholars, practitioners, and ordinary Americans has opened up a critical set of questions for the long-term future of American democracy. What are the dynamics that best explain the gap between the current state of American democracy and our aspirations for a just, responsive, inclusive, and legitimate democratic order? And what interventions might best help narrow this gap between reality and aspiration?

Drawing on contemporary scholarly and public debates, we suggest in this framing paper an infrastructural, systems-thinking approach to these questions. This approach draws upon the recognition that democratic polities require an interlocking and mutually dependent set of political, economic, and social infrastructures to give rise to a responsive, inclusive, and legitimate democracy. As these infrastructures erode, are broken, or become outdated, democracy's viability falls. While this paper is not meant to offer a comprehensive literature review, this mapping of the key foundations of democracy can help frame and structure the debate over democracy's challenges—and inform possible interventions.

I. Democratic Infrastructure: A Theoretical Framework

One way we can approach understanding the gap between the current state of American democracy and our aspirations for a more inclusive and responsive democratic polity is by unpacking the kinds of underlying institutional infrastructures—political, economic, and social—needed to facilitate democratic functioning. Sociologist Charles Tilly offers a useful starting point. Democracy, as Tilly notes, is best understood not as a specific institutional form (of, say, elections or party systems or the separation of powers), but rather by a wider set of social, economic, and political institutions that make possible "broad, equal, protected, and mutually binding consultation" between state actors and the public.[2] This definition can be further sharpened into several key dimensions that are each interrelated and mutually-dependent.[3]

First, changes to internal political norms, cultures, and dynamics can undermine the degree to which existing democratic institutions are effective at assuring mutual consultation between constituencies and state actors in broad, equal, and protected ways. Political incentives, norms, culture, and strategies can corrode democratic institutions and practices. Think for example about how contemporary uses of hardball politics,[4] identity politics,[5] or political polarization place democratic institutions under strain.

Second, democracy requires inclusion—what Tilly understands as breadth and equality. A democracy is not real if only some constituencies are included in political dialogue while other groups—be they racial minorities, women, non-property holders—are not. Similarly, democracy is illusory if it is in practice characterized by systemic hierarchies and equities.[6]

Third, democracy requires effective, yet accountable, government. The presence of "mutually binding consultation," as Tilly notes, implies a polity where "state agents have clear, enforceable obligations to deliver benefits" that are responsive to the demands of constituencies.[7] On the one hand, this requires sufficient state capacity such that government is able to find solutions to public problems and actually implement them in the first place—which without long-term legitimacy stability is compromised.[8] For example, without enforcement capacity, the state cannot assure civil rights, or pursue economic policies that might respond to the demands of the democratic public. But on the other hand, a democratic state must also necessarily be accountable. With greater state capacity comes greater potential for the abuse of state power—and greater conflict over the control of that state power.[9] Thus, a key aspect of democratic politics is an infrastructure that enables citizens to contest state actions, by imposing sanctions, procedural requirements, or mechanisms assuring responsiveness[10]—what Tilly refers to as protection. For example, without voting rights, fair elections, or a separation of

powers, or their equivalents, state power is unlikely to be responsive and accountable.

Fourth, mutually consultative democratic politics also require what we might call civic capacity—the ability of individuals and groups to mobilize, organize, and make political claims in the first place. This in turn depends on a range of social, economic, and political conditions. It requires, for example, a public sphere, a media and informational context, in which political claims can be made and debated. It requires a civil society ecosystem in which groups are able to organize effectively with equal opportunity for political influence. And it requires a party system that effectively transmits and helps mediate political claims and conflicts.

Finally, these underlying infrastructural conditions for democratic functioning are not static; rather they must be resilient and adaptive to changing external conditions—for example, as demographics, technology, and economic systems shift over time.

These infrastructures of democratic functioning are closely related to one another, and so the boundaries between these categories is not sharp. The rest of this paper unpacks these five components of democratic functioning. Table 1 summarizes these different lenses. It should also be noted that many trends and dynamics cut across these categories. For example, economic inequality represents a key form of systemic exclusion from political voice and socioeconomic life—while also exacerbating disparities in political power as it manifests in our electoral infrastructure, and shaping the imbalance of power among civil society groups. The goal of this framework is not to neatly divide up the landscape of diagnoses and interventions, but rather to offer a way of entering into the discussion about the current gap between American democratic realities and aspirations, and the kinds of interventions that might be most needed.

Table 1. Summary

Democratic infrastructure	Key questions	Areas of Potential Concern
Political incentives, norms, culture	Are these infrastructures robust to political dynamics and incentives within the polity? ● How does the system balance majority rule with protecting minority rights? ● How does the system maintain legitimacy with those who are out of power?	Polarization, teamsmanship, hardball politics and norm erosion Declining institutional forbearance Identity politics, struggles for recognition, and weaponized racism

Democratic infrastructure	Key questions	Areas of Potential Concern
Structural conditions for inclusion and exclusion	Are particular groups systematically excluded from political voice—e.g., on the basis of race, gender, wealth, location, etc.? How does political polarization and politics of identity exacerbate problems of racism and exclusion?	Race, racism, white supremacy Gender disparities and misogyny Economic inequality and exclusion Class divide in political leadership Demagoguery, scapegoating, and fearmongering Political violence and terrorism
Effective and accountable government	Does government have the capacity to solve public problems? Is government responsive and accountable to the public? Do political institutions translate public debates into political mandates? How can institutional design help achieve these goals? ● Separation of powers (e.g. inter-branch checks and balances, federalism, Senate/Electoral College)—and their limits ● Electoral structures—and their limits	Political gridlock Shortcomings of government service delivery Civic engagement, and structures for meaningful listening to public will Perceived distortions to concepts of representation and fairness in representation ("one person one vote") Voting rights, districting, campaign finance Inter-branch checks and balances, federalism, imperial Presidency, judicial activism, decline of Congress

Democratic infrastructure	Key questions	Areas of Potential Concern
Civic capacity and infrastructure	Are groups able to organize effectively to exercise political influence? Are party systems adequately transmitting and mediating political views and conflicts? Does the public sphere and media environment enable debate on fair and equal terms?	Civic engagement and organized civic power (social and labor movements) Strength and health of parties Intra-party conflict, tensions of the two party system Efficacy of mediating/gatekeeping institutions, such as media, parties, etc. Media bias Filter bubbles and politicized misinformation Concentration of media ownership Quality of discourse on social media
Resilience to changing external conditions	Does the system have the capacity to evolve as society changes?	Demographic trends Technological change Evolving social norms and culture Geopolitical trends and norms Election interference and sharp power of Russia, China, and other adversaries

II. Political Incentives, Norms, Culture

The norms, incentives, and strategies of political actors within a democracy pose one set of challenges to democratic infrastructure. In the democratic backsliding literature, scholars have highlighted how autocratic leaders, who by disposition are hostile to democratic institutions and civil liberties,[11] can gain political power through conventional and legitimate means, particularly by building coalitions with existing parties and gatekeepers, causing a gradual subversion of existing checks and balances and a consolidation of power.[12] These scholars also warn that democratic backsliding can also arise in a less direct form, through increasingly polarized and scorched-earth forms of political conflict between rival parties for power.[13] There is a generalized danger here rooted in the interaction between political self-interest and structural weaknesses of modern democratic institutions: Organized interest groups deploy political strategies to gain power and advance their agendas in ways that exploit structural limits to our institutions and which can exacerbate the pathologies of contemporary democracy. This combination of self-interest and structural conditions is what arguably explains the proliferation of norm violations and the increasing prevalence of hardball tactics. Furthermore, it is enabled by increased political polarization.

