

Political Parties and Constitutional Fidelity

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POLITICAL PARTIES AND CONSTITUTIONAL FIDELITY

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In the aftermath of the 2016 presidential election, fewer themes have received more attention from scholars and public commentators than political polarization. However, given the recent focus on tension and conflict in contemporary American society, the present also seems an especially appropriate moment to investigate those fundamental structures that have successfully worked in the opposite direction to bind and stabilize the American polity. The goal of this paper is precisely this task, and to emphasize the centrality of one particular structure that has played such a stabilizing function: the political parties. Parties are often invoked in discussions of political polarization. However, I focus on the significant role of political parties in articulating narratives of affiliation that effectively bind disparate social groups together into cohesive political coalitions, and that encourage popular fidelity to the overarching constitutional system. In doing so, I connect recent scholarship on the role of political parties in our constitutional system with a very extensive literature in constitutional law focused on themes of fidelity and popular commitment to the Constitution.

This paper seeks to demonstrate four primary points: first, I will identify some core themes of Jacksonian Democratic and Whig party ideology—especially with respect to their views on the economy and the composition of American society. Second, I will illustrate how those themes have remained prominent facets of modern-day Democratic and Republican party ideologies since at least the early 1990s. Third, building upon this prior discussion, I will provide a more systematic mapping of Jacksonian Era concepts onto present-day party politics in Part VI. I will also offer some speculation on how present-day party ideologies may evolve and intersect with some of the most contentious constitutional legal questions confronting the polity, including each party's views on certain individual rights and on the proper role of the federal judiciary. Ultimately, I hope to offer some clarity on how party narratives may evolve from the present context of the Trump presidency. Finally, I will address

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narratives of party affiliation from a more normative-legal perspective. Specifically, I will articulate and defend the use of a certain type of narrative of constitutional fidelity—rooted in contemporary legal theory and the work of Jack Balkin, but oriented more empathically toward party politics—that may have broad appeal in contemporary American politics: namely, a narrative of redemption.

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I. INTRODUCTION

In his article *Violence and the Word*, Robert Cover memorably noted that the law is intertwined with violence and conflict.¹ As Cover stated in the opening sentences of the article:

Legal interpretation takes place in a field of pain and death. This is true in several senses. Legal interpretive acts signal and occasion the imposition of violence upon others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life. Interpretations in law also constitute justifications for violence which has already occurred or which is about to occur. When interpreters have finished their work, they frequently

1. Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986).

leave behind victims whose lives have been torn apart by these organized, social practices of violence.²

The controversial and coercive nature of the law is especially magnified when the focus of adjudication extends to broader questions of public policy—whether in the realm of the economy and economic relations, immigration and citizenship, race, religion, abortion rights, or other contexts where the scope of the dispute and legal judgment might extend to millions of American citizens and residents. Those who are affected may have their own rights and interests directly at stake in the dispute; or may be affected in the future; or may have loved ones directly affected in the present or future; or may care deeply about these legal disputes at the level of closely held principles.

In the face of such pervasive disagreements and conflict—items that are guaranteed to be a perpetual feature of our legal system and democracy given the size and diversity of the American polity—one might be impressed by the relative stability of our constitutional system. In a context where nearly everyone can be expected to be disappointed or disenchanting, or even exploited (depending upon one’s normative baseline) by constitutional, legal, and political outcomes, one might wonder, What accounts for continued popular fidelity to the Constitution and the American constitutional system?³

This is a question where comprehensive answers would elude even much longer treatments than what I could provide here. To briefly speculate, however, some elements that likely contribute to the maintenance of popular fidelity to the constitutional system might include the following:

- Risk aversion and fear of the unknown: as unsatisfying as current conditions might be for some subset of the polity at any given moment in time, fear of the unknown might be perceived as much, much worse. Thus the calculus of choosing to either assent to or reject the existing constitutional system might be less about merely weighing positive and negative policy outcomes, and more about weighing positive and negative policy outcomes against a backdrop fear of very uncertain, alternative governing arrangements. Not surprisingly, anyone with even a decent sense of

2. *Id.* (footnote omitted); see also Robert M. Cover, *Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 40 (1983).

3. I use the term “popular fidelity” in a broad sense encompassing, as will be clear from the following text, the strongest forms of commitment to the constitutional system to mere acquiescence to the constitutional system and everything in between. Relatedly, on the differing levels of what he terms “sociological legitimacy” enjoyed by the Constitution, see Richard H. Fallon, Jr., *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787, 1795–96 (2005).

risk aversion might find themselves putting up with a status quo that encompassed an expansive set of undesirable policy outcomes. This, after all, is the preference one might discern in the inclination toward inertia and stability found in the original constitutional design.⁴

- Evolution and updating of the law: the evolution of the law, both through common law mechanisms⁵ and through dramatic exercises of popular sovereignty,⁶ may make the constitutional system align, just enough, with the policy preferences of a substantial portion of the polity to render it worthy of fidelity to enough individuals over time. The claim here is that, as a historical matter, the constitutional system has been responsive enough to popular preferences over time.
- Continuing hope for future change: Ian Shapiro offers the insight from the democratic theory literature that the maintenance of vigorous electoral competition can be crucial in aiding the stability of a democratic system.⁷ The possibility of reversible policy shifts, where losers may hold out hope of gaining the upper-hand in some future electoral competition, offers a strong incentive for them to stay invested in the democratic system even after suffering major electoral losses.⁸ In a similar vein, perhaps the mechanisms of reform in American politics and law have generally remained open enough—either through legislative

4. “[Constitutional] [f]idelity only requires that we believe that the Constitution is better than what we would have if we abandoned it.” William Michael Treanor, *Learning from Lincoln*, 65 *FORDHAM L. REV.* 1781, 1784 (1997); see also Fallon, *supra* note 3, at 1792 (making this point in the context of discussing minimal theories of moral legitimacy regarding the Constitution); Aziz Rana, *Constitutionalism and the Foundations of the Security State*, 103 *CALIF. L. REV.* 335, 340, 378–82 (2015) (discussing a campaign to encourage constitutional veneration put forth by corporate, legal, and military elites in the early twentieth century that was fundamentally intertwined with national security fears and concerns).

5. See David A. Strauss, *Common Law Constitutional Interpretation*, 63 *U. CHI. L. REV.* 877, 879, 885, 888, 898, 929–32 (1996) (discussing common law constitutional interpretation as a descriptive phenomenon).

6. See, e.g., 1 BRUCE ACKERMAN, *WE THE PEOPLE* (1991); 2 BRUCE ACKERMAN, *WE THE PEOPLE* (1998).

7. IAN SHAPIRO, *THE STATE OF DEMOCRATIC THEORY* 88, 90 (2003).

8. *Id.*; see also Stuart Chinn, *Threats to Democratic Stability: Comparing the Elections of 2016 and 1860*, 77 *MD. L. REV.* 291, 296–98 (2017).

reform or through the appointment of new federal judges—to allow disappointed constituencies to hold out hope for future changes.⁹ After all, Article V in the Constitution seemingly invites the possibility of future changes to the constitutional text.¹⁰ And prominent historical events such as Reconstruction, the New Deal, and the Civil Rights Era offer concrete illustrations of the potential for transformative changes within the existing constitutional framework.¹¹

Aside from these explanations, however, I want to draw attention to one other key structure of the American constitutional system that I also believe has played a supporting role in facilitating popular fidelity to that system: the political parties.

A number of legal scholars have drawn attention to some of the unique and very crucial functions that political parties play in the constitutional system.¹²

9. See, e.g., JACK M. BALKIN, *CONSTITUTIONAL REDEMPTION: POLITICAL FAITH IN AN UNJUST WORLD* 10 (2011); Frank H. Easterbrook, *Textualism and the Dead Hand*, 66 *GEO. WASH. L. REV.* 1119, 1122 (1998).

10. U.S. CONST. art. V (“The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.”).

11. See, e.g., STUART CHINN, *RECALIBRATING REFORM: THE LIMITS OF POLITICAL CHANGE* 3–4 (2014) (discussing transformative policy changes during each of these historical eras).

12. BRUCE ACKERMAN, *THE FAILURE OF THE FOUNDING FATHERS: JEFFERSON, MARSHALL, AND THE RISE OF PRESIDENTIAL DEMOCRACY* 5, 21–22 (2005) (discussing “movement-parties” in the context of the Jeffersonian Era that served as vehicles through which “common ideals played a central role in mobilizing the protagonists on a national basis” on matters of major constitutional significance); Jack M. Balkin & Sanford Levinson, *Understanding the Constitutional Revolution*, 87 *VA. L. REV.* 1045, 1064–66 (2001); see also *id.* at 1066–80 (offering a descriptive theory of “partisan entrenchment” where parties serve as “the major source” of transformations in constitutional doctrine); Daryl J. Levinson & Richard H. Pildes, *Separation of Parties, Not Powers*, 119 *HARV. L. REV.* 2311, 2315–19 (2006) (noting the fundamental place of political parties for any accurate understanding of separation of powers dynamics in practice); Nathaniel Persily & Bruce E. Cain, *The Legal Status of Political Parties: A Reassessment of Competing Paradigms*, 100 *COLUM. L. REV.* 775, 779 (2000) (setting forth six legal paradigms for political parties—managerial, libertarian, progressive, political markets, pluralist, and critical—with each paradigm offering a distinct view on the primary purpose served by

And similarly, scholarship from political science has set forth a number of distinct understandings of the political dynamics that give rise to political parties.¹³ My aim here, however, is to highlight one valuable function of political parties linked to their role in facilitating broader fidelity to the constitutional system—namely, their role of offering narratives of affiliation to the electorate.¹⁴ In setting forth policy positions, statements about present conditions in American life, statements on future reform, and even in sending less-than-substantive signals to distinct constituencies, political parties provide statements—sometimes more and sometimes less explicit—about their *relative affiliation* with various constituencies in American society.¹⁵ Thus parties demarcate focal points of commonality and affiliation for those who view themselves, their values, or their policy positions in a similar way.¹⁶ This is clearly a valuable function of political parties.¹⁷ I would tentatively suggest

parties in American constitutional democracy); Nathaniel Persily, *Toward a Functional Defense of Political Party Autonomy*, 76 N.Y.U. L. REV. 750, 753–54 (2001); see also *id.* at 793–811 (2001) (emphasizing the importance of parties’ functions of “enhancing competition and fostering representation of minorities and interest groups” in defending significant judicial protections for political party organizational autonomy).

13. For a concise summary of the three conventional views or conceptualizations of parties, see JOHN H. ALDRICH, *WHY PARTIES?: THE ORIGIN AND TRANSFORMATION OF POLITICAL PARTIES IN AMERICA* 7–14 (Benjamin I. Page ed. 1995). He labels these three views in turn “parties as diverse coalitions,” “the responsible party thesis,” and “parties and electoral competition.” *Id.* Aldrich’s own core claim is that political parties “result from actors’ [politicians, office seekers, officeholders] seeking to realize their goals [reelection, policy goals, personal prestige, etc.], choosing within and possibly shaping a given set of institutional arrangements, and so choosing within a given historical context. *Id.* at 6. For an opposing view, see Kathleen Bawn, Martin Cohen, David Karol, Seth Maskett, Hans Noel & John Zaller, *A Theory of Political Parties: Groups, Policy Demands and Nominations in American Politics*, 10 PERSPECTIVES ON POL. 571, 571 (2012) (focusing less on legislator goals and more on interest groups and activists, they argue that “parties in the United States are best understood as coalitions of interest groups and activists seeking to capture and use government for their particular goals, which range from material self-interest to high-minded idealism”).

14. To quote Douglas Jaenicke on the value of studying party ideology: “Political parties are a kind of political community; to interpret ideas of political party as broader theories of politics can be worthwhile.” Douglas W. Jaenicke, *The Jacksonian Integration of Parties into the Constitutional System*, 101 POL. SCI. Q. 85, 107 (1986); see also JOHN GERRING, *PARTY IDEOLOGIES IN AMERICA, 1820–1996*, at 6 (1998) (“[T]he major American parties have articulated views that were (and are) coherent, differentiated, and stable. American party history and, by extension, American political history at large have been irreducibly ideological.”)

15. See *infra* Parts III and IV.

16. See *infra* Parts III and IV.

17. Relatedly, political theorists have also sought to make a normative-theoretical case in defense of partisanship grounded, in part, on the value of political parties serving as a conduit for citizens to stand together as a collectivity striving for some broader set of goals through democratic means. See NANCY L. ROSENBLUM, *ON THE SIDE OF THE ANGELS: AN APPRECIATION OF PARTIES AND*

that it is a function so basic that it has been present in some form throughout American political history, encompassing historical periods when parties were weaker, stronger, less ideologically cohesive, and more ideologically cohesive.

As others have written, narratives of belonging are central to the construction of stable political communities.¹⁸ And precisely because the narratives of affiliation offered by parties are one step removed from questions of belonging to the American national community itself, the former provide a valuable venue for exploring significant controversies and questions surrounding affiliation in a manner that is slightly less weighty. In other words, narratives of affiliation from parties offer a chance for competing narratives to play out *within* the American political system, thereby perhaps providing a somewhat safer and less threatening space for contestation over questions of belonging and exclusion.

To the extent that the legal and policy outcomes in place at any given moment in time cannot align with every individual's preferences, narratives of affiliation put forth by the parties may expand the scope of plausible legal and policy views in play at that same moment in time.¹⁹ This might allow for more Americans to perceive their own world-views reflected in the constitutional system. Indeed, such narratives may provide stability-promoting benefits in perhaps giving greater solace to political losers on future policy reversibility or provide hope that the time for reform is no further away than the next set of elections.

Such questions regarding constitutional fidelity, affiliation, and party ideology would be worth exploring in any period of American history given how fundamental they are to the life of our constitutional democracy. But these questions have particular urgency in the present time for at least two reasons. First, the explicit articulation and contestation over narratives of belonging reached new levels of intensity with the 2016 presidential election and its aftermath.²⁰ The degree to which the polity has grappled with questions over

PARTISANSHIP 353–68 (2008); Russell Muirhead, *A Defense of Party Spirit*, 4 PERSPECTIVES ON POL. 713, 719–20 (2006).

18. See, e.g., ROGERS M. SMITH, *STORIES OF PEOPLEHOOD: THE POLITICS AND MORALS OF POLITICAL MEMBERSHIP* 42–56 (2003). On the relevance of narrative for the constitutional system and constitutional interpretation, see BALKIN, *supra* note 9, at 2–6; Frank I. Michelman, *Foreword: Traces of Self-Government*, 100 HARV. L. REV. 4, 64 (1986).

19. As Fallon notes with respect to constitutional meaning, “if constitutional meanings could not be experienced in diverse ways, then the fabric of acceptance that surrounds the Constitution might unravel.” Fallon, *supra* note 3, at 1811.

20. See Thomas B. Edsall, *Democrats are Playing Checkers While Trump is Playing Chess*, N.Y. TIMES (Oct. 12, 2017), https://www.nytimes.com/2017/10/12/opinion/democrats-are-playing-checkers-while-trump-is-playing-chess.html?_r=0 [https://perma.cc/8Z93-H4BQ].

who falls within the American political community—and to what extent—in recent electoral politics and public commentary seemingly has no ready analogue going back at least to the presidency of Bill Clinton (though precursors to the present-day context can be found, of course, in the Obama presidency).²¹

Second, and equally momentous, competing narratives about affiliation are taking place right now within a chaotic context for both American political parties and American constitutional democracy more generally. Up to the 2016 presidential election, Republicans set forth the image of being the party of business (both big and small) and the relatively more socially conservative²² while in contrast, Democrats set forth a vision of being the party of unions, the working-class, relatively more disempowered social groups such as racial minorities, the more socially liberal, and the more cosmopolitan.²³ To be sure, internal tensions within these party coalitions complicated their stances on certain values or policies (a largely inescapable feature of American parties), and it would not be difficult to show how policy outputs conflicted with these party self-images at different moments in time. Indeed, in recent times, such internal tensions are illustrated by the seemingly odd presence of socially liberal economic elites and socially conservative working-class voters in the Republican Party, and the outsized role of Wall Street money in the modern Democratic Party.²⁴ Still, the 2016 presidential election lay bare the divisions between the establishment and insurgent wings of both the Democratic and Republican parties, and conditions at present seem particularly ripe for the radical revision—or even future disintegration—of present party alignments. Hence we see within the present-day Democratic and Republican parties not

21. Ryan Lizza, *The Great Divide: Clinton, Sanders, and the Future of the Democratic Party*, THE NEW YORKER, Mar. 21, 2015, at 1–2.

22. THOMAS B. EDSALL, BUILDING RED AMERICA: THE NEW CONSERVATIVE COALITION AND THE DRIVE FOR PERMANENT POWER 45–46 (2006).

23. George Packer quotes Lawrence Summers in describing “the current Democratic Party as ‘a coalition of the cosmopolitan elite and diversity.’ The Republicans, he went on, combined ‘social conservatism and an agenda of helping rich people.’” George Packer, *The Unconnected*, THE NEW YORKER, Oct. 31, 2016, at 8. Others have described the core of this coalition in slightly different terms as the “McGovern coalition” of “minorities, youth, single women, and educated professionals.” Andrew Levison, *Winning (Some) Middle-of-the-Road Working-Class Whites*, AM. PROSPECT (June 1, 2017), <http://prospect.org/article/winning-some-middle-road-working-class-whites> [<https://perma.cc/Q62P-7V63>].