Polarization

Polarization represents the first key challenge to how existing democratic institutions are falling short. Partisanship is at record highs in the United States. The two distances between the parties is greater than ever before, as studies looking at the ideological party polarization from 1879–2012 demonstrate. Increasingly the two parties, Republican and Democrat, encapsulate a variety of issues which previously were non-ideological or nonpartisan.[14] The realignment of these two parties in the 1960s led to more deeply entrenched liberal and conservative parties. One large reason is the exodus of conservative, white Southern Dixiecrats, out of the Democratic Party after the Civil Rights Movement. As Democracy Fund Voter Study Group research has demonstrated, the primary conflict structuring the two parties involves questions of national identity, race, and morality; the traditional conflict over economics is less salient. [15]

Recent studies have underscored how polarization has shifted from issue-based differences to strong dislike and distrust along party lines, leading to what is today called affective polarization. Through measures of self-reporting, implicit bias, and measures of inter-group favoritism, [16] scholars have found a growing social distance between Democrats and Republicans since 1978.[17] This increase was linked to respondents' increased enmity to the opposing party as opposed to

respondents' increased like for one's party. However, there is also a counterargument against the polarization thesis. As some historians have suggested, the lamenting of polarization may be somewhat misleading, for it obscures the ways in which a *de*polarized mid-century politics was also deeply undemocratic and inegalitarian. James Wallner and Lee Drutman argue that what is needed is more of a battle of ideas.[18] Drutman outlines the paradox: "We can't have democracy *without* partisanship. But when partisanship overwhelms *everything*, it becomes increasingly difficult for democracy to function."[19]

Hardball and Norm Erosion

Polarization on its own does not necessarily pose a problem for democratic politics. But where polarization interacts with narrowly divided political environment where both parties are contesting for control, and where the stakes of losing political power feel existential, the result is an increasing pressure towards **hardball politics** and scorched-earth strategies that place existing political institutions under even greater strain. On this account, the pathologies of contemporary American politics have less to do with a resurgence of mass public opinion in favor of extreme right populism; instead a bigger driving factor is how the contest for political power incentivizes more extreme political tactics, ranging from institutional norm-breaking to taboo-shattering forms of political rhetoric in order to stave off potentially permanent decline of political influence. Thus, we see today how the coalition of business interests, conservative jurists, evangelicals, and the rest of the Nixonian coalition on the Right has sought to seize and defend political power, even through hardball tactics of bending and potentially breaking democratic institutions, like Senate judicial confirmations (Garland) and voter suppression, and money in politics. This is also what has led to the decades-long investment in skewing the media infrastructure (e.g. Fox, Sinclair, etc.) and the courts to create a supportive environment for these moves.

Each of these instances are ones where specific actors operating under self-interest have violated norms of good governance and mutual toleration—but have done so by weaponizing existing structural disparities in economic, political, and racial inclusion. This in turn has led to a greater crisis of democratic stability and legitimacy. This analysis suggests that the solution requires a shift in the incentives and coalitions that currently have a self-interest in breaking (or maintaining the broken) political system.

A related pressure of the key lenses for understanding the gap between democratic ideals and democratic realities focuses on the role of norms and political culture, particularly with respect to political elites and the ecosystem of leading political actors: elected officials, strategists, major media figures, party leaders, and the like. This approach emphasizes the importance of unwritten norms of political and civic conduct, particularly among political parties, candidates, and the Presidency. Where these norms are violated, the formal

structures of democratic institutions can quickly become shells, encasing a more authoritarian and explosive form of politics.

The recent literature on democratic backsliding, for example, has tended to highlight the importance of defending existing institutional checks and balances, as well as restoring informal **norms** that govern political behavior—norms such as the "mutual toleration"[20] of political opponents and "forbearance,"[21] which require political actors, once in power, to hold themselves back from deploying the full range of their coercive powers to snuff out their rivals. In the American context, a variety of other norms have also been central to maintaining democracy, including norms against conflicts of interest for elected officials, and norms promoting internal deliberation (such as the expectation that the president will consult with legal and other internal experts before advancing policy proposals). These norms prevent the executive branch from overreaching in normal circumstances.[22] Yet these norms have been blatantly violated by the current administration, contributing to concerns about presidential overreach and arbitrariness.[23] At the same time, the institutional system of checks and balances—whether it is intra-branch processes of Executive and regulatory policymaking, or inter-branch norms of Executive-Congressional relationships in legislation and appointments—has also been under increasing strain as political parties engage in increasingly scorched-earth partisan warfare through "constitutional hardball," tactics that while formally permitted in the constitutional scheme functionally lead to the breakdown of constitutional processes.[24] Think, for example, of how the Republican party blockaded the appointment of Merrick Garland to the Supreme Court in 2016, or how Executive opposition to Congress has led to more and more expansive interpretations of presidential power under both Democratic and Republican presidents.

While norm violation theories focus largely on political elites of various kinds, these norm violations are partly enabled by—and themselves contribute further to—accumulated public distrust of democratic institutions and disaffection with political participation. The Pew Research Center, for example, found that in 2016, less than a third of Americans expressed trust in the federal government in 2016,[25] while Gallup's polling revealed a similar finding, with trust in "the government's ability to handle domestic problems" at its lowest point since the 1970s.[26] Scholars have documented substantially the same trend in the United States and globally, as citizens have lost trust in governments and in their own sense of political efficacy—the sense of being able to exercise meaningful political power.[27] This problem of **public distrust** of democratic institutions can further accelerate the decline of democratic norms, practices, and institutional functioning. Indeed, this justified disaffection represents for many scholars a threat to "the legitimacy and stability of the political system."[28] Indeed, the resurgence of exclusionary populisms and political instability in recent years has borne it out.

It is worth noting, however, that some critics of the norms thesis have pointed out that a focus on norms is in many ways underdetermined, and the implications for reform turn greatly on what norms in particular we think are most critical to restore. For example, one could imagine a restoration of pre-2016 (or pre-2008) norms of inter-party comity that still leaves in place many of the practices and policies that contribute to the failure and delegitimization of democracy, like excessive money in politics, gerrymandering, voter suppression, or more.[29] Norm erosion is also possibly a product of the increasing stakes of political conflict: As federal power increases and the consequences of electoral loss go up, there is greater and greater incentive by particular interest groups to win at all costs. Indeed, this is part of the mechanism through which high inequality can drive democratic decline as wealthy interests have more to lose from popular redistributive policies, or as dominant racial groups perceive increased political and demographic threats from immigrants, and racial minorities.

Identity Politics and Weaponized Racism

A third variation of these political pressures stems from the ways in which racial and ethnic identity are deployed in modern democratic politics. While **identity politics** has been a frequent flashpoint of controversy in political debates, there is a larger pattern of political conflict driven by the push for what Francis Fukuyama has recently termed as the "demand for **recognition**."[30] In many cases these demands are critical for redressing the kinds of deep historical exclusion and inequities noted in Part III below. But in many democracies today, the demographic trends interact with deep histories of dominant-group identity, creating a toxic brew of racial anxiety, sense of threat from outsider "others," and a sense of loss of status. These anxieties are then easily weaponized and leveraged into political conflict.