24. Ryan Lizza describes the two political strains of the Democratic Party as a “populist, anti-Wall Street, and pro-regulation” wing vs. a “more austere, more oriented toward the New York financial world, and more laissez-faire” wing. Lizza, *supra* note 21, at 1.

just competing narratives of affiliation within each, but competing narratives that are affirmatively hostile to each other.

My general goals in this paper are precisely to deepen our understanding of party affiliation narratives and the contemporary political context, thereby enriching our understanding of popular fidelity to the constitutional system. In doing so, this paper will seek to demonstrate four primary points: (1) In Part II, I will identify some core themes of Jacksonian Democratic (hereafter “Jacksonian”) and Whig party ideology—especially with respect to their views on the economy and the composition of American society—and (2) in Parts III, IV, and V, I will illustrate how those themes have remained prominent facets of modern-day Democratic and Republican party ideologies since at least the early 1990s.²⁵ With respect to Jacksonian Era party ideologies, historical debate continues to be fierce on these points—particularly with respect to the ideology of the Jacksonians—so I will limit my focus to those ideals and principles that enjoy some convergence within some of the key historical interpretations of the era. With respect to more contemporary party ideologies, I will primarily focus on party platforms from the 1992 presidential election through the 2016 presidential election. (3) Building upon the discussion in Parts III, IV, and V, I will provide a more systematic mapping of Jacksonian Era concepts onto present-day politics in Part VI. I will also offer some speculation on how present-day party ideologies may evolve and intersect with some of the most contentious constitutional legal questions confronting the polity, including each party’s views on certain individual rights and on the “proper” role of the federal judiciary. Ultimately, I hope to offer some clarity on how such party narratives may evolve from the present context of the Trump presidency. (4) Finally, also in Part VI, I will address narratives of party affiliation from a more normative and legal bent. Specifically, I will discuss a kind of narrative of constitutional fidelity—rooted in contemporary legal theory and the work of Jack Balkin, but oriented more empathically toward party politics—that may have broad appeal in contemporary American politics: namely, a narrative of redemption. Building off of the discussion in Part V, I will discuss the implications of this narrative for some of the present-day controversies over individual rights.

Let me close with a note on my choice of the Jacksonian Era as the reference point for my analysis of contemporary party ideologies. Why this era and not

25. The relevance of Jacksonian Era party ideologies for present-day politics can no doubt be identified in every era of American politics since the mid-nineteenth century. Since the scope of this paper had to be delimited in some manner, I chose to start with the election of Clinton in 1992 given the presence of class-based themes in that campaign which figure prominently in this paper.

some other? First, the Jacksonian period was also a period of party upheaval, activism, and transition from the prior era of Democratic-Republican dominance to a new era of Jacksonian Democratic-Whig competition.²⁶ Much like the present time, party competition was fierce in the early-mid nineteenth century with—as we will see—some prominent narratives of affiliation prevailing within both parties.²⁷ Further, as we will also see, the Jacksonians and Whigs were responsible for setting forth a set of concepts and arguments about American politics, society, and the economy that retain vitality and influence into the present.²⁸ Examining some of these concepts at their inception may offer us some leverage in understanding their deployment in the present-time. Finally, it is also worth noting that the Trump–Jackson comparison has seeped into some public commentary as well—aided and encouraged in no small part by Trump himself.²⁹ Because comparisons between the two eras have been featured in public commentary, the focus on the Jacksonian Era as a reference point seems fitting for this reason too.

II. POLITICAL PARTY IDEOLOGIES IN THE JACKSONIAN ERA

It has commonly been the case that ideological uniformity within American political parties has been precluded by the disparate nature of party coalition members. The Jacksonian Democrats and the Whigs during the middle third of the nineteenth century illustrate this point as well as any historical example. The Jacksonians and Whigs were both truly national parties, and as such, they were both successful in drawing support from a diverse range of professional, religious, ethnic, and geographic constituencies.³⁰ Generally, Whigs were stronger in more economically-developed regions, in cities, and among evangelicals.³¹ Jacksonian voters, on the other hand, tended to be tied to less-developed agricultural areas, and generally had greater strength among nonevangelicals and ethnic white immigrants.³² Even though a more coherent

26. *See infra* Part II.

27. *See infra* Part II.

28. *See infra* Parts II–VI.

29. Peter Baker, *Jackson and Trump: How Two Populist Presidents Compare*, N.Y. TIMES (Mar. 15, 2017), <https://www.nytimes.com/2017/03/15/us/politics/donald-trump-andrew-jackson.html> [<https://perma.cc/G3T3-6C6F>]; Steve Inskeep, *Donald Trump's Secret? Channeling Andrew Jackson*, N.Y. TIMES (Feb. 17, 2016), <https://www.nytimes.com/2016/02/17/opinion/campaign-stops/donald-trumps-secret-channelling-andrew-jackson.html> [<https://perma.cc/RRC2-GHXE>].

30. DANIEL WALKER HOWE, *WHAT HATH GOD WROUGHT: THE TRANSFORMATION OF AMERICA, 1815–1848*, at 578 (2007).

31. *Id.* at 579.

32. *Id.* at 577–81.

party ideology would later crystallize by the late 1830s³³ the glue that bound the Jacksonians together was, at first, a sense of alienation from the national republican wing of the Jeffersonian Democratic Party prompted by the supposed corrupt bargain that delivered the presidency to John Quincy Adams in 1824.³⁴ And likewise, as commentators have noted, part of the glue for the Whig coalition was an equally powerful oppositional logic: antipathy to Andrew Jackson and accompanying fears of presidential and Democratic corruption of the constitutional system.³⁵

Yet, if an oppositional logic constituted some of the binding force of both electoral coalitions, one might also identify a larger world-view that emerged from both parties over time. Indeed the party ideologies of the Jacksonians and Whigs were substantive enough to encompass broader views about the economy and society.³⁶ Though disagreement continues between historians on the precise content and coherence of these views across such disparate coalitions,³⁷ I would propose the following set of discrete elements of a Democratic and Whig party ideology—broken down into rough viewpoints on the economy and society by each party.³⁸

At the heart of the Whig Party's identity, and the aspect for which it is perhaps best remembered in the present day in comparison to the Jacksonians, was its distinctive view of the economy. From a modern perspective, the Whigs are often viewed as the more forward-looking of the two parties, with a relatively greater embrace of the more impersonal, modern, manufacturing

33. JOHN ASHWORTH, 'AGRARIANS' & 'ARISTOCRATS': PARTY POLITICAL IDEOLOGY IN THE UNITED STATES, 1837–1846, at 47–48 (1983).

34. SEAN WILENTZ, *THE RISE OF AMERICAN DEMOCRACY: JEFFERSON TO LINCOLN* 508 (2005). Indeed, Jaenicke argues that the deep heterogeneity of the Jacksonian coalition led it to focus on proceduralism and institutional settlements as the primary glue of the coalition. Jaenicke, *supra* note 14, at 86–87. As noted below, however, I am proposing that a substantive set of principles also served to bind this coalition together.

35. WILENTZ, *supra* note 34, at 486–87.

36. ASHWORTH, *supra* note 33, at 62–65.

37. *See, e.g.*, CHARLES SELLERS, *THE MARKET REVOLUTION: JACKSONIAN AMERICA, 1815–1846*, at 438–39 (Oxford University Press 1991) [hereinafter SELLERS, *THE MARKET REVOLUTION*]; Daniel Feller, *Politics and Society: Toward a Jacksonian Synthesis*, 10 *J. EARLY REPUBLIC* 135 (1990); Charles Grier Sellers, Jr., *Andrew Jackson Versus the Historians*, 44 *MISS. VALLEY HIST. REV.* 615 (1958).

38. The discussion below both draws from and converges with the discussion of party ideology in GERRING, *supra* note 14, though Gerring's discussion of Whig and Jacksonian Democratic ideologies is within his examination of Whig-Republican and Democratic ideologies spanning decades beyond the Jacksonian Era. For his discussion of Whig-Republican Party ideology from 1828–1924, see *id.* at 57–124. For his discussion of Democratic Party ideology from 1828–1892, see *id.* at 161–86.

economy.³⁹ The Whig Party's desire for a growing national economy thus led it to two significant corollaries to its economic vision: (a) a crucial role for the state and federal governments in undertaking actions such as internal improvements, the tariff, and support for a national bank that might aid the growth of a national economy;⁴⁰ and (b) a view of American society as composed of non-antagonistic segments that all stood to gain from the common fruits of this growing economy.⁴¹ Hence the Whigs sought to appeal not just to investors and manufacturers, but also to artisans, wage-earners, and farmers who grew for commercial markets.⁴² In short, the Party sought to appeal to any upwardly mobile individuals who foresaw greater benefit from a larger economic world.⁴³

Beyond this economic vision and its implications for American society, there was a moral component to the Whig outlook on American society. As Howe has emphasized, there was a strong desire for moral improvement among many Whigs, which tied into their larger vision for economic development:

[Whigs] wanted to impose cultural (moral) homogeneity because they strongly believed in a society that would nurture and respect conscientious individual autonomy, in contrast to the Democrats, who valued the autonomy of the small white community. Much more than Democrats, Whigs worried about lawlessness, violence, and demagoguery. Duties seemed to them as important as rights, and both individuals and the nation had a responsibility to develop their potential to the fullest. Causes like temperance and public education fostered these values and also helped produce a population ready for the demands of a developed economy.⁴⁴

This impulse explains the presence of temperance advocates and anti-slavery advocates in the Whig Party⁴⁵ (and the shift of many Whigs into the Republican Party later). To be sure, this Whig outlook on moral uplift and

39. LAWRENCE FREDERICK KOHL, *THE POLITICS OF INDIVIDUALISM: PARTIES AND THE AMERICAN CHARACTER IN THE JACKSONIAN ERA* 15–18 (1989).

40. ASHWORTH, *supra* note 33, at 77–78, 82; DANIEL WALKER HOWE, *THE POLITICAL CULTURE OF THE AMERICAN WHIGS* 16 (1979); HOWE, *supra* note 30, at 583.

41. ASHWORTH, *supra* note 33, at 70; HOWE, *supra* note 40, at 9; ARTHUR M. SCHLESINGER, JR., *THE AGE OF JACKSON* 270–71 (1946); SELLERS, *THE MARKET REVOLUTION*, *supra* note 37, at 363; WILENTZ, *supra* note 34, at 486.

42. HOWE, *supra* note 40, at 13.

43. ASHWORTH, *supra* note 33, at 55; HOWE, *supra* note 40, at 13.

44. HOWE, *supra* note 30, at 583; *see also* HOWE, *supra* note 40, at 9; WILENTZ, *supra* note 34, at 489.

45. WILENTZ, *supra* note 34, at 491.

improvement was complicated by the presence of slaveholders and anti-slavery advocates within the Party, so it is hard to think of this party principle—or probably any other party principle mentioned in this paper for that matter—as a point of actual consensus among Party members at the level of specific policy.⁴⁶ But especially when contrasted with the Jacksonians discussed below, one discerns a relatively greater interest among many leading Whigs in a normative vision of America as a cohesive unit. By their estimation, Americans were meant to be bound together by common norms, morals, and a common outlook.⁴⁷ Indeed, this predisposition connected to the Whig Party's aversion to American imperialism: incorporating more diverse peoples within the American state would only complicate this aspiration to societal uniformity.⁴⁸ And it is also this piece of Whig Party ideology that seems perhaps most anachronistic, at first glance, from the vantage point of modern-day America.

With respect to the Jacksonians, countervailing views of the economy staked out a clearly different view and spoke to some different constituencies. As indicated most dramatically by his veto on the renewal of the Second Bank of the United States, Jackson articulated a deep concern about the intertwinement of the American economy with the federal government.⁴⁹ The primary concern with the American economy for Jacksonians was to prevent federal governmental action that would create an artificially privileged class of investors or entrepreneurs who might unfairly benefit from the interventions of a corrupt government.⁵⁰

This basic concern connected to several key corollaries of the Jacksonian view of the economy. First, the preference for less federal governmental intervention in the economy—as illustrated by the Jacksonian hostility to the Second Bank of the United States but also present in Jackson's hostility to internal improvements with his veto of the Maysville Road⁵¹—suggested that the ideal economy would be one relatively more free of centralized economic planning.⁵² Second, free of federal governmental influence, the unregulated economy would tend toward more egalitarian outcomes with more of an

46. *Id.*

47. HOWE, *supra* note 30, at 583.

48. ASHWORTH, *supra* note 33, at 76.

49. HOWE, *supra* note 30, at 386.

50. ASHWORTH, *supra* note 33, at 39–47; HOWE, *supra* note 30, at 386, 582; WILENTZ, *supra* note 34, at 370. Some of this anti-statism carried over to the local and state level as well. ASHWORTH, *supra* note 33, at 42–43.

51. HOWE, *supra* note 30, at 386.

52. ASHWORTH, *supra* note 33, at 20, 37; HOWE, *supra* note 30, at 386, 583.

agrarian and less a manufacturing bent.⁵³ Finally, the Jacksonian view of American society ultimately saw it as indeed composed of competing social classes in the form of producer classes (agrarians, laborers) and “artificial” special interests—the former of which would be harmed by federal governmental interference in the economy, and the latter of which would benefit. Jacksonian sympathies clearly lay with the former.⁵⁴

Perhaps the enduring feature of Jacksonian political historiography has been the degree to which commentators have (or have not) read economic class-based themes into the Party’s rhetoric. And while the debate continues, the Jacksonian rhetoric itself clearly spoke to the notion of at least the Party’s self-understanding of its stronger affiliation with a “producer” economic identity.⁵⁵ This is what Jackson himself stated in the most memorable passage of his veto of the Second Bank of the United States:

It is to be regretted that the rich and powerful too often bend the acts of government to their selfish purposes. Distinctions in society will always exist under every just government. Equality of talents, of education, or of wealth can not be produced by human institutions. In the full enjoyment of the gifts of Heaven and the fruits of superior industry, economy, and virtue, every man is equally entitled to protection by law; but when the laws undertake to add to these natural and just advantages artificial distinctions, to grant titles, gratuities, and exclusive privileges, to make the rich richer and the potent more powerful, the humble members of society—the farmers, mechanics, and laborers—who have neither the time nor the means of securing like favors to themselves, have a right to complain of the injustice of their Government. There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven

53. ASHWORTH, *supra* note 33, at 24–27.

54. *Id.* at 21–24, 28–29; SCHLESINGER, *supra* note 41, at 306–21; MARVIN MEYERS, THE JACKSONIAN PERSUASION: POLITICS AND BELIEF 6–9, 12–17, 19–23 (1957); SELLERS, THE MARKET REVOLUTION, *supra* note 37, at 321, 325–26, 345, 352, 439. For a qualified concurrence on this view, see HOWE, *supra* note 30, at 380–82, 582. For a somewhat more skeptical view on this point, Richard Hofstadter stated the following on Jackson’s philosophy: “This is the philosophy of a rising middle class; its aim is not to throttle but to liberate business, to open every possible pathway for the creative enterprise of the people. Although the Jacksonian leaders were more aggressive than the Jeffersonians in their crusades against monopoly and ‘the paper system,’ it is evident that the core of their philosophy was the same: both aimed to take the grip of government-granted privileges off the natural economic order.” RICHARD HOFSTADTER, THE AMERICAN POLITICAL TRADITION AND THE MEN WHO MADE IT 80 (1989); *see also id.* at 72–80.

55. ASHWORTH, *supra* note 33, at 24–27.

does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing. In the act before me there seems to be a wide and unnecessary departure from these just principles.⁵⁶

These economic ideals and their emphasis on federal governmental non-intervention complemented a commonly noted feature of Jacksonian thought with regard to the desired structure of American society. In contrast to the Whig focus on cohesion in American society and the centrality of moral improvement, the Jacksonians had diversity and plurality at its core as the party of northern immigrants and southern farmers—with many of the latter vested in the slave economy.⁵⁷ The Jacksonians thus emphasized themes of mutual non-interference, at least on matters of morality related to white men.⁵⁸ They opposed this moralizing of the Whigs and favored an ethos of cultural or moral *laissez-faire*.⁵⁹

The interplay between both parties' views on the economy and society suggest at least three ways to characterize the divergence in the larger visions offered by the Jacksonians and Whigs. First, one might argue that the differences between the Jacksonians and Whigs might be reduced to a divergent view on the proper role of the state—with Whigs relatively more open to federal governmental intervention and Jacksonians less so.⁶⁰ As noted below, this is a distinction that I think has value; it captures the divergence between the parties on key economic issues like internal improvements. Still, others helpfully caution against being too emphatic with this distinction.⁶¹ A potential problem with it, for example, is that it fails to align with the Jacksonian support for

56. President Andrew Jackson, Veto Message Regarding the Bank of the United States (July 10, 1832), http://avalon.law.yale.edu/19th_century/ajveto01.asp [<https://perma.cc/69RM-7YFH>].

57. HOWE, *supra* note 30, at 582.

58. Even though it is not a point of emphasis in the preceding discussion, Howe identifies white supremacy, and the policy question of Indian Removal, as *the* central issue for the early Jacksonians. *Id.* at 356–57, 584.