Indeed, **racial resentment** and desires to reassert traditional racial and gendered hierarchies represent powerful undercurrents driving much of the contemporary right's anti-government political fervor.[31] In recent years, the long-brewing backlash against immigration, and the experience of America's first African-American president fueled a racial backlash was easily leveraged by political elites to disrupt the balance of power.[32] There is also a history of stoking opposition to public spending that is tied to the perception that state-sponsored policies benefit racial and ethnic minorities.[33] Even when opponents of government programs and safety-net provisions have not openly engaged in racial appeals, Republican politicians have proved adept at fusing business interests and anti-government critiques with more subtle (and perhaps not always intentional) appeals to racial sentiments.[34] Indeed, as Kathy J. Cramer notes, "support for small government is more about identity than principle."[35] This engagement with deeper conceptions of communal identity—and the linking of identity with a mix of frustration at socioeconomic decline and

resentment of racial minorities—is particularly stark in the context of contemporary far-right movements who have a pervasive narrative of losing out to immigrants and racial minorities who in their view have cut in line to advance towards greater prosperity through unequal and unfair treatment.[36]

In running for election, Donald J. Trump made an implicit and explicit link between these emotions of grievance, decline, and a sense of social and cultural threat from ascendant "others," in many ways removing prior social taboos on explicit racial resentment, amplifying these underlying attitudes and bringing them into an open political configuration.

Quantitative data supports the ethnographic analyses of scholars like Katherine J. Cramer, Arlie Russell Hochschild, and others. White voters without a college education made up around two-thirds of Trump's supporters in the Republican primaries and around three-fifths in the general election. Survey data from the Voter Study Group shows a strong correlation between negative assessments of Muslims and support for Trump both in the Republican primary and the general election.[37]

Moreover, the survey results find the same relationship in the 2012 data on Muslims, suggesting Trump tapped into pre-existing attitudes.[38] Once engaged, these racial attitudes may have become even more toxic. In a recent study, Sean McElwee and Jason McDaniel analyzed the data of over 4,000 respondents in the American National Election Studies pre- and post-survey and found that Trump accelerated realignment in the electorate around racism.[39]

III. Structural Conditions for Inclusion and Exclusion

Democracy requires a basic level of broad equity and inclusion. A democracy that systematically excludes constituencies from social, political or economic life is not fully democratic. Historically this question of who can enjoy what the Fourteenth Amendment calls the "privileges and immunities of citizenship" has been a central fault line of American democracy, from the subordination and exploitation of enslaved persons, to the systematic legal exclusions of Jim Crow, and the exclusion and subordination of women at common law.

But even after the passage of the Thirteenth, Fourteenth, Fifteenth, and Nineteenth Amendments, abolishing slavery, assuring equal protection, and nominally protecting voting rights, indeed even after the civil rights movement of the 1960s, there remain often-hidden systems of exclusion from equal political power and participation.

Racial and Gender Exclusion

Racial and gender exclusion are persistent structural conditions that, in effect, mean that democracy is not a reality for many communities. Consider the extensive critiques of the institutionalized and systemic domination that communities of color face under the criminal justice system. The problems of mass incarceration and over-policing represent a modern system of racial subordination.[40] Over-policed and over-incarcerated communities of color do not, in a meaningful sense, live in a democratic polity marked by broad, equal, protected, mutually binding consultation. But similar patterns of structural exclusion appear in other contexts as well. Or consider how precarious and insecure work is often racialized, leaving workers of color particularly vulnerable, or how the welfare bureaucracy treats mostly minority recipients and applicants, or how housing and zoning systems of many cities concentrate racial minorities and poverty in particular neighborhoods. These are all ways of constructing second-class citizenship for racial minorities, magnifying their economic and political inequality.[41]

This form of systemic racial exclusion is echoed in other contexts and with other constituencies as well. Legal and political assertions that certain spheres of life are apolitical private realm[s] have similarly operated at times to shield the workplace, the market, or the family from the domain of public politics, immunizing them from reform efforts.[42] Similarly, legal regimes that immunize the inner workings of the firm from legal liability or political critique construct the workplace as a form of private government where workers are subject to the will of private managers and owners in ways that make them deeply unfree.[43]

These various issues, including racial and gender justice and labor law, involve substantive questions, that is, the substantive policy disputes that take place within ordinary democratic politics. Yet in the aggregate, these policies also construct implicit and explicit boundaries that limit who can make claims in public politics and what issues can be engaged in the first place, in ways that constitutively narrow the scope of democracy itself. While we are used to thinking about the existence or collapse of democracy as a macro polity-wide phenomenon, the cumulative effect of these different modes of exclusion is that, in lived reality, democratic functioning and failure is in fact asynchronous: Some constituencies may experience full democratic membership while others exist in positions of subordination, exclusion, or unaccountable, dominating rule.[44] Indeed, these forms of exclusion can also be deliberately constructed and exacerbated, as ways of reducing the political power of particular constituencies, particularly under conditions of norm erosion, hardball, or polarization as described in Part II above. Consider for example the problems of voter suppression and the battles over political and economic inclusion for communities of color in recent years.

Economic Exclusion

Democratic functioning is also closely related to economic conditions and **economic inequality and exclusion** in particular. On this argument, democracy cannot thrive without a more equitable economy. The idea that political democracy and economic democracy go together has been a staple of political and social theory on both the left and the right. At a macro level, there is a debate about the ways in which economic wealth (and collapse) can relate to democratic regime stability (or instability).[45] But the concentration of income, wealth, and economic opportunity poses a threat to democratic functioning in more specific ways.

Much of the scholarship on the democratic threat posed by concentrated wealth has explored the terrain of campaign finance reform and focused concerns on the ability of wealthy donors to influence elected officials to favor their interests.[46] But economic inequality skews democratic politics beyond the campaign finance context. In recent years, an extensive social science literature has documented how public policy skews toward the preferences of wealthier and more elite constituencies.[47] Through a variety of mechanisms, wealthier constituencies and business interests are able to steer policymaking to favor their interests over others. In the process, they also undermine the ability of other constituencies to advocate for themselves on fair and equal terms.

Economic inequality drives political inequality—and thus undermines democracy—through other mechanisms as well. For example, some scholars have documented how business groups shifted their organizing strategies and

advocacy goals in the 1970s and again in the 1990s.[48] The result has been a concerted effort to build a well-resourced and sophisticated system for lobbying, advocacy, and exerting influence on state and federal policymakers.[49] Organized business advocacy groups outweigh labor organizations, public interest groups, and marginalized constituencies in their lobbying presence.[50] Business interests have also vastly outweighed other actors through lobbying and influencing regulatory bodies, increasing their capacity to **capture** state institutions.[51] This increase in political power on the part of business has in turn led to the pursuit of policies that further concentrate economic wealth and therefore political influence. As discussed in Part V below, shifts in the resources and viability of civil society organizations has also affected this balance of political influence. In some cases, those shifts can be engineered through deliberate policies, such as "right-to-work" laws that undermine the countervailing power of organized labor.

Another mechanism linking economic inequality to political inequality focuses on the growing **class divide in political leadership**. Fewer and fewer political leaders come from working-class backgrounds, leading to demonstrable skewing of policy outcomes in favor of wealthier groups.[52] Similarly, shared social and cultural ties between economic elites and regulators help explain subtle forms of "cultural capture," where regulators defer to industry interests and take a softer hand than they might otherwise.[53] As Nicholas Carnes puts it, the disparity of political influence is a product not just of who is doing the talking—with more and more effective advocacy coming from elite and business interests—but also of who is doing the listening: as the policy class becomes less representative themselves of the economic and social diversity of the country, these disparities in responsiveness become more pronounced.[54]

IV. Effective and Accountable Government

Another key dimension for democratic functioning relates to the structure and functioning of political institutions. Democracies require a political infrastructure that can accomplish two imperatives: acting on and solving public problems, while also being subject to political accountability and public will-formation.