59. *Id.* at 582–83. Of course, the issue of slavery also highlights the complicated or partitioned nature of this Democratic commitment to moral pluralism and federal governmental non-interference on moral matters. The use of state power to preserve elements of white supremacy—itsself a crucial part of the social glue needed to tie together a disparate collation of white ethnic immigrants, slaveowners, and white agrarians—hints at an area where the use of state power held few anxieties for Jacksonians. Still even on the slavery issue, the ethos of *laissez-faire* remained prominent and was incorporated in the doctrine of “popular sovereignty” that Democrats put forth during the debates over slavery in the territories in the middle of the nineteenth century. Jaenicke, *supra* note 14, at 100–01, 106.

60. WILENTZ, *supra* note 34, at 489 (stating, though not endorsing, this view).

61. *Id.*

federal intervention in matters like Indian Removal and Whig support for federal non-intervention with respect to certain kinds of economic regulation.⁶²

Howe suggests that a second possible characterization of the divergence between the parties should be rooted in their differing views on uniformity and diversity with respect to certain segments of American society.⁶³ Under this view, Jacksonians were more inclined to uniformity on the economy (in favoring a more agrarian society) and more inclined to diversity with respect to morality.⁶⁴ The Whigs were the opposite on each dimension: favoring a more diverse economy that had room for manufacturing and industry, paired with a greater impulse toward creating a more morally uniform, cohesive American political community.⁶⁵

Third, and finally, one might also distinguish between the two parties with respect to their orientation on time. Superficially, one might think the Jacksonians were the party of the future; unlike the Whigs, the Democratic Party still nominally exists, and Jacksonian rhetoric and policies speak to modern sensibilities in a number of ways including their elevation of democratic egalitarian principles (at least among white men), their elevation of the presidency, and their creation of a mass, national party.⁶⁶ However, especially when the focus is on their respective visions of the economy and society, arguably a more compelling view would categorize the Whigs as the more future-oriented party with the Jacksonians being more focused on the present and past. Kohl has argued, for example, that the Jacksonian world view was more tied to traditional social relationships and was more fearful of the impersonal, growing market economy.⁶⁷ Thus, he views their modern-sounding assertions of radical equality as more a response to the threats they perceived, and discomfort they felt, in this newly emerging world.⁶⁸ For the Whigs, “[t]heirs was the world of contracts and constitutions, corporations and voluntary associations.”⁶⁹ As such, he views their seemingly-anachronistic sounding rhetoric around “social order” and “unity” as reflective of their embrace of the future; they grasped the need to reconstruct social relations and communal bonds with greater urgency than the Jacksonians because of their

62. HOWE, *supra* note 40, at 20; WILENTZ, *supra* note 34, at 489; HOWE, *supra* note 30, at 347–48, 356–57.

63. HOWE, *supra* note 40, at 20.

64. *Id.*

65. *Id.*; see also ASHWORTH, *supra* note 33, at 62–64.

66. WILENTZ, *supra* note 34, at 514, 516.

67. KOHL, *supra* note 39, at 15–16.

68. *Id.* at 16.

69. *Id.*

recognition and acceptance of the disruptive nature of the market economy.⁷⁰ Howe concurs with this view in stating, “[Jacksonian] Democrats basically approved of America the way it was.”⁷¹ Whigs, on the other hand, desired transformation economically, culturally, and morally in the American polity.⁷² I will return to these points of divergences between the Jacksonians and Whigs in the Parts below.

III. CONTEMPORARY PARTY IDEOLOGIES

With the example of the Jacksonian Era parties in mind, how do contemporary party ideologies look by comparison? A useful starting point for gaining some sense of party ideology in the present-day is to refer to each party’s platform ahead of presidential elections. Apparent within these Democratic and Republican platforms are both continuities and breaks from Jacksonian and Whig party ideologies.

A. *The Contemporary Democratic Party*

Beginning with the modern-day Democratic Party, it is clear that elements of both Jacksonian and Whig party ideology have been dominant within its views on the economy since at least 1992 through the 2016 presidential election. With respect to the Whig influence, since at least the New Deal transformation, Democrats have emphatically embraced a role for the state in intervening and managing the economy.⁷³ Hence the anti-federal governmental intervention part of Jacksonian ideology with respect to the economy has long since been discarded among Democrats in favor of Whig economic

70. *Id.* at 16–17.

71. HOWE, *supra* note 30, at 582; *see also id.* at 582–83.

72. *Id.* at 582–83.

73. 1992 *Democratic Party Platform*, AM. PRESIDENCY PROJECT (July 13, 1992), <http://www.presidency.ucsb.edu/ws/index.php?pid=29610> [https://perma.cc/AXU2-4NHA]; 1996 *Democratic Party Platform*, AM. PRESIDENCY PROJECT (Aug. 26, 1996), <http://www.presidency.ucsb.edu/ws/index.php?pid=29611> [https://perma.cc/922S-XTZL]; 2000 *Democratic Party Platform*, AM. PRESIDENCY PROJECT (Aug. 14, 2000), <http://www.presidency.ucsb.edu/ws/index.php?pid=29612> [https://perma.cc/7CWS-RTUQ]; 2004 *Democratic Party Platform*, AM. PRESIDENCY PROJECT (July 27, 2004), <http://www.presidency.ucsb.edu/ws/index.php?pid=29613> [https://perma.cc/U26V-5Y8T]; 2008 *Democratic Party Platform*, AM. PRESIDENCY PROJECT (Aug. 25, 2008), <http://www.presidency.ucsb.edu/ws/index.php?pid=78283> [https://perma.cc/X6NT-M74N]; 2012 *Democratic Party Platform*, AM. PRESIDENCY PROJECT (Sept. 3, 2012), <http://www.presidency.ucsb.edu/ws/index.php?pid=101962> [https://perma.cc/L3NT-DPAC]; 2016 *Democratic Party Platform*, AM. PRESIDENCY PROJECT (July 21, 2016), <http://www.presidency.ucsb.edu/ws/index.php?pid=117717> [https://perma.cc/DW4B-H7HQ].

interventionism.⁷⁴ But perhaps even more significantly—and also in alignment with Whig economic principles—there has been an excessive preoccupation of contemporary Democrats from 1992 to 2016 with *managing the national economy toward greater economic growth*.⁷⁵ This has been a marked feature of every Democratic Party platform from 1992 to 2012.⁷⁶ Alongside this point of emphasis is another corollary idea also tied to Whig ideology: a belief that continuing national economic growth will bring near-universal benefit to the country in lifting the economic fortunes of all.⁷⁷ If we may infer an item's

74. See *infra* note 77.

75. *Supra* note 73.

76. *Id.*

77. Consider in turn these statements from the Democratic Party platforms since 1992:

- “Our Party’s first priority is opportunity—broad-based, non-inflationary economic growth and the opportunity that flows from it. Democrats in 1992 hold nothing more important for America than an economy that offers growth and jobs for all.” *1992 Democratic Party Platform, supra* note 73.
- “Our strategy is in place, and it is working. We are proud of our economic record over the last four years—and we know that our record is a record to build on, not to rest on. We have to move forward, to make sure that every American willing to work hard has the opportunity to build a good life and share in the benefits of economic success.
In the last four years we worked to get the American economy going: cutting the deficit, expanding trade, and investing in our people. In the next four years we have to make the new economy work for all Americans: balancing the budget, creating more jobs, making sure all families can count on good health care and a secure retirement, and, most of all, expanding educational opportunities so all Americans can learn the skills they need to build the best possible future.” *1996 Democratic Party Platform, supra* note 73.
- “America has the lowest unemployment and fastest economic growth in more than 30 years. The American people have created 22 million new jobs. We have the lowest inflation rate in decades. More Americans own their home than ever before. Looking back on 1992, this much is clear: Americans are better off than we were eight years ago. . . . It took innovative, new Democratic policies to create the environment where prosperity could bloom. It will take more such policies to allow prosperity to blossom—to forge a prosperity that does not leave anyone out and does not leave anyone behind.” *2000 Democratic Party Platform, supra* note 73.
- “We believe in progress that brings prosperity for all Americans, not just for those who are already successful. We believe that good jobs will help strengthen and expand the strongest middle class the world has ever known.” *2004 Democratic Party Platform, supra* note 73.
- “We will devote \$50 billion to jumpstarting the economy, helping economic growth, and preventing another one million jobs from being

significance from its place in a given party platform (with earlier mentions indicating greater relative importance), this concern with managing the national economy toward achieving greater growth has been pervasive in recent Democratic Party thought. Economic growth was the first item mentioned, or an item mentioned in the first section, of the 1992,⁷⁸ 1996,⁷⁹ 2000,⁸⁰ 2008,⁸¹ 2012,⁸² and 2016⁸³ party platforms. The one exception was the 2004 Platform, where the economy was second behind the War on Terror, in the wake of the 9/11 attacks.

Still, there are also clear elements of Jacksonian ideology alive and well in the modern Democratic Party. First, as enamored as modern-day Democrats may be with the potential benefits of economic growth, it retains a relatively greater skepticism toward market forces relative to contemporary Republicans.⁸⁴ Hence social welfare commitments have also maintained a vital role in Democratic Party ideology as crucial components needed to correct for the negative consequences of a market economy.⁸⁵ To take one example, this

lost. This will include assistance to states and localities to prevent them from having to cut their vital services like education, health care, and infrastructure. We will quickly implement the housing bill recently passed by Congress and ensure that states and localities that have been hard-hit by the housing crisis can avoid cuts in vital services. We support investments in infrastructure to replenish the highway trust fund, invest in road and bridge maintenance and fund new, fast-tracked projects to repair schools. We believe that it is essential to take immediate steps to stem the loss of manufacturing jobs. Taking these immediate measures will provide good jobs and will help the economy today. But generating truly shared prosperity is only possible if we also address our most significant long-run challenges like the rising cost of health care, energy, and education.” *2008 Democratic Party Platform*, *supra* note 73.

- “Democrats know that America prospers when we’re all in it together. We see an America where everyone has a fair shot, does their fair share, and plays by the same rules. We see an America that out-educates, out-builds, and out-innovates the rest of the world. We see an America with greater economic security and opportunity, driven by education, energy, innovation and infrastructure, and a tax code that helps to create American jobs and bring down the debt in a balanced way.” *2012 Democratic Party Platform*, *supra* note 73.

78. *1992 Democratic Party Platform*, *supra* note 73.

79. *1996 Democratic Party Platform*, *supra* note 73.

80. *2000 Democratic Party Platform*, *supra* note 73.

81. *2008 Democratic Party Platform*, *supra* note 73.

82. *2012 Democratic Party Platform*, *supra* note 73.

83. *2016 Democratic Party Platform* *supra* note 73.

84. *See supra* note 73.

85. *Id.*

was the statement in the 2012 Democratic Party Platform on health care after the passage of the Affordable Care Act in 2010:

We believe accessible, affordable, high quality health care is part of the American promise, that Americans should have the security that comes with good health care, and that no one should go broke because they get sick. Over the determined opposition of Republicans, we enacted landmark reforms that are already helping millions of Americans, and more benefits will come soon.⁸⁶

Yet, even if there may be a thread of continuity between contemporary Democratic and Jacksonian skepticism of the market economy, the contemporary response to such concerns (such as the Affordable Care Act) obviously diverges from the relatively greater Jacksonian inclination to economic laissez-faire.

Beyond this, the most prominent continuity between Jacksonians and contemporary Democrats has been the occasional reference to quasi-populism in at least some of these Democratic Party platforms. While perhaps not as vocal or as emphatic as Jackson's language in defense of the "producer" classes, we see in these comments an emphasis on the particular concerns of the middle-class and working-class, joined with some anger toward the governing system for ill-treatment of these constituencies.⁸⁷

86. 2012 *Democratic Party Platform*, *supra* note 73.

87. Consider these comments:

- "We can no longer afford business as usual—neither the policies of the last 12 years of tax breaks for the rich, mismanagement, lack of leadership and cuts in services for the middle class and the poor, nor the adoption of new programs and new spending without new thinking. It is time to listen to the grass roots of America, time to renew the spirit of citizen activism that has always been the touchstone of a free and democratic society. Therefore we call for a revolution in government—to take power away from entrenched bureaucracies and narrow interests in Washington and put it back in the hands of ordinary people. We vow to make government more decentralized, more flexible, and more accountable—to reform public institutions and replace public officials who aren't leading with ones who will." 1992 *Democratic Party Platform*, *supra* note 73.
- "In President George Bush's America, unfortunately, too often you need special privileges if you want opportunity. This White House values wealth over hard work, lavishes special treatment upon a fortunate few at the expense of most businesses and working people, and defends policies that weaken America's competitive position and destroy American jobs. Instead of meeting the challenge of globalization by strengthening our workers' ability to compete and

The more emphatic statements of quasi-populism in recent years have been in the platforms for 2012 and 2016, where hints of antagonism toward not just the opposing party, but economic elites, also appear in the text. From the 2016 Democratic Party Platform, we see this statement: “To restore economic fairness, Democrats will fight against the greed and recklessness of Wall Street. Wall Street cannot be an island unto itself, gambling trillions in risky financial instruments and making huge profits, all the while thinking that taxpayers will be there to bail them out again.”⁸⁸ And the Platform added this comment with respect to economic elites:

At a time of massive income and wealth inequality, we believe the wealthiest Americans and largest corporations must pay

win, this Administration uses globalization as an excuse not to fight for American jobs.” *2004 Democratic Party Platform, supra* note 73.

- From the 2008 Democratic Party Platform: “From the mother working two jobs to pay the bills and the couple struggling to care for young children and aging parents, to the tens of millions of Americans without health insurance and the workers who have seen their jobs shipped overseas, too many Americans have been invisible to our current President and his party for too long. The people who do the work in America have never been invisible to the Democratic Party. It is time to make the American Dream real for them again. We need a government that stands up for the hopes, values, and interests of working people, and gives everyone willing to work hard the chance to make the most of their God-given potential.

...

We Democrats want—and we hereby pledge—a government led by Barack Obama that looks out for families in the new economy with health care, retirement security, and help, especially in bad times. Investment in our country—in energy, education, infrastructure, science. A ladder of opportunity for all. Democrats see these as the pillars of a more competitive and fair economy that will allow all Americans to take advantage of the opportunities of our new era.” *2008 Democratic Party Platform, supra* note 73.

- From the 2012 Democratic Party Platform: “Reclaiming the economic security of the middle class is the challenge we must overcome today. That begins by restoring the basic values that made our country great, and restoring for everyone who works hard and plays by the rules the opportunity to find a job that pays the bills, turn an idea into a profitable business, care for your family, afford a home you call your own and health care you can count on, retire with dignity and respect, and, most of all, give your children the kind of education that allows them to dream even bigger and go even further than you ever imagined. This has to be our North Star—an economy that’s built not from the top down, but from a growing middle class, and that provides ladders of opportunity for those working hard to join the middle class.” *2012 Democratic Party Platform, supra* note 73.

88. *2016 Democratic Party Platform, supra* note 73.

their fair share of taxes. Democrats will claw back tax breaks for companies that ship jobs overseas, eliminate tax breaks for big oil and gas companies, and crack down on inversions and other methods companies use to dodge their tax responsibilities. We will make sure that our tax code rewards businesses that make investments and provide good-paying jobs here in the United States, not businesses that walk out on America.⁸⁹

Beyond this, the Jacksonian inclination to recognize the distinct hardships of specific constituencies in American society has of course been extended in the contemporary Democratic Party toward an inclination to champion a variety of other constituencies like racial minorities, women, and the LGBT

89. *Id.* See also these comments from the 2016 Democratic Party Platform:

- “Democrats believe we must break down all the barriers holding Americans back and restore the basic bargain that built America’s mighty middle class: If you work hard and play by the rules, you can get ahead and stay ahead. The system is not working when we have a rigged economy in which ordinary Americans work longer hours for lower wages, while most new income and wealth goes to the top one percent. Republican governors, legislatures, and their corporate allies have launched attack after attack on workers’ fundamental rights to organize and bargain collectively. Too many Americans are living paycheck to paycheck, and hallmarks of a middle class life—owning a home, having access to affordable and quality childcare, retiring with dignity—feel out of reach. It is no wonder so many Americans feel like the deck is stacked against them. The Democratic Party believes that supporting workers through higher wages, workplace protections, policies to balance work and family, and other investments will help rebuild the middle class for the 21st century.” *Id.*
- “[T]he top one-tenth of one percent of Americans now own almost as much wealth as the bottom 90 percent combined. These trends create problems beyond insulting our sense of basic fairness. Social mobility is far lower than most believe it to be. Children who are born to families in the lowest fifth of earnings are more than 10 times more likely to remain there as adults than they are to earn as much as those in the top fifth. Unless we invest in building a level playing field, we all lose.” *Id.*

And from the 2012 Democratic Party Platform:

“The Republican Party has turned its back on the middle class Americans who built this country. Our opponents believe we should go back to the top-down economic policies of the last decade. They think that if we simply eliminate protections for families and consumers, let Wall Street write its own rules again, and cut taxes for the wealthiest, the market will solve all our problems on its own. They argue that if we help corporations and wealthy investors maximize their profits by whatever means necessary, whether through layoffs or outsourcing, it will automatically translate into jobs and prosperity that benefits us all. They would repeal health reform, turn Medicare into a voucher program, and follow the same path of fiscal irresponsibility of the past administration—giving trillions of dollars in tax cuts weighted towards millionaires and billionaires while sticking the middle class with the bill. But we’ve tried their policies—and we’ve all suffered when they failed.” *2012 Democratic Party Platform, supra* note 73.

community. Hence, there is a contemporary focus on “identity groups” within the Democratic Party, where the focus is not just on economic hardship, but status and dignity concerns as well.⁹⁰

The modern Democratic orientation to create a coalition out of these disparate segments has pressed it toward a task that the Jacksonians had to navigate as well: how to define an affiliative narrative out of such disparate parts. The elements of the contemporary Democratic response have at least some similarities too: a greater acceptance of moral and cultural pluralism relative to contemporary Republicans; greater emphasis on shared abstract ideals; and an inclination to favor the interests of certain disempowered groups.⁹¹

B. *The Contemporary Republican Party*

With respect to the modern-day Republican Party, we also see an interesting mix of Jacksonian and Whig ideological elements. The contemporary Republican Party clearly carries forward the Whig emphasis on economic growth and a pro-business orientation.⁹² Perhaps even more importantly—and

90. Such themes can be found in each platform in 1992, 1996, 2000, 2004, 2008, 2012, and 2016 platforms, and with the exception of the 2004 Platform, a similar sentence can be found in each case: “Democrats will continue to lead the fight to ensure that no Americans suffer discrimination or deprivation of rights on the basis of race, gender, language, national origin, religion, age, disability, sexual orientation, or other characteristics irrelevant to ability.” *1992 Democratic Party Platform*, *supra* note 73.

91. To be sure, commentators have noted that a less-ideological, more-cultural or experience-based commonality may reside in the Democratic Party among its more “elite” or “upscale” members. Commentators note that among this subset of contemporary Democrats, party affiliation has roots in a shared commitment to meritocracy, a relatively more international outlook, a focus on norms and lifestyles on the two American coasts, etc. Indeed, commentators have emphasized this more robust point of commonality among elite Democrats as part of the problem with its tenuous engagement with rural working-class, white voters in the modern electorate. Edsall distinguishes between “upscale Democrats” that encompass the well-educated, the well-off, and the culturally liberal from the “downscale” Democrats that encompass racial minorities and those who are economically struggling. Edsall points to the former as the agenda-setters for the Party. EDSALL, *supra* note 22, at 16–18. Griffin, Halpin, and Teixeira also note that “the Democrats allowed themselves to become the party of the status quo—a status quo perceived to be elitist, exclusionary, and disconnected from the entire range of working-class concerns, but particularly from those voters in white working-class areas. Rightly or wrongly, Hillary Clinton’s campaign exemplified a professional-class status quo that failed to rally enough working-class voters of color and failed to blunt the drift of white working-class voters to Republicans.” Robert Griffin, John Halpin & Ruy Teixeira, *Democrats Need to Be the Party of and for Working People—of All Races*, AM. PROSPECT (June 1, 2017), <http://prospect.org/article/democrats-need-be-party-and-working-people%E2%80%94all-races> [<https://perma.cc/YC7B-6J3K>]; *see also* Edsall, *supra* note 20.

92. *See, e.g., Republican Party Platform of 1992*, AM. PRESIDENCY PROJECT (Aug. 17, 1992), <http://www.presidency.ucsb.edu/ws/index.php?pid=25847> [<https://perma.cc/6AA6-DMNW>]; *Republican Party Platform of 1996*, AM. PRESIDENCY PROJECT (Aug. 12, 1996), <http://www.presidency.ucsb.edu/ws/index.php?pid=25848> [<https://perma.cc/AA43-FL2G>]; *2000*

similarly to contemporary Democrats—the modern-day Republican Party emphasizes the familiar Whig theme of greater economic growth providing benefit to all economic classes.⁹³

Their means of promoting economic growth do diverge from contemporary Democrats. While the above quotations from Democratic Party platforms focus on items like education spending and other forms of stimulus spending, the focus for Republicans in the past several decades has been lowering rates of taxation.⁹⁴ Nevertheless, similar to contemporary Democrats, the significance

Republican Party Platform, AM. PRESIDENCY PROJECT (July 31, 2000) <http://www.presidency.ucsb.edu/ws/index.php?pid=25849> [https://perma.cc/T8CN-MVYG]; *2004 Republican Party Platform*, AM. PRESIDENCY PROJECT (Aug. 30, 2004), <http://www.presidency.ucsb.edu/ws/index.php?pid=25850> [https://perma.cc/5W6A-YT95]; *2008 Republican Party Platform*, AM. PRESIDENCY PROJECT (Sept. 1, 2008), <http://www.presidency.ucsb.edu/ws/index.php?pid=78545> [https://perma.cc/VVZ4-V74H]; *2012 Republican Party Platform*, AM. PRESIDENCY PROJECT (Aug. 27, 2012), <http://www.presidency.ucsb.edu/ws/index.php?pid=101961> [https://perma.cc/GYU8-4V29]; *2016 Republican Party Platform*, AM. PRESIDENCY PROJECT (July 18, 2016), <http://www.presidency.ucsb.edu/ws/index.php?pid=117718> [https://perma.cc/P3YK-MPPZ].

93. See *supra* note 92.

94. Here are some examples:

- “Keeping what you earn. The test of economic policy is whether it promotes economic growth and expands job opportunities. Lower taxes and an expanding economy depend on long term, consistent restraint in the growth of federal spending.”
“Republicans want individuals and families to control their own economic destiny. Only long-term expansion of our economy and jobs can make the American dream a reality for generations to come. That is why we demand that the Congress do what President Bush called for last January: open a new era of growth and opportunity by enacting his comprehensive plan for economic recovery, including a reduction in the capital gains tax; an investment tax allowance; a \$5,000 tax credit for first-time home buyers; a needed modification of the “passive loss rule”; a \$500 increase in the personal income tax exemption; making permanent the research and development tax credit; and the passage of federal enterprise zone legislation.” *Republican Party Platform of 1992*, *supra* note 92.
- “We are the party of America’s earners, savers, and taxpayers—the people who work hard, take risks and build a better future for our families and our communities. Our party believes that we can best improve the standard of living in America by empowering the American people to act in their own behalf by: cutting the near-record tax burden on Americans; reducing government spending and its size, while balancing the budget; creating jobs; using the benefits of science, technology and innovations to improve both our lives and our competitiveness in the global economy; dramatically increasing the number of families who can own their own home; and unleashing the competitiveness and will to win of individual Americans on the world trade scene with free but fair trade.” *Republican Party Platform of*

1996, supra note 92.

- “When the average American family has to work more than four months out of every year to fund all levels of government, it’s time to change the tax system, to make it simpler, flatter, and fairer for everyone. It’s time for an economics of inclusion that will let people keep more of what they earn and accelerate movement up the opportunity ladder.

We therefore enthusiastically endorse the principles of Governor Bush’s Tax Cut with a Purpose:

- Replace the five current tax brackets with four lower ones, ensuring all taxpayers significant tax relief while targeting it especially toward low-income workers
- Help families by doubling the child tax credit to \$1,000, making it available to more families, and eliminating the marriage penalty.
- Encourage entrepreneurship and growth by capping the top marginal rate, ending the death tax, and making permanent the Research and Development credit.
- Promote charitable giving and education.
- Foster capital investment and savings to boost today’s dangerously low personal savings rate.

This is more than just an economic program to promote growth and job creation. It is our blueprint for the kind of society we want for our children and grandchildren. It is a call to conscience, a reminder that, even in times of great prosperity, there are those who bear great burdens. That is why, with the tax cuts we propose, while every taxpayer benefits, six million families—one in five taxpaying families with children—will no longer pay any federal income tax.” *2000 Republican Party Platform*, supra note 92.

- “Ownership gives citizens a vital stake in their communities and their country. By expanding ownership, we will help turn economic growth into lasting prosperity. As Republicans, we trust people to make decisions about how to spend, save, and invest their own money. We want individuals to own and control their income. We want people to have a tangible asset that they can build and rely on, making their own choices and directing their own future. Ownership should not be the preserve of the wealthy or the privileged.”
 “In 2001, President Bush and the Republican Congress worked together to pass the most sweeping tax relief in a generation. By letting families, workers, and small business owners keep more of the money they earn, they helped bring America from recession to a steadily expanding economy.” *2004 Republican Party Platform*, supra note 92.
- “Economic freedom expands the prosperity pie; government can only divide it up. That is why Republicans advocate lower taxes, reasonable regulation, and smaller, smarter government. That agenda translates to more opportunity for more people. It represents the economics of inclusion, the path by which hopes become achievements. It is the way we will reach our goal of enabling everyone to have a chance to own, invest, and build.” *2008 Republican Party Platform*, supra note 92.
- “Republicans believe in the Great American Dream, with its economics

of economic growth is also apparent in these Republican Party Platforms: these themes were in the leading sections of the Republican Party Platforms of 1996,⁹⁵ 2000,⁹⁶ 2012,⁹⁷ and 2016.⁹⁸ Three exceptions deserve mention: the 1992 Platform was a bit of an outlier within this span of years due to the odd choice of the Republican Party to devote a long, substantive section on “Uniting the Family” as the first substantive theme of that platform.⁹⁹ The 2004 Platform

of inclusion, enabling everyone to have a chance to own, invest, build, and prosper. It is the opposite of the policies which, for the last three and a half years, have stifled growth, destroyed jobs, halted investment, created unprecedented uncertainty, and prolonged the worst economic downturn since the Great Depression. Those policies have placed the federal government in the driver’s seat, rather than relying on energetic and entrepreneurial Americans to rebuild the economy from the ground up. Excessive taxation and regulation impede economic development. Lowering taxes promotes substantial economic growth and reducing regulation encourages business formation and job creation. Knowing that, a Republican President and Congress will jumpstart an economic renewal that creates opportunity, rewards work and saving, and unleashes the productive genius of the American people. Because the GOP is the Great Opportunity Party, this is our pledge to workers without jobs, families without savings, and neighborhoods without hope: together we can get our country back on track, expanding its bounty, renewing its faith, and fulfilling its promise of a better life.”

“The best jobs program is economic growth.” *2012 Republican Party Platform, supra* note 92.

- From the 2016 Republican Party Platform: “We are the party of a growing economy that gives everyone a chance in life, an opportunity to learn, work, and realize the prosperity freedom makes possible.”
 “Republicans consider the establishment of a pro-growth tax code a moral imperative. More than any other public policy, the way government raises revenue—how much, at what rates, under what circumstances, from whom, and for whom—has the greatest impact on our economy’s performance. It powerfully influences the level of economic growth and job creation, which translates into the level of opportunity for those who would otherwise be left behind. Getting our tax system right will be the most important factor in driving the entire economy back to prosperity.” *2016 Republican Party Platform, supra* note 92.

Mark Smith has also noted the significance of economic themes in Republican Party platforms and, consistent with the argument here, notes the convergence of both parties on prioritizing economic themes in recent decades. MARK A. SMITH, *THE RIGHT TALK: HOW CONSERVATIVES TRANSFORMED THE GREAT SOCIETY INTO THE ECONOMIC SOCIETY* 17–18, 145 (2007).

95. *Republican Party Platform of 1996, supra* note 92.

96. *2000 Republican Party Platform, supra* note 92.

97. *2012 Republican Party Platform, supra* note 92.

98. *2016 Republican Party Platform, supra* note 92.

99. *Republican Party Platform of 1992, supra* note 92.

was a second exception since it had the “War on Terror” as the first substantive section—much like the 2004 Democratic Party Platform in the wake of 9/11.¹⁰⁰ And then finally, likely due to deteriorating economic conditions in the run-up to the 2008 election—and the fact that George W. Bush was the incumbent—the War on Terror and government reform preceded the economy in the 2008 Platform.¹⁰¹

As alluded to above, there is one respect in which modern Republican thought owes more to Jacksonian than Whig ideology: their relatively greater skepticism toward state intervention, or positive state action, in bringing about economic growth. The anti-statist orientation of modern-day Republicans on the economy during these years may be fairly represented by this comment in the 2016 Republican Party Platform:

Government cannot create prosperity, though government can limit or destroy it. Prosperity is the product of self-discipline, enterprise, saving and investment by individuals, but it is not an end in itself. Prosperity provides the means by which citizens and their families can maintain their independence from government, raise their children by their own values, practice their faith, and build communities of cooperation and mutual respect.¹⁰²

With respect to the contemporary Republican view on society, an interesting blend of Jacksonian and Whig ideology appears here as well. More in line with Whig ideology, contemporary Republican economic views emphasize the *universal* benefits of economic growth; discussion of economic segmentation by classes is largely absent. Also, the Republican Party has shown more of an inclination toward notions of a unified America defined by a common culture and common norms. For example, the Party has been more hospitable to certain constituencies such as the Christian Right that have pressed for relatively more emphatic views of moral uniformity in line with Whig ideology.¹⁰³ Further, Republican Party platforms have emphasized commitments to banning U.S. flag desecration and establishing English as the

100. 2004 Republican Party Platform, *supra* note 92; 2004 Democratic Party Platform, *supra* note 73.

101. 2008 Republican Party Platform, *supra* note 92.

102. 2016 Republican Party Platform, *supra* note 92.

103. Republican Party Platform of 1992, *supra* note 92.

national language.¹⁰⁴ Every Republican Party platform from 1996–2012 devotes space to these two issues.¹⁰⁵

C. *Insurgent Democrats and Republicans*

If the contemporary Democratic and Republican parties have notably converged upon Whiggish themes in focusing on narratives of national economic growth—with benefits for all—the insurgent wings of both parties have been defined by their common rejection of this appeal *and* their mutual, emphatic embrace of Jacksonian themes.¹⁰⁶ This is perhaps not surprising given the economic backdrop of present times, with a prolonged bout of modest economic growth and increasing economic inequality.

Insurgent Democrats have focused on Jacksonian themes of class-based segmentation in society, with emphasis on a clear oppositional theme: the corruption of the polity by a self-interested economic elite.¹⁰⁷ Very much in the Jacksonian vein, economic disadvantage is linked to a clear segment of the polity.¹⁰⁸ Shades of the Jacksonian war with the Second Bank of the United States are not hard to see.

104. *Republican Party Platform of 1996*, *supra* note 92; *2000 Republican Party Platform*, *supra* note 92; *2004 Republican Party Platform*, *supra* note 92; *2008 Republican Party Platform*, *supra* note 92; *2012 Republican Party Platform*, *supra* note 92; *2016 Republican Party Platform*, *supra* note 92.

105. *See supra* note 104. In 2016, the Republican Party Platform included a section on English as the official language of the nation, but did not mention flag desecration, and neither item is mentioned in the 1992 Platform. Here is a relatively representative statement from the 2008 Republican Party Platform on flag desecration:

The symbol of our unity, to which we all pledge allegiance, is the flag. By whatever legislative method is most feasible, Old Glory should be given legal protection against desecration. We condemn decisions by activist judges to deny children the opportunity to say the Pledge of Allegiance in public school.” *2008 Republican Party Platform*, *supra* note 92.

And here is the comment on English as the official language from the same platform:

One sign of our unity is our English language. For newcomers, it has always been the fastest route to prosperity in America. English empowers. We support English as the official language in our nation, while welcoming the ethnic diversity in the United States and the territories, including language. Immigrants should be encouraged to learn English. English is the accepted language of business, commerce, and legal proceedings, and it is essential as a unifying cultural force. It is also important, as part of cultural integration, that our schools provide better education in U.S. history and civics for all children, thereby fostering a commitment to our national motto, *E Pluribus Unum*. *Id.*

106. Guy Molyneux, *A Tale of Two Populisms*, AM. PROSPECT (June 1, 2017), <http://prospect.org/article/tale-two-populisms> [https://perma.cc/P2MX-5BMC].

107. *Id.*

108. *Id.*

The Republican insurgency, defined in significant part by Donald Trump himself, shares several points of commonality with insurgent Democrats: an acknowledgment of widespread economic discontent,¹⁰⁹ a recognition of the segmentation and fault lines in American society,¹¹⁰ and an oppositional narrative that places the blame for this discontent at the feet of clearly defined segments of American society.¹¹¹ But the difference between Republican and Democratic insurgents, of course, lies in the constituencies each would blame. In place of the self-serving economic elites that were the focus of the latter, the primary targets for Republican insurgents are illegal immigrants, who are perceived to be the cause of job loss for many working-class white Americans; entitled racial minorities and other identity groups, who are perceived to be the unjust beneficiaries of a corrupt government's largesse; "cultural" or liberal elites; and perhaps most significantly, a corrupt governing system that has favored these groups over more deserving Americans.¹¹² This is how Molyneux described the populism pressed forth by Trump in the 2016 campaign, as distinct from the populism of Senator Elizabeth Warren:

Warren speaks of the power of economic elites to further enrich themselves at the expense of average people. But in Trump's tale, it is political elites who wear the black hats. This is *political* populism: The people have been betrayed by their government.