The first imperative requires a basic level of **state capacity.** Without some basic ability to tax, spend, monitor, and enforce rules, democratic polities cannot be responsive to public needs, which in turn undermines the legitimacy and durability of democratic systems.[55] While we are used to thinking about the need for limits on coercive state power arising from classical liberal and republican thought, this need for state capacity and state effectiveness presents an important additional imperative for democratic institutional design.[56] It also offers a way to diagnose democratic dysfunction. As state institutions become more gridlocked, lose resources, autonomy, or expertise, the ability of government to solve public problems declines. This in turn points to a host of background conditions needed for democratic functioning. Modern democratic states, for example, need revenues and resources. They also require technical administrative expertise to solve complex public problems.[57] If the basic capacities of government are undermined, so too is democracy.

The second imperative involves the principle of **state accountability**. This condition involves not the baseline capacity of a state to act, but rather in the ways in which political institutions translate public demands into mandates that direct state action. In other words, a key purpose of democratic institutions is to hold state power to account, and to direct it to public needs. Institutions may fail in this regard in a variety of ways: failing to reconcile diverse political views into clear mandates; falling prey to the outsized influence of partial factions and special interests rather than the general public; or giving rise to escalating political conflict over control of power in ways that become less contained and more damaging to political stability.

In American democracy, these twin needs of state capacity and state accountability are theoretically met by our political infrastructures: the constitutional separation of powers, the allocation of power across different branches of government, and the institutional structures that go into defining voting rights, districts, and elections themselves. In the current American context, these institutional infrastructures are operating in ways that increasingly pose challenges to state capacity, accountability, and responsiveness.

Limits of the Separation of Powers

For the Framers of the Constitution, the separation of powers—dividing political authority into the three branches of Executive, Legislature, and Judiciary—were meant to prevent the of concentration and overreach of political power.[58] The inter-branch system of checks and balances was also meant to translate diverse political views and constituencies into legitimate and effective public mandates to direct state action. But this design has increasingly resulted in politics that is gridlocked, or that engages in hardball politics that stretch the boundaries of constitutional order. The challenges of the separation of powers stem in large part from the fact that, as Daryl Levinson and Rick Pildes have argued, American politics operates in practice under a "**separation of parties, not power**," as each political party has greater incentive in modern politics to coordinate across the branches it controls, in order to advance its political agenda.[59] The result is, on the one hand, greater coordination between, say, a Republican Senate and Republican President—and on the other hand, increased potential for opposition parties to leverage veto points in Executive or Legislative branches to prevent policies they might oppose.

One consequence of this separation of parties is that Madisonian separation of powers only really occurs during periods of divided government. As Lee Drutman has noted, "Because the president is the only actor in the system who runs for office nationally, he has historically defined the party brand. And because the electoral fate of congressional partisans is linked to the brand of the party, they have a strong interest in going easy on fellow partisan presidents, while being tough on opposing partisan presidents. As a result, separation of powers has long been a dead letter without divided government."[60]

This separation of parties not powers also provides a structural foundation for the kind of constitutional hardball that has been noted earlier. As parties collude across branches, or leverage veto points to block the other party's agenda, the likelihood of hardball tactics increases. Furthermore, this kind of partisan warfare—operating very much at odds with the checks and balances orientation of Madisonian constitutionalism—is further exacerbated by the modern party system and funding structure. As Julia Azari has suggested,[61] the proliferation of big donors and modern media technology means that political parties have less power as gatekeepers screening candidates out of the electoral pool. (See Part V below.)

Another key reason why the constitutional separation of powers has failed to meet the needs of both accountable and effective government stems from the way in which political power has accumulated in some branches more so than others, creating a **misalignment** of power across the branches, and exacerbating conflicts over political control between the two parties.

Consider the problems of **concentrated executive authority**. Much of the anxiety about democratic collapse in recent American politics has stemmed from fears of Executive branch overreach. Some of this is rooted in the unique nature of the Trump presidency itself. The Trump administration has shown a penchant for flouting conventional processes for Executive branch policymaking and regulation, for example in sudden Executive Order declarations like the 2017 travel ban or the 2019 fights over the design of the 2020 census.[62] But concerns about the imperial presidency predate Donald Trump,[63] and in many ways the fear of tyranny has been an ever-present specter over fragile democracies.[64] These fears are symptomatic of a deeper structural failure of democratic accountability.

For much of the last century, these concerns about executive overreach have been mitigated by the development of an increasingly sophisticated internal institutional structure to the presidency, where cabinet agencies, legal counsel, and an administrative state with an independent civil service have created a system of checks and balances, transparency, consultation, and other procedures that structure the exercise of administrative action.[65] Constitutional doctrines around delegation and the administrative state—plus statutes like the Administrative Procedure Act—have all combined to help institutionalize these practices. However, as the Trump presidency has helped cast into relief, these procedures are very much subject to the desires and norms of Executive branch officials—and of presidents themselves.[66] These internal Executive branch mechanisms by themselves, then, are not sufficient to assure democratic accountability and responsiveness.

Similarly, concerns about **judicial activism**, while often used as an easy form of partisan rhetoric on either side, captures a very real concern about the increased politicization of the judiciary, where the two parties compete to entrench long-term political views through the control and weaponization of the judicial appointments process. And as federal judges are largely immune to electoral sanction, the reliance on policymaking-by-judicial-review creates challenges for democratic legitimacy—and helps fuel a more aggressive competition for political control of the Executive branch (and the Senate).

A corollary to the concentration of power in the Executive and judicial branch is the relative **decline of Congress**. The Constitution places Congress foremost among the three branches of government—legislative power is placed as Article I of the Constitution for a reason—and yet Congress' dysfunction has been a widely-noted premise of modern American political and public discourse. Reduced personnel, outdated technology, and the pressure to fundraise are some of the many contributing factors which have deteriorated congressional capacity. The result is that increasingly the presidency is seen as the focal point for political initiative and action.

Similarly, with a weakened legislature and expansive presidency, the judicial power becomes increasingly important as a way of shaping policy through ex post judicial review—exacerbating the crisis of judicial power and legitimacy. A key reason, then, why so much power has flowed to Executive and Judiciary, placing these branches under greater political pressure than they were meant to bear, is the underlying emaciation of Congress itself.

Fourth, there are a number of challenges arising from the balance of **federal and state power** in our current constitutional system. Like the separation of powers, a key purpose of the federal structure is to distribute political power—to dissipate its concentration, improve checks and balances, and ensure that even in losing some contests for political control, different factions can still exercise political power in other spaces.[67] But just as the separation of powers has come to function differently in recent years, so too has federalism. The expansion of federal authority over the twentieth century has made federal power—and especially Executive and judicial power, as noted above—mission critical for both parties. The result is that the Madisonian notion of reducing the costs of electoral losses has been less true in recent decades.

Furthermore, with the nationalization of media and political culture, state politics is increasingly a step-stone and microcosm of national politics, as parties leverage their control of states to block, or bypass federal political debates.[68]

At the same time, because much of the original constitutional structure was designed to empower states-qua-states—particularly through the proportionment rules of the Senate and the Electoral College—the reality is that smaller, more rural states have outsized political influence. And these states, thanks to demographic shifts (see Part VI below) are increasingly distinctive in their demographic and political orientation, as Democratic voters cluster along the coasts,[69] and the median state is increasingly more predominantly white than the rest of the country. These two sets of trends place different pressures on the ideal of effective and accountable democratic government: As federalism becomes more nationalized, the checks and balances that federalism was meant to offer become less likely; and as demographic shifts continue, the racialized implications of the Electoral College and Senate become even more pronounced.