Progressives mock Trump for claiming he wants to "drain the swamp" while promising to deliver deregulation, regressive tax cuts, and other goodies to special interests. But in Trump's view, the "swamp" is inhabited by bureaucrats, not billionaires. His answer to "corruption" is to rescind civil-service protections for federal workers, not limit political spending. His political reform agenda consists almost entirely of telling *politicians* what they cannot do—banning lobbying by former members of Congress and executive branch officials—rather than restricting powerful interests.¹¹³

Parallels to Jacksonianism are also not difficult to see here: modern-day white nationalism invokes the white supremacy then prominent among Jacksonians; the antagonism to identity groups perceived to be favorites of the

109. *Id.*

110. *Id.*

111. *Id.*

112. Brad Plumer, *Full Transcript of Donald Trump's Acceptance Speech at the RNC*, VOX (July 22, 2016, 12:30 PM), <https://www.vox.com/2016/7/21/12253426/donald-trump-acceptance-speech-transcript-republican-nomination-transcript> [<https://perma.cc/WSS9-PHE3>].

113. Molyneux, *supra* note 106.

government invokes the Jacksonian antipathy to an investor class perceived to be the beneficiary of a corrupt government; and the modern-day antipathy to liberal and cultural elites speaks to the Jacksonian ethos emphasizing the “common [white] man.”¹¹⁴

IV. PATTERNS IN CONTEMPORARY PARTY IDEOLOGY

Having surveyed party platforms from the past several decades, two initial observations might be made: first, for much of the past three decades, a key component of Whig ideology, focused on the common benefit of a growing national economy, has held sway for both the contemporary Democratic and Republican parties. Most parties have found it useful to have affiliative narratives at their disposal that may reach beyond their core supporters to other constituencies that may be more tentative supporters. Narratives that are future-oriented and that emphasize policy choices where “everyone wins” will not surprisingly hold great attraction for any political party seeking broader appeal. Against a background set of conditions where economic anxieties never receded for long in the late twentieth and early twenty-first centuries,¹¹⁵ such narratives would not surprisingly hold a great deal of attraction for parties in electoral contests.

However, and this leads to my second point, the contemporary focus on national economic growth has proven to have significant limitations for presidents and political parties in the context of clearly troubled economic conditions. In conditions of a relatively stagnant economy, or even in the midst of economic crisis, successful parties have found it necessary to have at their disposal stories of commonality that depart from themes of universal uplift or universal benefits. Instead, successful narratives have encompassed either an emphasis on the special handicaps faced by a worthy constituency, or the articulation of shared grievances against some other subset of the electorate. These populist-oriented narratives find inspiration in the Jacksonian-Democratic Party, of course, and have had significant—though perhaps relatively more sporadic—influence in recent years compared to narratives of universal economic growth.

It is not obvious that populist appeals would necessarily have to be tied to periods of economic trouble. One could imagine the relationship in reverse: in

114. Inskeep, *supra* note 29.

115. As Galston summarizes it, “The poor performance of the economy, at least as average Americans have experienced it, has framed the politics of the past generation. After seven consecutive years of growth, median household income peaked in 1999. Since then there has been no growth whatsoever. In November 2016, more than seven years after the end of the Great Recession, median household income stood just shy of its record high, reached sixteen years earlier.” William A. Galston, *The Populist Moment*, J. DEMOCRACY, Apr. 2017, at 21, 24.

times of lackluster economic growth or even economic crisis, one might think that grow-the-pie narratives would have particular appeal since economic uncertainty and angst might be at their greatest. However, while such angst and anxiety is certainly present within the electorate at these times, it seemingly gets channeled in a different way: less toward an optimistic future and more toward a retrospective evaluation of what went wrong—and who to blame for it. Consider at a glance some of the strategies taken by successful presidential campaigns over the past several decades.

Bill Clinton's campaign in 1992 is a fitting illustration of the preceding point. Against a backdrop of economic malaise and tremendous concern about the economy within the electorate, Bill Clinton emphasized populist themes during his successful campaign for the presidency.¹¹⁶ He spoke of American economic anxiety with a recession at hand and spoke aggressively of economic elites not paying their fair share. As he stated in his speech announcing his presidential candidacy:

Opportunity for all means making taxes fair. I'm not out to soak the rich. I wouldn't mind being rich. But I do believe the rich should pay their fair share. For 12 years, the Republicans have raised taxes on the middle class. It's time to give the middle class tax relief.

....

How can you ask people who work or who are poor to behave responsibly, when they know that the heads of our biggest companies raised their own pay in the last decade by four times the percentage their workers' pay went up? Three times as much as their profits went up. When they ran their companies into the ground and their employees were on the street, what did they do? They bailed out with golden parachutes to a cushy life. That's just wrong.¹¹⁷

116. F. Christopher Arterton, *Campaign '92: Strategies and Tactics of the Candidates*, in *THE ELECTION OF 1992: REPORTS AND INTERPRETATIONS* 74, 77–79 (Gerald M. Pomper ed., 1993); Walter Dean Burnham, *Introduction—Bill Clinton: Riding the Tiger*, in *THE ELECTION OF 1996: REPORTS AND INTERPRETATIONS* 1, 3 (Gerald M. Pomper ed., 1997); Packer, *supra* note 23, at 52; Gerald M. Pomper, *The Presidential Election*, in *THE ELECTION OF 1992: REPORTS AND INTERPRETATIONS* 132, 144–50 (Gerald M. Pomper ed., 1993).

117. President Bill Clinton, *Announcement Speech* (Oct. 3, 1991), <http://www.4president.org/speeches/billclinton1992announcement.htm> [<https://perma.cc/5JLZ-JNAT>] [hereinafter Clinton, *Announcement Speech*]. Similarly, in his speech accepting the Democratic Party's presidential nomination, he stated:

I was raised to believe the American Dream was built on rewarding hard work.
But we have seen the folks of Washington turn the American ethic on its head.
For too long those who play by the rules and keep the faith have gotten the shaft,

Ultimately, he rode a wave of discontent and desire for change to eventual victory. Once in office, the economic populist themes of 1992 ultimately gave way to a focus on deficit reduction; neoliberal policy choices like and law-and-order themes and welfare reform; and some staples of contemporary Democratic Party doctrine like health care reform and promoting national economic growth.¹¹⁸ In 1996, these policy choices, and a focus on the universal benefits of economic growth, played well against the backdrop of the relatively strong economy that had taken hold by that time.¹¹⁹ As it turned out, the switch in Clinton's focus to a narrative of national economic growth, as opposed to a more populist-oriented appeal, was sufficient to reassure his reelection against these background conditions.

George W. Bush won two terms in office pressing a theme of growing the pie-universalism in his domestic policies (and, befitting his establishment Republican roots, bypassing any rhetoric leaning toward populism). Once in office, he pressed forward on this goal with an emphasis on tax reductions and deregulation, aimed at unleashing market forces.¹²⁰ Beyond the economy, he

and those who cut corners and cut deals have been rewarded.

People are working harder than ever, spending less time with their children, working nights and weekends at their jobs instead of going to PTA and Little League or Scouts. And their incomes are still going down. Their taxes are still going up. And the costs of health care, housing and education are going through the roof.

Meanwhile, more and more of our best people are falling into poverty even though they work 40 hours a week.

Our people are pleading for change, but government is in the way. It has been hijacked by privileged private interests. It has forgotten who really pays the bills around here. It has taken more of your money and given you less in return.

President Bill Clinton, *In Their Own Words; Transcript of Speech by Clinton Accepting Democratic Nomination*, N.Y. TIMES (July 17, 1992), <https://www.nytimes.com/1992/07/17/news/their-own-words-transcript-speech-clinton-accepting-democratic-nomination.html> [https://perma.cc/AM2M-GU7J]. To be sure, Clinton's rhetoric in 1992 foreshadowed the greater emphasis he and the Democratic Party would place on the universal benefits of economic growth in 1996. For example, he also stated in his announcement speech that "In a Clinton Administration, we are going to create opportunity for all. We've got to grow this economy, not shrink it." Clinton, *Announcement Speech*, *supra*.

118. Lizza, *supra* note 21, at 1–2, 5; Packer, *supra* note 23, at 52. Indeed Clinton's economic team in his first term encompassed competing factions of deficit hawks and more populist-minded aides. JOHN F. HARRIS, *THE SURVIVOR: BILL CLINTON IN THE WHITE HOUSE* 21–23 (2005). Beyond economic policy, Harris also notes a split between more combative populist-minded aides, and those aides who aspired to consensus in policy-making. *Id.* at 93–94.

119. Burnham, *supra* note 116, at 14; Gerald M. Pomper, *The Presidential Election, in THE ELECTION OF 1996: REPORTS AND INTERPRETATIONS*, *supra* note 116, at 191–92.

120. James T. Patterson, *Transformative Economic Policies: Tax Cutting, Stimuli, and Bailouts, in THE PRESIDENCY OF GEORGE W. BUSH: A FIRST HISTORICAL ASSESSMENT* 114, 118, 120, 126–27 (Julian E. Zelizer ed., 2010); Julian E. Zelizer, *Establishment Conservative: The Presidency of George*

labeled his vision one of “compassionate conservatism” with some movement to the political center on education, the prescription drug benefit, and with some outreach toward racial minorities and advocates for gay rights.¹²¹ In the face of a Democratic Party still reeling from the Clinton–Lewinsky scandal, and aided by the benefit of a strong economy ahead of both of his contests for the presidency,¹²² this set of more universalist narratives, paired with a dose of anti-statism, provided a winning formula against Al Gore (narrowly) in 2000 and John Kerry in 2004—even with, or perhaps aided by, the extreme uncertainties opened up by the 9/11 attacks and the subsequent Iraqi War. But the economic downturn that hit right at the end of W. Bush’s second term, combined with the continuing Iraq War, also showed the limits of the grow-the-pie narrative. W. Bush’s approval ratings dropped dramatically in the lead-up to the 2008 election.¹²³

Barack Obama took advantage of this in 2008. Deteriorating economic conditions created a wave of discontent within the electorate.¹²⁴ Weatherford has thus written that the 2008 election “centered on the economy and economic policy—this was the most salient campaign issue, and the Great Recession and the continuing impacts of the financial crisis crowded most other issues off the agenda during President Obama’s first two years.”¹²⁵ In response, Obama and the Democratic Party offered narratives on the economy that deployed some populist themes in 2008, though in only a measured way. For example, in his speech on the economy at Raleigh, North Carolina in June 2008, Obama did not hesitate in pointing out the losers in the modern American economy:

You don’t have to read the stock tickers or scan the headlines
in the financial section to understand the seriousness of the

W. Bush, in *THE PRESIDENCY OF GEORGE W. BUSH: A FIRST HISTORICAL ASSESSMENT*, *supra*, at 1, 4.

121. EDSALL, *supra* note 22, at 51; Gary Gerstle, *Minorities, Multiculturalism, and the Presidency of George W. Bush*, in *THE PRESIDENCY OF GEORGE W. BUSH: A FIRST HISTORICAL ASSESSMENT*, *supra* note 120, at 252, 253–54, 279–80; Kevin M. Kruse, *Compassionate Conservatism: Religion in the Age of George W. Bush*, in *THE PRESIDENCY OF GEORGE W. BUSH: A FIRST HISTORICAL ASSESSMENT*, *supra* note 120, at 227, 230.

122. Kathleen A. Frankovic & Monika L. McDermott, *Public Opinion in the 2000 Election: The Ambivalent Electorate*, in *THE ELECTION OF 2000: REPORTS AND INTERPRETATIONS* 73, 74–76 (Gerald M. Pomper ed., 2001); Patterson, *supra* note 120, at 129; Gerald M. Pomper, *The Presidential Election*, in *THE ELECTION OF 2000: REPORTS AND INTERPRETATIONS*, *supra*, at 135, 140–45.

123. DAVID AXELROD, *BELIEVER: MY FORTY YEARS IN POLITICS* 289 (2015); JOHN HEILEMANN & MARK HALPERIN, *GAME CHANGE: OBAMA AND THE CLINTONS, MCCAIN AND PALIN, AND THE RACE OF A LIFETIME* 271–72, 316 (2010).

124. M. Stephen Weatherford, *Economic Crisis and Political Change: A New New Deal?*, in *THE OBAMA PRESIDENCY: APPRAISALS AND PROSPECTS* 295, 295, 296 (Bert A. Rockman, Andrew Rudalevige & Colin Campbell eds., 2012).

125. *Id.* at 295; *see also id.* at 297.

situation we're in right now. You just have to go to Pennsylvania and listen to the man who lost his job but can't even afford the gas to drive around and look for a new one. Or listen to the woman from Iowa who works the night shift after a full day of class and still can't pay the medical bills for a sister who's ill. Or talk to the worker I met in Indiana who worked at the same plant his father worked at for thirty years until they moved it to Mexico and made the workers actually pack up the equipment themselves so they could send it to China.¹²⁶

Similarly, he had little hesitation in attributing these problems to the economically privileged and to the political establishment.¹²⁷ No doubt, this was an appealing tactic given his own status as a non-incumbent candidate and relatively junior status as a Senator. The cause of the economic crisis was due to:

[what George Bush called] the Ownership Society, but it's little more than a worn dogma that says we should give more to those at the top and hope that their good fortune trickles down to the hardworking many. For eight long years, our President sacrificed investments in health care, and education, and energy, and infrastructure on the altar of tax breaks for big corporations and wealthy CEOs—trillions of dollars in giveaways that proved neither compassionate nor conservative.

And for all of George Bush's professed faith in free markets, the markets have hardly been free—not when the gates of Washington are thrown open to high-priced lobbyists who rig the rules of the road and riddle our tax code with special interest favors and corporate loopholes. As a result of such special-interest driven policies and lax regulation, we haven't seen prosperity trickling down to Main Street. Instead, a housing crisis that could leave up to two million homeowners facing foreclosure has shaken confidence in the entire economy.¹²⁸

126. *Obama Delivers Speech on Economy*, N.Y. TIMES (June 9, 2008), <http://www.nytimes.com/2008/06/09/us/politics/09transcript-obama.html> [https://perma.cc/8XWF-65U5].

127. *Id.*

128. *Id.*

Themes of unity and optimism have also long been core components of Obama's orientation,¹²⁹ so it would be difficult to claim him as anything like an exemplar of American populism.¹³⁰ Still, these quasi-populist notes were a notable component of Obama's victory in 2008. Once in office, the same pattern persisted: he sounded some minor notes of populism, but as perhaps foreshadowed by his campaign, his endorsement of those themes remained tentative.¹³¹

Likewise, in the run-up to the 2012 election, Obama was faced with an economy that veered from stagnant to slightly improving.¹³² It was a frustrating context to be running as an incumbent. As Halperin and Heilemann note:

His [Obama's] people had been praying for the kind of slow but steady improvement on the jobs front that would let them run an updated version of Reagan's "Morning in America" campaign. Instead they had been handed a succession of fits, starts, and false dawns, in which respectable jobs reports were followed by anemic ones, creating in the electorate a widespread, free-floating angst—with just a third of voters saying the economy was improving and two-thirds believing the country remained on the wrong track.¹³³

Faced with these less than ideal economic conditions, his presidential campaign once again folded populist themes into its message. In line with the rhetoric he deployed in 2008, Obama's statements on the economy in the run-up to the 2012 election identified unfair losers and unfair winners in the economy, paired with some Whiggish notes on universalism and the benefits of

129. In his biography of Obama, David Remnick noted that Obama's inclination to consensus was well-noted among his law school classmates: "Everyone remembers Obama in much the same way: that he held generally progressive views on the political and racial controversies on campus, but never took the lead. He always used language of reconciliation rather than of insistence." DAVID REMNICK, *THE BRIDGE: THE LIFE AND RISE OF BARACK OBAMA* 214 (2011).

130. In the same speech, for example, he also offered this comment in the concluding paragraphs: But we also believe in an America where unrivaled prosperity brings boundless opportunity—a place where jobs are there for the willing; where hard work is rewarded with a decent living; where no matter how much you start with or where you come from or who your parents are, you can make it if you try.

Obama Delivers Speech on Economy, *supra* note 126; *see also* Weatherford, *supra* note 124, at 301–03.

131. MARK HALPERIN & JOHN HEILEMANN, *DOUBLE DOWN: GAME CHANGE 2012*, at 30, 52 (2014); Lizza, *supra* note 21, at 4. Bob Woodward quotes David Plouffe in saying the following about Obama: "He is, in his gut, a fiscal conservative There is a Blue Dog streak in him." BOB WOODWARD, *THE PRICE OF POLITICS* 92 (2013).

132. HALPERIN & HEILEMANN, *supra* note 131, at 288.

133. *Id.* at 288; *see also id.* at 430.

broad economic growth.¹³⁴ In his speech at Osawatomie, Kansas in late 2011, Obama offered the following succinct paragraph encapsulating all three themes:

This isn't about class warfare. This is about the nation's welfare. It's about making choices that benefit not just the people who've done fantastically well over the last few decades, but that benefits the middle class, and those fighting to get into the middle class, and the economy as a whole.¹³⁵

As with winning presidential campaigns in 1992 and 2012, the winning party and candidate had to offer some outlet for economic anxieties in the electorate.

On the eve of the 2016 election, economic conditions were perceived as being stuck in a similar place: from stagnant to glimpses of small improvement.¹³⁶ In that context, Hillary Clinton attempted to pull from Obama's playbook: an economic narrative that blended some populist notes with some optimistic themes about universal economic growth. With respect to the former, Clinton sounded some Jacksonian notes in offering some criticism of corporations, economic elites, and those politicians who support these interests:

And yes, we know, too many special interests with too many lobbyists have stood in the way of progress while protecting the perks of the privileged few.

And it's not just Washington. Too many corporations have embraced policies that favor hedge funds and other big

134. See, e.g., President Barack Obama, *Remarks by the President on the Economy in Osawatomie, Kansas* (Dec. 6, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/12/06/remarks-president-economy-osawatomie-kansas> [<https://perma.cc/V2FR-EDJZ>] [hereinafter Obama, *Remarks by the President*]; *Full Transcript of Obama's Speech on the Economy in Cleveland, Ohio*, WASH. POST (June 14, 2012), https://www.washingtonpost.com/politics/full-transcript-of-obamas-speech-on-the-economy-in-cleveland-ohio/2012/06/14/gJQAdY10cV_story.html?utm_term=.f22284b6b411 [<https://perma.cc/6HNZ-QD7R>]. Notably, as the incumbent candidate, Obama also had to frame then-present economic conditions as part of a systemic problem that long preceded his presidency: "But let's be clear: not only are we digging out of a hole that is 9 million jobs deep, we're digging out from an entire decade where 6 million manufacturing jobs left our shores; where costs rose but incomes and wages didn't; and where the middle class fell further and further behind.

So recovering from the crisis of 2008 has always been the first and most urgent order of business, but it's not enough. Our economy won't be truly healthy until we reverse that much longer and profound erosion of middle-class jobs and middle-class incomes." *Id.*

135. Obama, *Remarks by the President*, *supra* note 134.

136. Justin McCarthy & Jeffrey M. Jones, *U.S. Economic Confidence Surges After Election*, GALLUP (Nov. 15, 2016), <http://news.gallup.com/poll/197474/economic-confidence-surges-election.aspx> [<https://perma.cc/3K2Z-A7TM>] (noting that pre-election, 81% of Republicans and 35% of Democrats believed the economy was getting worse); Dan Roberts, *Why Hillary Clinton Lost the Election: The Economy, Trust and a Weak Message*, GUARDIAN, Nov. 9, 2016 ("Stagnant wage levels and soaring inequality were symptoms of the malaise felt by many voters.").

shareholders and top management at the expense of their workers, communities and even their long-term value.

They're driven by Wall Street's obsession with short-term share prices and quarterly earnings. Now, a recent survey of corporate executives found that more than half, when asked, would hold off making a successful long-term investment, maybe in their workers or plant and equipment or research, if it meant missing a target in the next earnings report.¹³⁷

Still, this solicitude for the working and middle-class was nestled within a larger vision of a growing economy working toward the common benefit of all—a theme very much in line with contemporary Democratic Party themes:

I have a clear vision for the economy and it's this. We need to make sure our economy works for everyone. Not just those at the top.

Not just for the rich or the well-connected, not just for people living in some parts of the country or people from certain backgrounds and not others, I mean everyone. And I have a plan, I have a plan to get us there.

137. Katie Reilly, *Read Hillary Clinton's Speech Attacking Donald Trump's Economic Policies*, TIME (June 22, 2016), <http://time.com/4378959/hillary-clinton-raleigh-speech-economy/> [<https://perma.cc/N7J3-ZRM9>]. For other, similar examples, see Michele Gorman, *Full Transcript: Hillary Clinton's Economic Speech*, NEWSWEEK (Aug. 11, 2016, 5:53 PM), <https://www.newsweek.com/hillary-clinton-full-transcript-economic-speech-489602> [<https://perma.cc/MJ8E-W336>] (speech in Warren, Michigan):

And Wall Street, corporations, and the super-rich, should finally pay their fair share of taxes. That's why I support the so-called 'Buffett Rule,' because multi-millionaires should not be able to pay a lower tax rate than their secretaries.

We should also add a new tax on multi-millionaires, crack down on tax gaming by corporations and close the carried interest loophole—something I've advocated for years.

Scott Horsley, Tamara Keith & Danielle Kurtzleben, *Fact Check: Clinton's Speech on the Economy, Annotated*, NPR (June 28, 2016, 2:50 PM), <https://www.npr.org/2016/06/28/483870735/fact-check-clintons-speech-on-the-economy-annotated> [<https://perma.cc/Y6CA-TUQ5>] (speech in Cincinnati, Ohio):

And you ask yourself, well, wait a minute, Why did the richest Americans and the biggest corporations get away with manipulating the tax code so they pay lower rates than you do? That's a good question.

It doesn't make any sense, it doesn't make moral sense, economic sense, historic sense, and you know what else doesn't make sense? When leaders in Congress give more tax breaks to hedge fund millionaires instead of making investments in manufacturing clean energy and education that will actually create more good jobs.

It doesn't make sense when corporations stash their profits overseas or send them to influential shareholders, instead of making long-term investments in raising wages, training and research. Or when governors and legislatures use every trick in the book to weaken unions and make it harder for Americans to organize themselves for better wages and benefits.

Five steps we can take together to drive growth that's strong, fair and lasting. Growth that reduces inequality, increases upward mobility, that reaches into every corner of our country.¹³⁸

The overlap between Hillary Clinton's rhetoric and that of Bernie Sanders is not hard to find, and yet the distinctions are also apparent too. By way of contrast, Sanders pulled no punches in taking the Jacksonian rhetoric of class further than Obama and Hillary Clinton, wrapping it within categorical statements of immorality and illegality. In his speech at the Democratic National Convention, he stated:

This election is about ending the grotesque level of income and wealth inequality in America today!

It is not moral, it is not acceptable, and it is not sustainable that the top 1/10th of 1 percent now owns almost as much wealth as the bottom 90 percent.

Or that the top 1 percent in recent years has earned 85 percent of all new income. That is unacceptable. That must change.

This election is about remembering where we were seven-and-a-half years ago when President Obama came into office after eight years of Republican trickle-down economics. The Republicans want us to forget that as a result of the greed, recklessness and illegal behavior on Wall Street our economy was in the worst economic downturn since the Great Depression. That's where we were.¹³⁹

Furthermore, in stark contrast to the neoliberal ambivalence about "big government," Sanders was unabashedly a statist:

Many of my Republican colleagues believe that government is

138. Reilly, *supra* note 137. For other examples, see Gorman, *supra* note 137 ("It [the economy] can seem like a zero sum, when you are competing for a job, a promotion, or a contract if someone wins and someone loses, but that is not the full picture. If you step back, you'll see we're all in this together. If we can grow together, we can all rise together."); Philip Bump, *Here is Hillary Clinton's Presidential Nomination Acceptance Speech*, WASH. POST (July 28, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/07/28/here-is-hillary-clintons-presidential-nomination-acceptance-speech/?utm_term=.d3cffd779ca1 [<https://perma.cc/3S5Y-JN7S>] ("America needs every one of us to lend our energy, our talents, our ambition to making our nation better and stronger. I believe that with all my heart. That's why 'stronger together' is not just a lesson from our history, it's not just a slogan for our campaign, it's a guiding principle for the country we've always been and the future we're going to build, a country where the economy works for everyone, not just those at the top.").

139. Washington Post Staff, *Transcript: Bernie Sanders's Full Speech at the 2016 DNC*, WASH. POST (July 26, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/07/26/transcript-bernie-sanders-full-speech-at-the-2016-dnc/?utm_term=.16c0de0755af [<https://perma.cc/7L3R-VQTS>].

the enemy, that we need to eviscerate and privatize virtually all aspects of government—whether it is Social Security, Medicare, the VA, EPA, the Postal Service or public education. I strongly disagree. In a democratic civilized society, government must play an enormously important role in protecting all of us and our planet.¹⁴⁰

However, if a grow-the-pie narrative proved helpful to Obama in securing the win in 2012, it was not sufficient for Hillary Clinton in 2016—possibly due to her different strengths as a candidate, or the obstacle of having to campaign with several more years of stagnant growth in front of the electorate,¹⁴¹ or the persistent problem of her email controversies,¹⁴² or possibly because of her reduced credibility sounding populist themes due to her own ties to Wall Street (and the presence of an insurgent candidate and critic like Sanders within her own party).¹⁴³

Finally, consider Donald Trump’s campaign rhetoric, who stands out as the sole example of a Republican president among those from 1992 to the present who successfully deployed populist themes toward a presidential victory. Echoing Jacksonian rhetoric, he sought to paint Hillary Clinton as the tool of special interests:

Big business, elite media and major donors are lining up behind the campaign of my opponent because they know she will keep our rigged system in place. They are throwing money at her because they have total control over every single thing she does. She is their puppet, and they pull the strings. That is why Hillary Clinton's message is that things will never change. Never ever.¹⁴⁴

More substantively, he put forth a stark vision of a failing American economy that he proposed to turn around through tougher negotiation in trade agreements, reform of the tax code, reductions in the regulation of industry, and

140. Politico Staff, *Transcript: Bernie Sanders Speech in Burlington, Vermont*, POLITICO (June 16, 2016, 8:30 PM), <https://www.politico.com/story/2016/06/transcript-bernie-sanders-speech-in-burlington-vermont-224465> [<https://perma.cc/9XHF-7T3J>].

141. Hence, like Obama in 2012, Hillary Clinton had to link her economic critiques to structural issues that preceded Obama’s two terms: “Our economy is so much stronger than when they took office. Nearly 15 million new private sector jobs, 20 million more Americans with health insurance, and an auto industry that just had its best year ever. Now, that’s real progress, but none of us can be satisfied with the status quo, not by a long shot. We’re still facing deep-seated problems that developed long before the recession and have stayed with us through the recovery.” Bump, *supra* note 138.

142. JONATHAN ALLEN & AMIE PARNES, SHATTERED: INSIDE HILLARY CLINTON’S DOOMED CAMPAIGN 223, 342 (2017).

143. *Id.*

144. See Plumer, *supra* note 112.

energy reform.¹⁴⁵ Through these means, Trump claimed that economic growth and job creation would follow.¹⁴⁶ Trump's economic vision also mirrored Jacksonian rhetoric in two more respects: first, he did give rhetorical lip-service to economic segmentation, promising tax reform that would particularly benefit the middle class:

I am proposing an across the board income tax reduction, especially for middle income Americans. This will lead to millions of new and really good paying jobs. The rich will pay their fair share, but no one will pay so much that it destroys jobs or undermines our ability as a nation to compete.¹⁴⁷

But in addition, the target of Trump's criticism for present economic conditions was the federal government in many respects. On trade policy and the federal regulation of industry, he noted:

It is estimated that current overregulation is costing our economy as much as \$2 trillion dollars a year—that's money taken straight out of cities like yours.

The federal register is now over 80,000 pages long. As the Wall Street Journal noted, President Obama has issued close to four hundred new major regulations since taking office, each with a cost to the American economy of \$100 million or more. In 2015 alone, the Obama Administration unilaterally issued more than 2,000 new regulations—each a hidden tax on American consumers, and a massive lead weight on the American economy.¹⁴⁸

Likewise, on energy policy he stated that “[t]he Obama–Clinton war on coal has cost Michigan over 50,000 jobs.”¹⁴⁹ And finally, with respect to trade, he attributed to a federal policy of “globalism” the responsibility for job loss and loss of American wealth.¹⁵⁰

145. *Id.*

146. *See id.*; Tessa Berenson, *Read Donald Trump's Speech on Jobs and the Economy*, TIME (Sept. 15, 2016), <http://time.com/4495507/donald-trump-economy-speech-transcript/> [<https://perma.cc/H2EZ-ELQ5>]; Philip Bump, Amber Phillips & Callum Borchers, *Donald Trump's Economic Speech, Annotated*, WASH. POST (Aug. 8, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/08/08/donald-trumps-economic-speech-annotated/?utm_term=.4595f1ed02f8 [<https://perma.cc/MY6Y-EFHF>].

147. Bump, Phillips & Borchers, *supra* note 146.

148. *Id.*

149. *Id.*

150. Berenson, *supra* note 146.

V. CONTEMPORARY PATTERNS IN PARTY STATEMENTS ON CONSTITUTIONAL FIDELITY

The preceding Parts have underscored two distinct dichotomies which, when combined, allow for a number of interesting ideological syntheses. The first is a conceptual dichotomy speaking to the actual and desired nature of American society: hence we see within party ideologies varying degrees of emphasis on viewing American society as segmented vs. non-segmented. The second is a conceptual dichotomy speaking to the actual and desired role of the federal government: hence party ideologies have encompassed varying degrees of emphasis on federal governmental statism vs. federal governmental anti-statism.

It seems quite likely that the reflection of these concepts—and the many potential combinations of them—within party ideologies have played some role in shoring up popular fidelity to the broader constitutional system over time. Within these concepts, party elites have an extraordinarily expansive and historically authentic conceptual grammar to speak to the array of hopes, desires, worries, and discontents that a majority of the electorate may be feeling for prolonged periods of time, and in the midst of very diverse circumstances. The deployment of these concepts by astute party leaders supplies reasons for broad portions of the electorate to remain invested in a constitutional system that is or may yet speak to their current concerns and future hopes.

Still, constitutional fidelity is directly implicated in party ideology in an additional, and even more direct way, and that is the focus of this Part. Within party platforms and within the statements of party leaders and members, we might also identify elements of party ideology that directly incorporate claims about what the Constitution requires or demands. Thus within these statements, we find party ideologies encompassing statements about *how* individuals should show fidelity to the Constitution.

As was the case with the more general discussion of contemporary party platforms in Part III, we likewise find that within Republican and Democratic party statements that directly reference the Constitution in these platforms, there is an interesting blend and synthesis of Jacksonian and Whig elements for both parties. Beginning with the Republicans, the constitutionally related issues that have enjoyed the most consistent mention in its party platforms from 1992 to 2016 have arguably been its opposition to abortion rights;¹⁵¹ its commitment to protecting private property rights;¹⁵² and its commitment to gun

151. *Supra* note 92.

152. *Id.*

rights¹⁵³—all of which were mentioned in the 1992, 1996, 2000, 2004, 2008, 2012, and 2016 platforms at least once.¹⁵⁴ It is not surprising that the contemporary Republican Party has oriented itself toward appealing to pro-life, market-oriented, and pro-gun rights constituencies given its composition. But, in both appealing to these groups *and* in highlighting the threats each of these groups faces, the Republicans are deploying a tactic from the Jacksonian toolkit of highlighting segmentation in the American polity where some constituencies face greater disadvantage or threat than others.

However, given the Republican Party's orientation toward otherwise avoiding a focus on segmentation—particularly in its discussion of the economy—its discussion of abortion, private property, and guns is reoriented in a way that avoids too explicit an endorsement of segmentation: Republican Party platforms generally avoid talking about these issues as being the result of conflict between competing constituencies in society.¹⁵⁵ That is, they avoid talking about pro-life or pro-property rights or pro-gun rights constituencies.¹⁵⁶ Rather, the rhetorical focus in these platforms is on the constitutional right at stake, which places a bit of a universalist gloss upon constitutional arguments that are otherwise very clearly focused on speaking to distinct constituencies.

Note for example this statement in the 2016 Republican Party Platform on gun rights:

We uphold the right of individuals to keep and bear arms, a natural inalienable right that predates the Constitution and is secured by the Second Amendment. Lawful gun ownership enables Americans to exercise their God-given right of self-defense for the safety of their homes, their loved ones, and their communities.

We salute the Republican Congress for defending the right to keep and bear arms by preventing the President from installing a new liberal majority on the Supreme Court. The confirmation to the Court of additional anti-gun justices would eviscerate the Second Amendment's fundamental protections. Already, local officials in the nation's capital and elsewhere are defying the Court's decisions upholding an individual right to bear arms as affirmed by the Supreme Court in *Heller* and *McDonald*.¹⁵⁷

153. *Id.*

154. *Id.*

155. *See id.*

156. *See id.*

157. 2016 Republican Party Platform, *supra* note 92.

Likewise, note the focus on the constitutional right at stake in this comment on property rights from the 2016 Platform, referencing the Supreme Court's decision in *Kelo v. City of New London*¹⁵⁸ in 2005:

The Framers of our government knew, from history and experience, that when private property is not secure, freedom is at risk. That is why the Fifth Amendment declares that private property may not be "taken for public use without just compensation." The Supreme Court's *Kelo* decision undermined this safeguard by allowing local governments to seize a person's home or land not only for vital public use, but also for "public purpose," which thus allowed the government to seize it for transfer to private developers or other private entities. We call on any state legislatures that have not already done so to nullify the impact of *Kelo* within their jurisdiction by legislation or state constitutional amendments declaring that private property may be taken only for true public use, and we join House Republicans in supporting the Private Property Rights Protection Act.¹⁵⁹

The emphasis on the constitutional right at stake has also been important in the Republican Party statements on abortion and gay marriage (the latter of which earned consistent mention in the platforms from 2004 to 2016).¹⁶⁰ To be sure, the Republican orientation toward universalism is complicated on these latter two issues in again appealing to segments of the polity, and in appealing to the need for federal governmental intervention against its otherwise anti-statist orientation. The rhetorical move here, however, is to focus squarely on the constitutional rights involved and ignore the rest. Hence in the 2016 Platform, this was a portion of the statement on abortion:

The Constitution's guarantee that no one can "be deprived of life, liberty or property" deliberately echoes the Declaration of Independence's proclamation that "all" are "endowed by their Creator" with the inalienable right to life. Accordingly, we assert the sanctity of human life and affirm that the unborn child has a fundamental right to life which cannot be infringed. We support a human life amendment to the Constitution and legislation to make clear that the Fourteenth Amendment's protections apply to children before birth.¹⁶¹

158. 545 U.S. 469 (2005).