The Limits of Our Electoral Infrastructure

If the separation of powers is one of the key political institutional infrastructures tasked with—and largely failing at—driving effective and accountable governmental action, a second key political infrastructure is the **electoral system** itself. It is through elections that we hold state actors to account, how we transmit public demands and views into political action, and how we reconcile diverse constituencies and viewpoints into democratic mandates and legitimacy. Yet arguably much of our electoral infrastructure is currently struggling to fill

these needs—and has increasingly become a problematic source of political advantage as factions compete for power by altering the background political rules of the game themselves.

There are a number of key dimensions that make up the democratic quality of our electoral machinery: in particular, around voting rights, districting, campaign finance, and the balance between federal and state power.[70] These institutions are critical components of our accountability infrastructure, holding policymakers accountable, and transmitting constituency needs and demands into the political process. Erosion and hijacking of these systems undermines democracy.

First, **voting rights** are increasingly under threat. Despite frequent claims of voter fraud and fears of unregistered voters tainting election results, this threat in reality is vanishingly small. But in the name of combating voter fraud, political actors have implemented a regime built to suppress the votes particularly of young people, working families and communities of color. Through draconian voter ID laws, systematic under-resourcing of election administration commissions and the mechanisms of voting machines and polling places, we have a democracy that functions for some, but is largely illusory for others. This undermines democratic responsiveness—and helps deepen the kinds of racial and economic inequality noted in Part III above.

Second, **districting** has too often been hijacked to entrench political power of particular parties or groups. The practice of gerrymandering dates back to the very beginnings of the republic[71] and involves the strategic crafting of district lines for political advantage. When done effectively—and with the advent of street-level data and redistricting technology it is easy to do so—gerrymandered districts can result in electoral maps that systematically result in one party rule, blunting majoritarian democracy. Partisan gerrymandering is also increasingly implicated in questions of racial gerrymandering given the voting trends among different demographic communities. Supreme Court Constitutional doctrine, however, has taken divergent and at times conflicting responses to the issue. On the one hand, the Court has drawn on both the Equal Protection Clause and the Voting Rights Act to police racial gerrymandering—redistricting on the basis of racial demographics.[72] By contrast, the Court has recently held that partisan gerrymanders—drawing district lines on the basis of the party affiliations of voters—are non-justiciable, effectively blessing the practice.[73] By permitting partisan gerrymanders, however, the Court has opened to door to racial gerrymandering. Given the enormous overlap between race and party affiliation in America, legislators can now de facto racially gerrymander, so long as they claim that they are redistricting according to party ties.[74] Finally, the retirement of Justice Kennedy, the swing vote in a 5-4 decision upholding the constitutionality of a referendum-backed independent redistricting commission in Arizona, casts significant doubt on the obvious institutional fix to gerrymanders.[75]

Third, just as gerrymandering and voter suppression threaten equality at the ballot box, the current state of **campaign finance** risks equal representation in everyday democracy. Ever since the Court's decision in *Buckley v. Valeo*[76] to invalidate individual political expenditure limits on First Amendment grounds, the law of campaign finance kept the door open to unlimited corporate spending. And in 2010, the Court realized that very possibility, ruling that the expenditure limits on corporate spending in the Bipartisan Campaign Reform Act violated the First Amendment,[77] resulting in a flood of dark money via Super Political Action Committees (PACs).[78] The criticisms of campaign finance deregulation is voluminous and need not be recounted here.[79] In brief, the challenge that deregulated financing poses to democracy is severe. Financing allows wealthy constituencies to exercise more influence and gain more direct contact with elected officials. The result is an overrepresentation of elite interests in public policy.[80] This further exacerbates the disparity between the political preferences and actions of elected officials as they diverge from their constituencies.[81] *Citizens United* and its view of money in politics have attracted public and scholarly criticism alike. In an age of intense polarization, *Citizens United* is a rare point of agreement, as large majorities of Republican and Democratic voters support a constitutional amendment overturning the decision.[82]

V. Civic Capacity and Infrastructure

If democracy requires mutually-binding consultation as described in Part I above, a key component of this consultation between state and society is the civic infrastructure: how the informal social institutions enable (or undermine) the ability of constituents to organize, exercise political agency, and shape the exercise of political power. Pathologies of civic infrastructure can undermine democracy by deepening disparities of political power and voice, and by undermining the ways in which political debates and constituency demands translate into political action. In particular, attention to civic infrastructure points us towards the issues arising from **civil society organizing, political parties,** and **the media infrastructure**.

With respect to **civil society**, a key challenge for democracy is the disparity in political influence between different constituencies. As noted in Part III above, the disproportionate political influence of business interests and corporate power, for example, can drive instances of political capture, and shape how policies can skew towards wealthier interests. This tendency is exacerbated by shifts that have undermined the broader ecosystem of civil society organizing. For example, as Skocpol and Putnam have documented, participation in civil society organizations created a civic fabric which served as a counter-weight to moneyed interests. But civic participation has over the last century shifted from mass member organizations to professionalized advocacy institutions. This decline in membership based political activity and civic associations over the last century has weakened an effective countervailing force against lobbying. Membership-based civic associations are where individuals historically gained knowledge, experience, and political efficacy.[83] This decline thus affects not just political culture, but also contributed to the decline in political countervailing power of workers and other constituencies, especially as political advocacy has shifted over the last half-century away from mass-member organizations to professionalized non-profit advocacy groups.[84] While these professionalized advocates can be more sophisticated in their lobbying campaigns, this shift has weakened the popular foundations that historically drove the political power of membership-based groups.[85]

Furthermore, this shift has also been engineered by power-shifting policy changes, for example through the promotion of tax cuts, right-to-work laws that fragment the ability of labor unions to exercise oppositional political power, and other similar shifts.[86] Indeed, business interests have focused on policy changes that—like the busting of unions—undermine the countervailing power of labor and other rival interest groups.[87]

A related concern stems from the deterioration of social capital, which could be a contributing factor to democratic dysfunction. The Organisation for Economic

Co-operation and Development (OECD) identifies social capital as "the links, shared values and understandings in society that enable individuals and groups to trust each other and so work together."[88] For some social capital scholars, declining forms of community participation in the late twentieth century—attendance at school or town hall meetings, membership in civic organizations with local chapters, active engagement in religious organizations, participation in team sports, entertaining of friends in the home, etc.—could be indicators of eroding communal bonds.[89] This erosion could be troubling for democracy, for as Robert Putnam and others have long argued, social capital contributes to trust and reciprocity, and in turn helps explain democratic culture and long-term democratic durability.[90] Both bridging social capital—bonds across lines of difference—and bonding social capital—deeper bonds within communities—are essential to democratic functioning. With this in mind, Putnam, like other social capital scholars, hearkens to the nineteenth and early twentieth century era of mass-membership organizations when Americans were the "joiners" within their community.[91] This type of activity could serve as a way to insulate some of the effects of polarization described in Part II.

Similarly, another key dimension of civic infrastructure is the **party system**. Changes to the dynamics of modern American political parties have helped exacerbate some of the key dysfunctions of contemporary democratic politics. As noted in Part IV above, the deregulation of campaign financing and the proliferation of direct mass media communications through online tools like Facebook has weakened the gatekeeping power of political parties,[92] which to some scholars has undermined the ability of parties to moderate extreme candidates.[93] At the same time, the modern party apparatus has arguably shifted to a more professionalized and insulated cadre, separated from the day-to-day experience of many voters.[94] Yet this decline of party capacity accompanies an increase in partisan identity and partisan polarization, further exacerbating scorched-earth politics between the two parties (See Part II above).