159. 2016 Republican Party Platform, *supra* note 92.

160. 2004 Republican Party Platform, *supra* note 92; 2008 Republican Party Platform, *supra* note 92; 2012 Republican Party Platform, *supra* note 92; 2016 Republican Party Platform, *supra* note 92.

161. 2016 Republican Party Platform, *supra* note 92.

Notwithstanding this appeal to federal governmental intervention, the Platform did include this meek nod to anti-statism: “We oppose the use of public funds to perform or promote abortion or to fund organizations, like Planned Parenthood, so long as they provide or refer for elective abortions or sell fetal body parts rather than provide healthcare.”¹⁶² Similarly, the Platform said this about gay marriage in 2016: “For that reason, as explained elsewhere in this platform, we do not accept the Supreme Court’s redefinition of marriage and we urge its reversal, whether through judicial reconsideration or a constitutional amendment returning control over marriage to the states.”¹⁶³

Finally, Republican Party platforms in 1996, 2000, 2004, 2008, 2012, and 2016 also included explicit statements about the judiciary, and how the judiciary should best demonstrate its fidelity to the Constitution.¹⁶⁴ Within these statements, we see another Jacksonian influence in the modern Republican Party.

The general concern in these statements is on “judicial activism,” with the Republican Party oriented as the defender of democracy against judicial usurpers of the Constitution. Most of the time, these platforms have linked the Republican concern about judicial activism with an endorsement of originalism as the proper interpretative method. The 2016 Platform was notably expansive on this topic and contained two explicit statements on constitutional interpretative method:

- “We believe the Constitution was written not as a flexible document, but as our enduring covenant. We believe our constitutional system—limited government, separation of powers, federalism, and the rights of the people—must be preserved uncompromised for future generations.”¹⁶⁵
- “In a free society, the primary role of government is to protect the God-given, inalienable rights of its citizens. These constitutional rights are not negotiable for any American. We affirm that all legislation, regulation,

162. *Id.* A similar line has appeared in every Republican Platform from at least 1992–2012.

163. The Platform, also, however, linked this position to a concern about federal governmental statism with respect to enforcing anti-discrimination principles to anti-gay marriage individuals. “We oppose government discrimination against businesses or entities which decline to sell items or services to individuals for activities that go against their religious views about such activities.” *2016 Republican Party Platform*, *supra* note 92.

164. *Republican Party Platform of 1996*, *supra* note 92; *2000 Republican Party Platform*, *supra* note 92; *2004 Republican Party Platform*, *supra* note 92; *2008 Republican Party Platform*, *supra* note 92; *2012 Republican Party Platform*, *supra* note 92; *2016 Republican Party Platform*, *supra* note 92.

165. *2016 Republican Party Platform*, *supra* note 92.

and official actions must conform to the Constitution's original meaning as understood at the time the language was adopted."¹⁶⁶

And it contained the following longer comment on the judiciary:

Only a Republican president will appoint judges who respect the rule of law expressed within the Constitution and Declaration of Independence, including the inalienable right to life and the laws of nature and nature's God, as did the late Justice Antonin Scalia. We are facing a national crisis in our judiciary. . . . In tandem with a Republican Senate, a new Republican president will restore to the Court a strong conservative majority that will follow the text and original meaning of the Constitution and our laws.¹⁶⁷

The clear point of emphasis within these statements is backward-looking. Showing fidelity to the Constitution means respecting and applying the considered judgments of those in the past. And at least at its inception, originalism was offered as a constitutional interpretative method aimed at reinforcing the status quo in reaction to the progressive rulings of the Warren Court.¹⁶⁸ Much like the Jacksonian views on the economy and society that found their inspiration more in the present and past and less in appealing to an unknown future, Republican rhetoric on constitutional interpretative method has a similar temporal orientation to the present and past.

166. *Id.*

167. *Id.* Note, however, that in the 2004 and 2008 Republican Party platforms, Republicans raised the concern about judicial activism without explicitly invoking originalism. From the 2004 Republican Party platform:

We believe that the self-proclaimed supremacy of these judicial activists is antithetical to the democratic ideals on which our nation was founded. President Bush has established a solid record of nominating only judges who have demonstrated respect for the Constitution and the democratic processes of our republic, and Republicans in the Senate have strongly supported those nominees.

2004 *Republican Party Platform*, *supra* note 92.

And from the 2008 Republican Party Platform:

Republicans will insist on the appointment of constitutionalist judges, men and women who will not distort our founding documents to deny the people's right to self-government, sanction federal powers that violate our liberties, or inject foreign law into American jurisprudence.

We oppose stealth nominations to the federal bench, and especially to the Supreme Court, whose lack of a clear and distinguished record leaves doubt about their respect for the Constitution or their intellectual fortitude. Nominees must have a record of fidelity to the U.S. Constitution and the rule of law.

2008 *Republican Party Platform*, *supra* note 92.

168. Keith E. Whittington, *The New Originalism*, 2 *GEO. J.L. & PUB. POL'Y* 599, 599, 601 (2004).

With respect to the Democrats, they have been, for better or worse, much less inclined to elaborate on constitutional themes in their party platforms in recent years. Of the constitutional themes that they have emphasized in these platforms, they have not surprisingly stayed true to the synthesis of Jacksonian class political themes and Whig federal governmental statism that has otherwise characterized much of contemporary Democratic Party ideology for the past several decades. For example, in their 2016 Platform, they mentioned the following on gender equality:

We are committed to ensuring full equality for women. Democrats will fight to end gender discrimination in the areas of education, employment, health care, or any other sphere. We will combat biases across economic, political, and social life that hold women back and limit their opportunities and also tackle specific challenges facing women of color. After 240 years, we will finally enshrine the rights of women in the Constitution by passing the Equal Rights Amendment. And we will urge U.S. ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.¹⁶⁹

Relatedly, abortion rights has been the constitutional theme most consistently mentioned in Democratic Party platforms (in 1992, 1996, 2000, 2004, 2008, 2012, and 2016).¹⁷⁰ While the Democratic position here fits neatly with its larger orientation toward class politics and gender equality, they are postured on this issue as demanding *less* governmental intervention. The platforms have accordingly noted this point. For example, in the 2016 Platform, it noted first that:

Democrats are committed to protecting and advancing reproductive health, rights, and justice. We believe unequivocally, like the majority of Americans, that every woman should have access to quality reproductive health care services, including safe and legal abortion—regardless of where she lives, how much money she makes, or how she is insured. We believe that reproductive health is core to women's, men's, and young people's health and wellbeing.¹⁷¹

It then noted that “We will continue to oppose—and seek to overturn—federal and state laws and policies that impede a woman's access to abortion, including by repealing the Hyde Amendment.”¹⁷²

169. 2016 Democratic Party Platform, *supra* note 73.

170. *Supra* note 73.

171. 2016 Democratic Party Platform, *supra* note 73.

172. *Id.*

Of greater interest has been what the Democratic Party Platforms have said about the judiciary and constitutional interpretative method. Here again, their statements are sparser than what we find in the Republican platforms. But here are the following comments from the three platforms where they did appear during this span of years:

- In 2008: “For our Judiciary, we will select and confirm judges who are men and women of unquestionable talent and character, who firmly respect the rule of law, who listen to and are respectful of different points of view, and who represent the diversity of America. We support the appointment of judges who respect our system of checks and balances and the separation of power among the Executive Branch, Congress, and the Judiciary—and who understand that the Constitution protects not only the powerful, but also the disadvantaged and the powerless.”¹⁷³
- In 2012: “Moving forward, we will continue to nominate and confirm judges who are men and women of unquestionable talent and character and will always demonstrate their faithfulness to our law and our Constitution and bring with them a sense of how American society works and how the American people live.”¹⁷⁴
- In 2016: “We will appoint judges who defend the constitutional principles of liberty and equality for all, and will protect a woman's right to safe and legal abortion, curb billionaires' influence over elections because they understand that *Citizens United* has fundamentally damaged our democracy, and believe the Constitution protects not only the powerful, but also the disadvantaged and powerless.”¹⁷⁵

Within these statements we see again the familiar Democratic Party appeal to governmental actions on behalf of disadvantaged segments of society. Beyond that, we also see—especially in the 2008 and 2012 Platform statements—an endorsement of the idea that constitutional fidelity entails the judicial application of constitutional principles with an eye to “how American society works” through the eyes of its diverse constituencies. These hints of a “living constitutionalism” approach to interpretation have been articulated even more forcefully in statements by Democratic Party leaders in the context of the

173. 2008 Democratic Party Platform, *supra* note 73.

174. 2012 Democratic Party Platform, *supra* note 73.

175. 2016 Democratic Party Platform, *supra* note 73.

floor debates over Supreme Court nominees and cumulatively, they hint at another influence of Whig thought for modern day Democrats: in this context of constitutional interpretation and how best to demonstrate constitutional fidelity, the focus is on utilizing the document toward achieving some form of progress in the unknown future.

Thus, in the Senate debates over the nomination of Robert Bork, then-Senator and then-chairman of the Judiciary Committee, Joe Biden stated that: “For under our living Constitution, every generation has the task of harmonizing the liberty and popular sovereignty that comprise free government. If we circumscribe liberty within such historical bounds, we betray the heritage of our forebears and endanger the legacy of our descendants.”¹⁷⁶ Almost twenty years later, then-Senator Clinton said the following in the context of the Senate debates over Samuel Alito:

Our greatest strength has always been our commitment, generation after generation, with some fits and starts, to enlarging the circle of rights and equality. That great American commitment has made us a beacon of freedom around the world. This nomination could well be the tipping point against constitutionally based freedoms and protections we cherish as individuals and as a nation. I fear Judge Alito will roll back decades of progress and roll over when confronted with an administration too willing to flaunt the rules and looking for a rubberstamp. The stakes could not be higher.¹⁷⁷

And finally, eleven years later in the context of the Senate debates over Neil Gorsuch, Senator Dianne Feinstein, ranking member of the Senate Judiciary Committee, stated: “The U.S. Constitution, I believe, is a living document intended to evolve as our country evolves. We are not supposed to ignore social progress, and I don’t believe the Founders of our country ever intended us to do so.”¹⁷⁸

Again, the cumulative effect of these statements by Party leaders over the span of thirty years is a forward-looking orientation toward constitutional fidelity, with fidelity shown through the achievement of change toward “progress”—defined here as a more inclusive, equal, and just polity. Much as the Whigs were temporally oriented toward an unknown future where American society and its economy might be transformed, we hear similar notes within the modern Democratic Party’s rhetoric on constitutional interpretation.

176. 133 Cong. Rec. 27341, 28656 (1987) (statement of Sen. Biden).

177. 152 Cong. Rec. S68 (2006) (statement of Sen. Clinton).

178. 163 Cong. Rec. S2324 (2017) (statement of Sen. Feinstein).

VI. ECONOMY, SOCIETY, AND THE CONSTITUTION IN PARTY AFFILIATION
NARRATIVES: SOME ALTERNATIVES

As introduced in Part II and referenced in subsequent Parts, we can identify two crucial elements of the respective views on the Jacksonians and Whigs on the economy and society: (a) Each party held a core assumption about the nature of American society. For the Jacksonians, there was an emphasis on the segmented nature of the American polity between producers and non-producers, while the Whigs emphasized a view of society absent such stark segmentation.¹⁷⁹ Because of this, each Party had a distinct strategy with respect to outreach toward non-core constituencies. The class-oriented nature of Jacksonian ideology pressed them to more expansive rhetoric on those classes that were “producers” and thus worthy of party sympathy and in need of protection from selfish, unfairly privileged elites.¹⁸⁰ The non-class-oriented nature of the Whigs pressed them toward a rhetoric of outreach that emphasized the potential for economic improvement for all Americans.¹⁸¹ (b) In addition, each party saw the federal government as playing a different role within their respective economic visions. For Whigs, federal intervention was crucial for individuals to achieve economic improvement, while for Jacksonians, federal intervention in the economy was symbolic of a dysfunction that might lead to elites being unfairly privileged by government.¹⁸² Further, implicated within their respective views on federal statism was a temporal orientation, with the statism of the Whigs connected to a more future-looking orientation, and the anti-statism of the Jacksonians linked to a focus on the past and present.¹⁸³

With these points in mind, consider this two-by-two box setting forth contrasting party views on society (segmentation vs. non-segmentation emphasis) and the state (statist vs. anti-statist in emphasis):

	Statist	Anti-Statist
Segmented Society	Populism	Jacksonian
Non-Segmented Society	Whig	Libertarianism

One might say that each box represents an archetypal party narrative on the economy and society since, in practice, different parties may employ multiple

179. *See supra* Part II.

180. *See supra* Part II.

181. *See supra* Part II.

182. *See supra* Part II.

183. *See supra* Part II.

elements into sometimes-incongruous ideological syntheses.¹⁸⁴ In fleshing out each narrative within these four boxes, I will offer some comments on how political entrepreneurs might broaden each narrative-type to capture a more expansive portion of the electorate in contemporary politics. After doing so, I will conclude with some comments on what type of narrative of party affiliation I would find normatively attractive.

A. *Populism*

This mix of a segmented view of society combined with a more statist orientation speaks to a blend of the Jacksonian view of society and the Whig view of the federal government's role in managing the economy. Some elements of this view have always been present in contemporary Democratic Party thought, though it has been especially pronounced (as indicated by the party platforms) in 1992, 2004, 2012, and 2016.¹⁸⁵ The populist view also speaks to the core perspective of the modern-day insurgent (or Sanders) wing of the Democratic Party with its focus on both the unfair advantages enjoyed by economic elites, and its desire for greater state power to check that advantage.¹⁸⁶ Finally, one also finds elements of the populist view in modern-day insurgent Republican Party thought as well, though with some greater qualms about federal intervention.¹⁸⁷ Given insurgent Republican concerns about certain constituencies such as racial minorities, women, or urbanites gaining an unfair advantage due to federal governmental privilege, insurgent Republicans may have serious-to-qualified concerns about seeing the federal government as the best tool for rooting out the forms of disadvantage that concern them.

Looking ahead to the future, the populist view may yet come to dominate the Democratic Party if the insurgent wing of the party continues to gain strength from young voters and activists. If it does, a focus on economic segmentation will be at the core of its populist message. But beyond that, for populism to orient a modern-day Democratic Party, leaders of the Party will have to find a way to integrate the status-based forms of segmentation that have been central to contemporary Democratic Party thought—such as

184. On this point, see ROGERS M. SMITH, *CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY* 489–90 (1997).

185. *1992 Democratic Platform*, *supra* note 73; *2004 Democratic Party Platform*, *supra* note 73; *2012 Democratic Party Platform*, *supra* note 73; *2016 Democratic Party Platform*, *supra* note 73.

186. Molyneux, *supra* note 106.

187. *See id.*

disadvantages based on race, gender, and sexual orientation—within a more emphatic economic-populist vision as well.

Of course, it is hard to imagine Democratic Party leaders rejecting either economic or status-based themes of segmentation and disadvantage—and the idea that government is needed to combat these forms of disadvantage. Elements of all of these ideas are present in every Democratic Party platform from 1992 to the present.¹⁸⁸ The real question is one of prioritization: between economic and social status, which will enjoy priority, and what will be the consequences of any specific prioritization for attracting the young, educated, minority, and white working-class voters that the Party will need for a winning coalition. This is the primary challenge for a populist-based vision of party affiliation to be at the core of a more expansive Democratic Party coalition.

B. Jacksonian View

The combination of a segmented societal view with a more anti-federal governmental posture speaks to the classic Jacksonian perspective, but as alluded to above, one finds strong hints of this within modern-day insurgent Republican thought. The focus of popular antagonism may differ—present-day insurgent Republicans may have concerns about economic elites, but they may have equal or greater concern about cultural elites. Yet, the rhetoric of unfair advantage in the present day invokes Jacksonian rhetoric from the nineteenth century.¹⁸⁹ Finally, the problematic role of the federal government also carries forward from the nineteenth century as well. Hence the use of phrase of “draining the swamp” of Washington D.C. by Trump and his supporters.

What would it take for this perspective to expand within either the Republican Party or within a grass-roots third party? This coalition of the aggrieved would probably have to expand beyond disenchanted members of the working and middle-class, social conservatives, those annoyed with political correctness, and white nationalists. It would have to attempt to connect to any and all constituencies who felt disadvantaged—broadly defined—and aggrieved by federal action (as either the cause of that grievance or unhelpful in redressing it). Probably the most attractive hope in this vein would be the possibility of insurgent Democrats, especially young voters, becoming so disenchanted with “the system” that their concerns about class-based segmentation—which overlap significantly with the concerns of those in the Jacksonian box—become problems beyond the reach or power of the state to solve. If, for example, Sanders voters get to a place where there was a widespread belief that the federal government, or government in general, was

188. *Supra* note 73.

189. Inskeep, *supra* note 29.

beyond redemption, they might fall within this Jacksonian box, and the ranks of these voters might grow dramatically.