Third, a working and responsive democracy requires a **media infrastructure** that facilitates public debate and deliberation. From the print pamphlets of the eighteenth and nineteenth centuries to the rise of the telegraph, radio, and broadcast television in the last century, technological changes to our media ecosystem have had major implications for the state of our democracy. Communications technologies enable new forms of association, debate, and civil society organization. But as these new technologies arise, they also create new forms of political communication, propaganda, and misinformation.

As digital media increasingly becomes readily accessible to the public, traditional media outlets that used to serve as gatekeepers of information, shaping and influencing the information made available to the public, have transitioned to being "gatewatchers," where more individuals can set the agenda and disseminate information. Given the accessibility of digital media,

decentralization of various diverse actors, and the unprecedented information available, the public can today customize the nature and content of the information it accesses, creating more fragmented political ideologies and instability.[95] But as online platforms have a business model focused on data collection and the monetization of user interaction through selling ads, this creates incentives for the platforms and their algorithms to feed users ever-more extreme content in order to maximize user time on the platform. There is a risk of further filter bubbles which reinforce people's existing dispositions and ideologies.[96] Online communication through platforms like YouTube, Facebook, and Twitter create epistemic bubbles where groups systematically are constrained in interacting only with like-minded views, leading to greater polarization, insulation, and even radicalization (see Part II above).[97] The result is an online public sphere essentially optimized for misinformation, disinformation, and polarization.[98]

Furthermore, these are not just new concerns for the era of online misinformation and fake news; similar concerns arose in the context of the rise of the telegraph and of radio over a century ago.[99] The dynamics of fake news and weaponized use of political information is one that even in the modern era describes the strategic use of cable and print media in the late twentieth century to create similar filter bubble and polarization/radicalization dynamics.[100] Indeed, the combination of cutting-edge digital tools with unrestricted dollars and influence on the right emboldens the contemporary alt-right and has helped fuel the rise of exclusionary populism described above. The power of conservative media—from Breitbart to Fox to talk radio—to amplify, reinforce, and create support for these viewpoints has been a key factor in the political impact of these movements.[101]

The changing media infrastructure also raises another parallel concern for democracy: the concentration of ownership and control over media institutions. A century ago, one of the central concerns of antitrust reformers worried about the rise of corporate power was the way in which new media barons like Robert Gould, who owned Western Union, could control the flow of information—and through it, the public sphere and the nature of democratic debate.[102] Today, a similar concern arises in the context of concentrated media ownership. In cable, radio, and print, media monopolies like Sinclair News mean that a relatively small number of firms and investors control the flow of information and the political content of many media outlets. Similarly, the rise of online platforms like Facebook and Alphabet's YouTube also poses a concentration problem: these firms and their management of online algorithms exercise outsized influence on political speech. The result has been an increasingly cross-partisan concern with ownership and control of online speech.

VI. Resilience to Changing External Conditions

Thus far the democratic infrastructures described above—socioeconomic inclusion; political institutions for effective and accountable government; civic infrastructure—have largely been described in static terms. But a key challenge for democracy stems from the ways in which external macro trends place pressure on, and exacerbate weaknesses in, these infrastructures. A number of macro trends today generate such pressures on democratic institutions.

First, **demographic change** interacts in important ways with the limitations of current political institutions and the declining civic infrastructures described above. A growing body of scholarship has highlighted the "big sort," as internal migration patterns concentrate Democratic voters in urban areas, and Republican voters in rural ones. At a micro level, Americans increasingly cluster in neighborhoods that are homogenous in terms of income, marital status, educational level, and even political beliefs—which helps magnify polarization and sharper partisan leans in many counties.[103]

This in turn exacerbates other structural urban-rural divides. Economically, superstar geographies like San Francisco, San Jose, New York, Boston, and Los Angeles account for a much higher share of economic output.[104] The increasingly urbanized, and information-based modern economy concentrates economic opportunity in these cities, leading to a powerful migratory pull away from rural communities into urban spaces. These social and economic challenges have also shaped a common rural political consciousness that sees rural communities as ignored by decision-makers, neglected in the allocation of social and economic resources, and disrespected by mainstream culture.[105] This in turn helps exacerbate polarization and disparities in the political lean of states and localities that can further contribute to the kinds of gridlock and gaps in Senate and Electoral College gaps described above. There is also a growing form of inequality within these cities. Housing prices have soared in the inner cores mega cities, leaving few who can afford to live in the city center. Richard Florida calls this the Patchwork Metropolis, where the city and the wider metropolis have an inner more privileged "creative class" with a working-class outer rim.[106]

Simultaneously to these urban-rural and intra-urban inequalities is a changing demographic trend across the United States are changing. The country is moving towards a nonwhite nation with an increasingly aging population which is less-religious. These demographic shifts also interact with partisan sorting: one party skews older, whiter, and more religious and conservative, while another skews younger, more nonwhite, more secular, liberal, and more immigrant- and LBGTQ-friendly.[107] This in turn helps fuel racial anxieties that political leaders can tap into and foment polarization and weaponized racism as outlined in Part II and III.

Second, **technological change** can exacerbate the politics of identity and economic inequities described in Part II and III above, and the shifts to media infrastructure described in Part V. The rise of big data, automation, artificial intelligence, and algorithms are increasingly altering the dynamics of different economic sectors. Despite the substantial economic benefits automation is expected to bring, for many workers, automation presents an uncertain future and fewer opportunities.[108] A McKinsey report found that 47 percent of today's jobs can be automated using existing technologies, and that nearly 800 million jobs can become automated globally by 2030.[109] As much as 14 percent of the global workforce (375 million workers) will have to change occupational categories by 2030. Work will increasingly favor skills that defy automation, putting pressure on workers to attain higher levels of education or develop social and emotional skills.[110] Automation by itself is not necessarily a societal challenge, although it may up-end traditional notions of identity through work and concepts about human's unique capabilities. Rather the democratic challenge arises from how automation concentrates and redistributes political and economic power. Automation enables new divisions of labor and new forms of labor control, which can further reduce worker voice, expand corporate profits, and exacerbate inequality.[111]

VII. Conclusion

This paper suggests a way of conceptualizing the contemporary state of democratic dysfunction in American politics, to help inform diagnoses and possible interventions. Democracy, we have suggested, is more than a specific institutional form; rather, it is a sociological, economic, and political condition of broad, equal, protected, mutually-binding consultation.[112]

Democratic functioning, understood in this way, depends on a set of underlying institutions and infrastructures in order to ensure responsive, inclusive, accountable, and effective governance. First, existing democratic institutions may be undermined by changes to internal political culture and tactics—particularly with the rise of polarization, hardball, norm erosion, and identity politics. Second, democracy requires socioeconomic conditions that dismantle and prevent systematic forms of exclusion and inequality. Third, democracy requires political institutions that enable both effective government that can address public problems, and accountable institutions through which constituencies can make themselves heard. This in turn requires a rethinking of some of the pathologies arising from our current constitutional and electoral institutional systems. Fourth, democracy requires a civic infrastructure—civil society, parties, and a public sphere which make possible the ability of constituencies to mobilize, organize, and participate in democratic politics.

Focusing on these complementary and related infrastructures helps organize the diagnosis of how democratic politics today falls short of democratic ideals and what interventions may be needed. Indeed, a key need for democratic institutions is that they be resilient to new pressures. Secular trends like demographic shifts, migration, and technological change place greater pressure on democracy: increasing polarization, gaps in political lean and power across states, or new forms of economic inequality and media disinformation.

These dynamics are not mutually exclusive. Rather, they are highly interrelated and dynamic. For example, polarization can interact with demographic sorting and gerrymandering in ways that make hardball politics more likely, and exacerbate disparities of political power. Similarly, economic inequality can increase the wealth and political influence of some actors, which can in turn lead to greater willingness to engage in scorched-earth political tactics and weaponized voter and civil society suppression to maintain political power.

By design, this paper has not offered solutions. Rather it aimed to offer a holistic infrastructural diagnosis of democratic dysfunction; each part of which points to a varied set of interventions. Furthermore, the many different ways in which contemporary democracy falls short of our aspirations underscores how there is no single silver bullet reform to assure democratic functioning. It will require a range of interventions, and in particular solutions that tackle the underlying structural roots of democratic failure.

Notes

1   See for example, Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (New York: Crown, 2018), 5–6; and Aziz Huq and Tom Ginsburg, "How to Lose a Constitutional Democracy," *UCLA Law Review* 65 (2018): 78–169.

2   Charles Tilly, *Democracy* (2007), pp. 13-14.

3   This framework is informed by a "systems" lens on complex phenomenon like democratic polities.

4   See Jack M. Balkin, "Constitutional Hardball and Constitutional Crises," *Quinnipiac Law Review* 26 (2008): 579–98; see also Joseph Fishkin and David E. Pozen, "Asymmetric Constitutional Hardball," *Colum bia Law Review,* 2018, Vo.118, pp.915-82.

5   See e.g. Francis Fukuyama, *Identity: The Demand for Dignity and the Politics of Resentment* (2018).

6   Tilly, at 14.

7   Tilly, at 15

8   Tilly, at 58. Juan Linz has classically referred to this condition of political stability as the problem of "efficacy" (the ability of the state to find solutions to public problems) and "effectiveness" (the ability of the state to actually implement those solutions). See Juan Linz, *The Breakdown of Democratic Regimes: Crisis, Breakdown, & Reequilibration* (Linz and Alfred Stepan eds., 1978), at 20-22.

9   Tilly, at 15-16.

10   See Mark Philp, "Delimiting Democratic Accountability," *Political Studies* 57 (2009), at 28, 32–35; Andrew Rehfeld, "Representation Rethought: On Trustees, Delegates, and Gyroscopes in the Study of Political Representation and Democracy," *American Political Science Review* 103 (2009)

11   Levitsky and Ziblatt describe the views and dispositions of authoritarian leaders as revolving around a shared rejection of democratic institutions,

of legitimate opposition, and of civil liberties (*How Democracies Die*, 65–68).

12   Levitsky and Ziblatt describe how autocrats, once in power, erode opposition through attacks on media and use of patronage relationships (*How Democracies Die,* 78–96); and Huq and Ginsburg, "How to Lose a Constitutional Democracy."

13   Jack M. Balkin, "Constitutional Hardball and Constitutional Crises," *Quinnipiac Law Review* 26 (2008): 579–98; see also Levitsky and Ziblatt, *How Democracies Die,* 217.

14   Ashley E. Jochim and Bryan D. Jones. 2012. "Issue Politics in a Polarized Congress," *Political Research Quarterly* https://doi.org/10.1177/1065912912448930

15   Lee Drutman, 2017, "Political Divisions in 2016 and Beyond: Tensions Between and Within the Two Parties," *Democracy Fund, Voter Study Group* https://www.voterstudygroup.org/publication/political-divisions-in-2016-and-beyond

16   Iyengar et al., "The origins and consequences of affective polarization in the United States," April 23, 2018, https://www.dartmouth.edu/~seanjwestwood/papers/ARPS.pdf

17   Scholars use various methodologies to assess survey self report of partisan effect, including the "feeling thermometer" and "social distance." In feeling thermometer, survey respondents are asked to rate democrats and republicans anywhere from 0 (cold) to 100 (warm), and affective polarization is measured as the difference between the rate respondents give to own's party and the opposing party. Using this methodology scholars found that affective polarization dramatically increased from 22.64 % to 40.87% between 1978 and 2016. See also Political Polarization in the American Public, Pew Research Center, June 12, 2014, https://www.people-press.org/2014/06/12/political-polarization-in-the-american-public/

18   James Wallner, 2013, *The Death of Deliberation: Partisanship and Polarization in the United States Senate*. Lantham, MD: Lexington Books, Rowman & Littlefiend.

19   Lee Drutman, "We need political parties. But their rabid partisanship could destroy American democracy." *Vox* September 7, 2017, https://www.vox.com/the-big-idea/2017/9/5/16227700/hyperpartisanship-identity-american-democracy-problems-solutions-doom-loop

20   Levitsky and Ziblatt, *How Democracies Die,* 102

21   Ibid., 106.

22   Daphna Renan maps out different norms that structure the exercise of executive power in "Presidential Norms and Article II," *Harvard Law Review* 131 (2018): 2187–2282.

23   Goldsmith, "Will Donald Trump Destroy the Presidency?", *The Atlantic*, October 2017: "Trump has been less constrained by norms, the nonlegal principles of appropriate behavior that presidents and other officials tacitly accept and that typically structure their actions. Norms, not laws, create the expectation that a president will take regular intelligence briefings, pay public respect to our allies, and not fire the FBI director for declining to pledge his loyalty. There is no canonical list of presidential norms. They are rarely noticed until they are violated."

24   See Jack Balkin, Constitutional hardball; see also Pozen and Chafetz, Asymmetric Constitutional Hardball.

25   See e.g., Jedediah Purdy, "Normcore," *Dissent*, Summer 2018, www.dissentmagazine.org/article/normcore-trump-resistance-books-crisis-of-democracy

26   Ibid.

27   Ibid.

28   Ibid.

29   Ibid.

30   Francis Fukuyama 2018, "Against Identity politics: The New Tribalism and the Crisis of Democracy," *Foreign Affairs*, https://www.foreignaffairs.com/articles/americas/2018-08-14/against-identity-politics-tribalism-francis-fukuyama; Francis Fukuyama, *Identity: The Demand for Dignity and the Politics of Resentment* (2018).

31   Nicolas A. Valentino and David O. Sears, "Old Times They Are Not Forgotten: Race and Partisan Realignment in the Contemporary South," *American Journal of Political Science* 49 (2005): 672–88; and Hacker and Pierson, *American Amnesia*, 251: "the case is strong that race is a major ingredient in the GOP's anti-government cocktail." See also Ian Haney Lopez, *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class* (New York: Oxford Univ. Press, 2014).

32   See e.g., Ian Haney Lopez, *Dog Whistle Politics*.

33   Martin Gilens, *Why Americans Hate Welfare: Race, Media, and the Politics of Antipoverty Policy* (Chicago: Univ. of Chicago Press, 1999); Alberto Alesina, Edward Glaeser, and Bruce Sacerdote, "Why Doesn't the United States Have a European-Style Welfare State?" *Brookings Papers on Economic Activity,* no. 2 (2001): 187–254; Erzo F. P. Luttmer, "Group Loyalty and the Taste for Redistribution," *Journal of Political Economy* 109 (2001): 500–28; and Woojin Lee and John E. Roemer, "Racism and Redistribution in the United States: A Solution to the Problem of American Exceptionalism," *Journal of Public Economics* 90 (2006): 1027–52.

34   Alberto Alesina and Edward Glaeser, *Fighting Poverty in the US and Europe: A World of Difference* (Oxford: Oxford Univ. Press, 2004).