C. *Whig View*

The combination of a non-segmented societal view with a more federal statist posture on the economy was the core Whig outlook. As alluded to in Part III, this was also a perspective that has held and continues to hold sway within the contemporary Democratic Party, albeit with a statist perspective that is likely far beyond what most Whigs contemplated in the nineteenth century. One might go even further and say that especially in those years where there have been strong economic conditions, the establishment wings of the Democratic *and* Republican parties have converged on the message of the priority of economic growth, with universal benefits to all.

At present, these ideas are somewhat embattled within the Democratic Party, but it is worth remembering why they have been such a force in American politics for the last several decades. First, this orientation has provided a winning formula in binding together a diverse array of distinct constituencies. To take an example, the modern Democratic Party encompasses both an array of disadvantaged constituencies such as racial minorities, women, LGBT individuals, working-class individuals, and pairs them with the strange coalition partner of socially liberal, but economically wealthy individuals. The convergence amongst these groups is not obvious, and especially in a time of election campaigning where money is key, being able to court wealthy donors has been a crucial component—and sometimes constraint—of modern Democratic Party leaders.

In moments of economic tension, holding these constituencies together can be a challenge. To take a relatively mild example of this, Halperin and Heilemann note the conflict Obama faced after his election in 2008 from Wall Street donors, who grew increasingly annoyed with his criticism of “fat-cat bankers.”¹⁹⁰ However, when economic conditions permit it as a viable strategy, the Whig perspective offers an optimistic narrative that is able to bind these disparate groups together: a rising tide could indeed lift all boats, thus taking the sting out of grievances tied to social status, and perhaps offering hope for substantive changes in the future that may go down easier in a more robust economy.

But again, as the 2016 election demonstrated, this strategy has its limits if economic conditions do not oblige, or if the focus is on a presidential candidate that cannot create the necessary enthusiasm to bind these groups together.

190. HALPERIN & HEILEMANN, *supra* note 131, at 29; *see also id.* at 28–32.

Looking to the future, if the Whig strategy might be deployed successfully by the Democrats, perhaps it may find support from another leader like Obama who had the right economic conditions in front of him or her, and the right kind of charisma. That said, Obama was a particularly talented candidate, and it is questionable whether someone with his skillset will arrive anytime soon (or that someone with a somewhat more modest set of skills can be successful with this approach). At some point, especially with decades of rising inequality finally affecting traditional party alignments, we may be at a juncture where persistent and growing concerns about structural disadvantage—whether economic or status-based—cannot be managed by the vague promise of future economic growth accompanied by universal benefits.

D. Libertarian View

The combination of a non-segmented societal outlook with a more skeptical posture toward federal governmental intervention in the economy speaks to the libertarian strain within modern-day Republicanism that is hostile to the social welfare state.¹⁹¹ More broadly, we might also say that this orientation is, in short, the flip-side of the Whig view in that it speaks to a strain of thought that extends across a good portion of contemporary Republicanism more generally: seeking greater universal economic growth, and believing that this goal will be aided by a smaller governmental footprint in the economy—state, and especially federal. For this perspective to gain greater traction in the future, the most likely strategy would be to expand this concern about governmental involvement to other policy areas such as crime, education, health care, etc.—and hope that more voters will believe that good policy outcomes will follow less governmental interference with the free market.

In favor of this type of party narrative, the libertarian view is—like the Whig view—a universalist perspective. It is pitched to everybody. Hence, so long as one is a believer in the core idea that governmental involvement is generally a problem, there are no distinct factions to manage (in contrast to modern-day Jacksonians, or modern-day Populists—each of which have a heightened form of the coalition-management problem since each offers a party narrative that is self-consciously speaking to societal segments). In a libertarian view, everyone is in the same boat as being ill-served by governmental involvement; it is the Jacksonian perspective taken one step further, where there

191. It is conceptually possible to be one version of a truly principled federalist in the sense of favoring vigorous state intervention in certain policy domains while also not favoring any federal intervention. However, at least within the realm of policies tied to the economy, the tendency among contemporary Republicans is to be anti-statist on both the federal and state levels.

is only one enemy—the government—and where the ranks of the downtrodden are expanded to include basically everyone.

Still, the libertarian perspective, like the Whig perspective, is likely to have severe limits in its appeal during times of economic crisis, when the federal government may or may not be a convincing enough villain for enough voters. Further, the libertarian orientation toward universalism also suffers from the inability to articulate the hardships and disadvantages that are specific to particular groups in the same way a Jacksonian or populist perspective can. One suspects that the libertarian perspective would find its greatest appeal in times where economic conditions were good enough to suggest the potential for optimism and improvement, while being not good enough for voters to be satisfied with the status quo.

E. Constitutional Fidelity and Party Narratives

With some of these distinct possibilities for party narratives now on the table, let me conclude on a more normative point in offering my own view on the type of narrative, or combination of narratives, I would consider the most defensible. However, in order to answer this question, I first have to address a more immediate one: namely, What criteria might we use in evaluating different party narratives of affiliation as more or less desirable?

Tentatively, I would start from the basic presumption that an attractive narrative of affiliation must either hold broad appeal for at least a majority of the polity, or possess the potential to be attractive to majorities in the not-too-distant future. A narrative of affiliation cannot fulfill its core function of helping to bind a polity together if most of the targeted polity ultimately rejects that narrative. Beyond this basic point, I would also endorse a general set of values that have their traditional home in the contemporary Democratic Party, but in theory—and depending upon context—might have much broader appeal: (a) the desirability of inclusivity; (b) a concern about hierarchies in power across various domains of social life; (c) a concern about structural disadvantages across race, gender, sexual orientation, economic class, and other dimensions of social status; and (d) a belief that continued state intervention into American society is necessary and desirable.

From this very briefly-stated normative starting point, I am led to find elements of Jacksonian populism and Whig universalism equally attractive. Briefly stated, the ability of the former to speak to group disadvantage is both compelling political messaging in times of economic stress, and it has the virtue of sociological accuracy. Yet, the focus of Whig ideology on an as-yet-unknown, better future can be equally compelling messaging, and a necessity for holding together a coalition of voters with very different interests and concerns. The task then for successful ideological entrepreneurs is to try to

synthesize these two elements. To my mind, one of the most attractive ideological vehicles for doing so from our political and legal traditions is a “redemptive” narrative that, in addition to emphasizing the importance of barriers to equality premised on race, gender, and sexual orientation, emphasizes the centrality of economic disadvantage in American life.

In a basic sense, the redemptive ideal speaks to the notion that the American polity is engaged in a cross-generational project to redeem some larger founding purpose set within its core identity. Obviously, redemptive themes might be deployed in any number of ways and could easily be deployed toward goals that run directly antithetical to the values I identified in the previous paragraph. However, if deployed toward the goals of inclusivity and the recognition of structural disadvantages, it offers to my mind perhaps the most attractive way of creating unity out of the acknowledgment of historical disadvantages and wrong-doings that have fallen on distinct segments of the polity. Jack Balkin articulates the redemptive ideal as follows with respect to constitutional narratives:

Redemption is not simply reform, but change that fulfills a promise of the past. Redemption does not mean discharging the existing Constitution and substituting a different one, but returning the Constitution we have to its correct path, pushing it closer to what we take to be its true nature, and discarding the dross of past moral compromise. Through constitutional redemption, the Constitution becomes what it always promised it would be but never was; it changes in the direction of its correct interpretation and application; it responds appropriately to alterations in time and circumstance.¹⁹²

Again, Balkin’s focus is on constitutional fidelity, but one might apply the basic idea to narratives of fidelity that extend beyond just the document to encompass the larger system of American constitutional democracy. Following up on Balkin’s comments, a redemptive political and legal narrative built upon a cross-generational vision of America as seeking to redeem an initial promise—however vaguely defined—of securing greater equality for more and more disadvantaged social groups, including the economically-disadvantaged, has at least four virtues. Collectively these virtues speak to some of the most appealing and enduring elements of the Jacksonian and Whig party visions. Let me mention each in turn.

First, a redemptive narrative focused on the structural disadvantages faced by different social groups speaks to one of the core elements of Jacksonian

192. BALKIN, *supra* note 9, at 5–6; *see also id.* at 27–28, 120–23; Cover, *supra* note 2, at 34–35.

ideology: it recognizes the segmented nature of American society, and the possibility that different social groups may fare differently under certain social and economic conditions.¹⁹³ Especially in the polarized political climate of the present, it would seem impossible for either party to ignore these differences, and indeed, neither the Democrats or Republicans do; their point of divergence simply lies in which groups each prioritizes. This Jacksonian idea continues to have resonance as a means of inclusion, even if the Jacksonians themselves are a problematic model for inclusivity.¹⁹⁴

Second, however, a redemptive narrative focused on structural disadvantage has the virtue of not simply being an account of punishing group A for its past behavior to group B. Rather, because it is oriented as a shared historical project, a redemptive narrative has the potential to recognize segmentation and differential hardships in a way that makes these hardships the responsibility of all for their eradication—and that makes the triumph of progress the shared triumph of all. In other words, it offers an avenue for genuinely acknowledging and incorporating narratives about the struggles of different social groups into one larger, more encompassing narrative that purports to speak to every member of the polity. And because this is a cross-generational project that spans the entire polity, it makes the responsibilities for those shortcomings—and the celebration of achievements—pertinent to every member of the political community.¹⁹⁵ Thus, it speaks to the Whig goal of a political community bound by a shared project of self-improvement, and a shared optimism about a better, unknown future.

Third, redemptive narratives that incorporate economic hardship may have particularly strong appeal in times of economic crisis or uncertainty. As noted above, we have seen the heightened attention to income inequality in recent years from the Democratic Party. Note, for example, this comment from Obama in his farewell speech:

There's a second threat to our democracy—one as old as our nation itself. After my election, there was talk of a post-racial America. Such a vision, however well-intended, was never realistic. For race remains a potent and often divisive force in

193. Stuart Chinn, *Situating "Groups" in Constitutional Argument: Interrogating Judicial Arguments on Economic Rights, Gender Equality, and Gay Equality*, 18 U. PA. J. CONST. L. 95, 95 (2015).

194. On how the political meaning of certain concepts may change in dramatic fashion over time, see J.M. Balkin, *Ideological Drift and the Struggle over Meaning*, 25 CONN. L. REV. 869, 870–71 (1993) (discussing his theory of “ideological drift”); Stephen Skowronek, *The Reassociation of Ideas and Purposes: Racism, Liberalism, and the American Political Tradition*, 100 AM. POL. SCI. REV. 385, 393–95 (2006) (discussing the creative appropriation of certain enduring concepts by astute ideological entrepreneurs).

195. BALKIN, *supra* note 9, at 31.

our society. I've lived long enough to know that race relations are better than they were ten, or twenty, or thirty years ago—you can see it not just in statistics, but in the attitudes of young Americans across the political spectrum.

But we're not where we need to be. All of us have more work to do. After all, if every economic issue is framed as a struggle between a hardworking white middle class and undeserving minorities, then workers of all shades will be left fighting for scraps while the wealthy withdraw further into their private enclaves. If we decline to invest in the children of immigrants, just because they don't look like us, we diminish the prospects of our own children—because those brown kids will represent a larger share of America's workforce. And our economy doesn't have to be a zero-sum game. Last year, incomes rose for all races, all age groups, for men and for women.¹⁹⁶

Again, the need for contemporary Democrats to integrate concerns about economic hardship with more conventional Party commitments to status-based inequalities is hardly news to them. But if a truly robust and substantive redemptive vision of the American constitutional system could emerge where the structural disadvantages that are connected to economic status could be conceptualized as related to or integrated with the obstacles commonly noted with respect to race, gender, and sexual orientation,¹⁹⁷ two significant consequences might follow: first, there might be *significantly* broader appeal for this type of redemptive narrative during the present period of economic discontent. Second, this type of narrative might press the Democratic Party toward policy goals and objectives that would align it in a more realistic way with its familiar rhetoric on helping the middle class. In place of the conventional narratives of hoping for a better future for all—which was a core component of Whig ideology and that has been so common in Democratic and Republican party platforms—a party that truly took such a redemptive narrative as its starting point could prompt a conversation about critically reassessing the starting presumption of the Whigs that has continued to be so prominent (and in many ways, problematic) in contemporary politics: that a booming economy will inevitably accrue to the benefit of all.

196. Politico Staff, *Text of Farewell Address by President Barack Obama*, POLITICO (Jan. 10, 2017, 10:07 PM), <https://www.politico.com/story/2017/01/text-of-farewell-address-by-president-barack-obama-233456> [<https://perma.cc/3QBF-9CQP>].

197. See Joseph Fishkin & William E. Forbath, *The Anti-Oligarchy Constitution*, 94 B.U. L. REV. 669, 672–75 (2014) (emphasizing the “Anti-Oligarchy Constitution”—a set of constitutional arguments focused on the problems of economic class inequalities and excessive concentrations of economic power).

Fourth, and relatedly, an expansive redemptive vision aimed at rectifying structural disadvantages could speak to both the federal statism of the Whigs and the anti-federal statism of the Jacksonians (even if it would more readily be identified as a statist orientation). Such a vision would encompass harnessing the power of the state to redress the harms faced by vulnerable groups due to discrimination and disadvantage in civil society. At the same time, a redemptive narrative might also incorporate corrective measures aimed at scaling back the coercive power of the state in contexts where it might create the structural harm—as contemporary Democrats might argue is the case with state laws that seek to curtail the right to an abortion, or federal or state actions by law enforcement directed at racial minorities or undocumented immigrant communities.

However, in endorsing the normative appeal and utility of redemptive narratives, we should also take note of its potential limits. The potential critiques might fall into at least two categories: the first is that redemptive narratives may understate historical wrongs. One might worry that in the dynamic of incorporating the stories of group struggles into a common (and at least somewhat more uplifting) narrative of redemption, there is also a persistent risk that the polity's acknowledgment of those struggles may be minimized, simplified, or forgotten in the collective push toward reconciliation in the polity's collective memory.¹⁹⁸

A second set of critiques might be rooted in the opposite perspective: that too great a reliance on history may undermine the goal of a common national project of self-improvement. Indeed, redemptive narratives are inherently historical in seeking to explain the present through the lens of the past. While at times this orientation may be both comforting and helpful in giving these narratives broad appeal, a single-minded focus on redemption also risks reducing our changing social world to categories from the past and forcing contemporary politics to continue to rehash the fights of another time. Redemptive narratives may very well fail to capture what was so appealing about the focus on economic growth through the past several decades: the focus on a different, as-yet-unknown, better future that might free the polity from some of the struggles of the past and present. Indeed, focusing on a future, changing world sometimes allows the leaders of party coalitions to take the pressure off of contemporary divisions. If optimistic party narratives are convincing enough, competing factions may find it quite plausible to consider joining together into a common goal of expanding the pie, where the lines of division could theoretically change or even disappear.

198. *See generally* DAVID W. BLIGHT, RACE AND REUNION: THE CIVIL WAR IN AMERICAN MEMORY (2001) (discussing such dynamics in the post-Civil War era).

However, neither of these critiques is incapable of being incorporated into a redemptive narrative. With respect to the first critique, the risk of historical wrongs not receiving a full accounting in party narratives is always present. In the push to get a majority of votes—in an election or in a legislative battle—the desire to paper over differences and not dig too deeply into past wrongs for the sake of present unity is inescapable. Even on normative grounds, a strategic choice by party leaders to avoid airing out certain substantive differences can be compelling. At the least, a redemptive narrative *invites* discussion about accounting for past historical wrongs in a way that narratives purely focused on economic or social progress do not. In their favor, redemptive narratives offer a pathway for the concerns raised with this first critique to potentially receive a hearing in time.

With respect to the second critique, it rightfully notes how compelling narratives of progress can be when conditions permit. Still, one should not understate the possibility for progress to be integrated within a redemptive narrative either. Within its very orientation, redemptive narratives are both backward and forward-looking, so integrating concepts of a better, as-yet unimagined future hardly seem beyond the ability of skilled ideological entrepreneurs and party leaders. More appealing narratives will have to be conscientiously balanced between being rooted in historical events that must be acknowledged, and being oriented toward a future that might allow the polity to move forward in embracing the unknown. Finally, it is also worth emphasizing that progress narratives have their own severe limits when—as we have seen—economic conditions falter. In a time of economic insecurity or economic crisis, asking voters to put their faith in an unseen future of prosperity is likely to be an uphill battle. Hence we saw a greater presence for populist themes from winning presidential coalitions during times of economic uncertainty in Part IV. In these instances, redemptive narratives have the clear advantage over narratives more centrally focused on progress.

VII. CONCLUSION

The 2016 presidential election prompted a fundamental rethinking of party ideologies and party dynamics among politicians, scholars, and public commentators, and the view subsequent to the 2018 midterm elections is arguably not much clearer. In examining some of the key ideas of the Jacksonian-Democratic and Whig Parties, and in mapping those ideas onto contemporary party ideologies, my hope has been, in part, to show a strong historical connection between these two historical eras. Further, I have sought to provide some conceptual tools from that era to aid in understanding the present moment. As I note in the preceding Part, I believe that a redemptive party narrative can combine some of the most attractive elements of the

Jacksonian and Whig ideologies, and I suspect that at least portions of such a narrative could find appeal in contemporary politics. But whether the party narratives that ultimately take hold in the near future are redemptive in orientation or not, my hope is that they will align with the substantive ideals articulated here, and that they will be successful in maintaining broad, popular fidelity to the constitutional system.