35   Cramer, Politics of Resentment, 145.

36   Hochschild, *Strangers in Their Own Land,* ix, 135-9. See also Nils C. Kumkar, T*he Tea Party, Occupy Wall Street, and the Great Recession* (New York: Palgrave Macmillian, 2018).

37   Robert Griffin and Ruy Teixeira, "The Story of Trump's Appeal: A Portrait of Trump Voters," Democracy Fund Voter Study Group (website), June 2017, 4, https://www.voterstudygroup.org/publications/2016-elections/story-of-trumps-appeal

38   Ibid., 11, 22.

39   Sean McElwee and Jason McDaniel, "Economic Anxiety Didn't Make People Vote Trump, Racism Did," *Nation*, May 8, 2017, https://www.thenation.com/article/economic-anxiety-didnt-make-people-vote-trump-racism-did/

40   Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010).

41   Andrea Flynn et al. map the ways in which different legal and policy systems from labor law to welfare bureaucracies to criminal justice to housing construct racial hierarchy today in *The Hidden Rules of Race: Barriers to an Inclusive Economy* (New York: Cambridge University Press, 2017).

42   For a classic statement of the ways in which appeals to a "private realm" have worked to immunize gender roles from political critique and reform, see Susan Moller Okin, "Justice and Gender," *Philosophy and Public Affairs* 16 (1987): 42–72. See also her "'Forty Acres and a Mule' for Women: Rawls and Feminism," *Politics, Philosophy and Economics* 4, no. 2 (2005): 233–48, 234: "Just as the freedom and equality proclaimed by the Declaration of Independence and the U.S. Constitution's Bill of Rights did not take account of the fact that the economy of half the country was based on slave labor, so the freedom and equality of most liberal political thought does not take account of the unpaid labor of women in the home."

43   Elizabeth Anderson, Private Government: How Employers Rule Our Lives (and Why We Don't Talk about It) (Princeton, NJ: Princeton University Press, 2017), 39–42.

44   See e.g. Daniel Ziblatt, "How Did Europe Democratize?," *World Politics* 58 (2006) at 311, 333 (suggesting that, rather than evolving in lockstep, some institutional forms necessary for democracy might advance while others do not).

45   See e.g., Adam Przeworski and Fernando Limongi, "Modernization: Theories and Facts," *World Politics* (1997); Philip Gourevitch, *Politics in Hard Times*; (Ithaca, NY: Cornell University Press, 1986). Rueschemeyer, Stephens, and Stephens, *Capitalist Development and Democracy*, (Chicago, IL: University of Chicago Press, 1992).

46   Lawrence Lessig, Republic, Lost: How Money Corrupts Congress — And a Plan to Stop It (New York: Twelve, 2011); and Zephyr Teachout, Corruption in America: From Benjamin Franklin's Snuff Box to Citizens United (Cambridge, MA: Harvard University Press, 2014).

47   Martin Gilens, Affluence and Influence: Economic Inequality and Political Power in America (Princeton, NJ: Princeton University Press, 2014); and Martin Gilens and Benjamin I. Page, Democracy in America: What Has Gone Wrong and What We Can Do About It (Chicago: University of Chicago Press, 2017), 38: "[e]conomic inequality begets political inequality, which, in turn, makes it harder to address economic inequality."

48   Hacker and Pierson describe the shift within the business lobby from a focus on industrial interests that became dominant politically after the 1970s to a focus on financial interests starting in the 1990s (Jacob S. Hacker and Paul Pierson, *American Amnesia: How the War on Government Led Us to Forget What Made America Prosper* (New York: Simon & Schuster, 2017), 206.

49   Hacker and Pierson.

50   Martin Gilens and Benjamin Page, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," *Perspectives on Politics* 12 (2014): 564–81, 575: "business groups are far more numerous and active; they spend much more money; and they tend to get their way;" Kay Lehman Schlozman, Sidney Verba, and Henry E. Brady, *The Unheavenly Chorus: Unequal Political Voice and the Broken Promise of American Democracy* (Princeton, NJ: Princeton University Press, 2012), 442: "the weight of advocacy by organizations representing business interests … in no case is … outweighed by the activity of either organizations representing the less privileged or public interest groups."

51   Jason Webb Yackee and Susan Webb Yackee, "A Bias Towards Business? Assessing Interest Group Influence on the U.S. Bureaucracy," *Journal of Politics* 68 (2006): 128–39.

52   Nicholas Carnes, *White Collar Government: The Hidden Role of Class in Economic PolicyMaking* (Chicago: University of Chicago Press, 2013).

53   James Kwak, "Cultural Capture and the Financial Crisis," in *Preventing Regulatory Capture: Special Internet Influence and How to Limit It*, ed. Daniel Carpenter and David A. Moss (New York: Cambridge University Press, 2013), 71–98.

54   Nicholas Carnes, *White Collar Government: The Hidden Role of Class in Economic PolicyMaking* (Chicago: University of Chicago Press, 2013).

55   See Linz; Tilly

56   See e.g., Michael Lewis, *The Fifth Risk,* (New York, NY: W W. Noron & Companny, 2018); David Moss, *When All Else Fails: Government as the Ultimate Risk Manager* (Cambridge, MA: Harvard University Press, 2004).

57   Ibid.

58   As James Madison noted in *Federalist* 47, "the accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." The Federalist No. 47 (James Madison). As Justice Louis Brandies argued, the Constitutional design hoped to "preclude the exercise of arbitrary power…by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy." *Myers v. United States,* 272 U.S. 293 (1926) (J. Brandeis, dissenting).

59   Daryl J. Levinson & Rick H. Pildes, *Separation of Parties, Not Power*, 119 Harv. L. Rev. 2311 (2006).

60   Lee Drutman, *There Is No Separation of Powers without Divided Government*, Vox (Jan. 3, 2018), https://www.vox.com/polyarchy/2018/1/3/16844848/separation-of-powers-divided-government.

61   For an early statement of this view, see Julia Azari, "Weak parties and strong partisanship are a bad combination," *Vox*, 2016 https://www.vox.com/mischiefs-of-faction/2016/11/3/13512362/weak-parties-strong-partisanship-bad-combination.

62   See e.g., Jack Goldsmith, *Will Donald Trump Destroy the Presidency?* The Atlantic (October 2017).

63   Bruce Ackerman, The Decline and Fall of the American Republic (2010) (highlighting a nearly half-century trend towards greater concentration of power in the Executive Branch that poses a long-term structural threat to the separation of powers and American democracy)

64   See e.g., Steven Levitsky and Daniel Ziblatt, *How Democracies Die* (2018) ; Paul Schmitter, Transitions to Authoritarian Rule

65   See e.g., Jon Michaels, Constitutional Coup (2018); Neal Katyal, *Internal Separation of Powers: Checking Today's Most Dangerous Branch from Within*, 115 Yale L.J. 2314 (2006); Curtis A. Bradley & Trevor W. Morrison, *Presidential Power, Historical Practice, and Legal Constraint,* 113 Colum. L. Rev.

1097 (2013) (defending a view of the executive as constrained by the publicity of legal discourse and recognition of historical practice); Jack Goldsmith, Power and Constraint (2012).

66   See e.g., Daphna Renan, *The Law Presidents Make,* 103 Va. L. Rev. 805 (2017); and Renan, *Presidential Norms and Article II,* 131 Harv. L. Rev. 2187 (2018)

67   See Federalist 10; see also Heather Gerken, *"Dissenting by Deciding"* Stanford Law Review 57 (2005): 1745–1805.

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