Brigham Young University Journal of Public Law

Volume 37 | Issue 2 Article 4

Fall 10-10-2023

Political Fragmentation in the Democracies of the West

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ABSTRACT

The decline of effective government throughout most Western democracies poses one of the greatest challenges democracy currently confronts. The importance of effective government receives too little attention in democratic and legal theory, yet the inability to deliver effective government can lead citizens to alienation, distrust, and withdrawal from participation, and worse, to endorse authoritarian leaders who promise to cut through the dysfunctions of democratic governments.

A major reason for this decline in effective government is that democracies have become more politically fragmented. Political power has been dispersed among many more political parties, organized groups, and even more spontaneous, instantly mobilized non-formal groups. In the proportional-representation systems of Western Europe, power is now divided across many more political parties, including recent, insurgent ones. In the first-past-the-post system of the United States, the main parties are much more internally fragmented. Outside groups, and even individual actors, have far greater power to disrupt and undermine government efforts to forge policy than in the past.

This article expands and extends earlier work I have done on political fragmentation in the United States. It identifies the various forms political fragmentation has taken across Western democracies in general. The article then explores some of the major economic and cultural forces that are fueling fragmentation across most Western democracies.

This piece then turns to a substantial analysis of the communications revolution, as another major cause of the political fragmentation in

* For helpful comments, I thank Jonathan Rauch, Bob Bauer, Jonathan Haidt, Moshe Halbertal, Daryl Levinson, and participants in the NYU Legal and Political Philosophy Colloquium, particularly Liam Murphy and Sam Scheffler. For terrific research assistance, thanks go to NYU students Will Goncher, Pieter Bower, Adam Littlestone-Luria, Heather Szyalagi, and Connor Cardoso. For proofreading assistance, I think Jonathan Wampler. Some excerpts from this article were published in Richard H. Pildes, *Democracies in the Age of Fragmentation,* 110 Calif. L. Rev. 2051 (2022).

democracies today. The challenge this revolution poses to democratic government is more profound than more familiar concerns with disinformation, misinformation, offensive speech, and the like. The communications revolution might inherently undermine the capacity for legitimate, broadly accepted political authority – the authority necessary to be able to govern effectively in democratic systems. Political fragmentation is the result of dissatisfaction with the way democracies have been governing, yet it also makes effective governance all the more difficult. Though there is insufficient appreciation of this new era of political fragmentation, overcoming this fragmentation and delivering effective governance is among the most urgent challenges facing democracies across the West.

INTRODUCTION

Political and legal theory, as well as debates about political reform and legal doctrine, give too little weight to the importance of effective government in the central values democratic governments must aim to realize. Democratic government, in the United States and throughout long-established Western democracies, today confronts many challenges. A good deal of academic and popular writing now exists about some of these challenges, such as the risk of democratic backsliding, regression, or the rise of "populism"[1] and "illiberal democracies."[2] Good reasons exist for these concerns. But far less appreciated is the way in which recently emergent forces have driven a rise in what I call "political fragmentation," and the challenge such fragmentation poses to the ability of democracies to deliver effective government. Put briefly, political fragmentation is the dispersion of political power into so many different hands and centers of power that it becomes difficult to marshal enough political power and authority for democratic governments to function effectively. The emergence of political fragmentation, fueled in part by the communications revolution, might pose the deepest and most enduring challenge to democratic governments, including in the United States, in this era.

To take the United States as one example, there is little question that recent decades have seen a dramatic decline in the effectiveness of government, whether measured in the number of important bills Congress is able to enact, the proportion of all issues people identify as most important that Congress manages to address, or the number of enacted bills that update old policies enacted many decades earlier.[3] Social scientists now write books with titles like *Can America Govern Itself?* Longitudinal data confirm the obvious, which is the more polarized Congress is, the less it enacts significant legislation; in "the ten most polarized [congressional] terms," a bit more than 10.6 significant laws were enacted, while in "the ten least polarized . . . terms," that number goes up sixty percent, to around

1. JAN-WERNER MÜLLER, WHAT IS POPULISM? 101 (2016).

2. *See, e.g.*, Steven Levitsky & Daniel Ziblatt, How Democracies Die (2018).

3. Suzanne Mettler & Claire Leavitt, *Public Policy and Political Dysfunction*, *in* CAN AMERICA GOVERN ITSELF? 239, 248 (Frances E. Lee & Nolan McCarty eds., 2019) ("However we measure it, whether as the number of important bills passed in a given Congress, the proportion of all salient items on the legislative agenda that a given Congress manages to pass or the number of enacted bills that change, revise or restructure extant policy, stalemate in the legislature presents unique and in many cases unprecedented challenges to the American polity in its third century.") (citations omitted).

"sixteen significant enactments per term."[4] The inability of democratic governments to deliver on the issues their populations care most about poses serious risks.

David Runciman describes the appeal of modern democracy as essentially twofold.[5] It offers dignity and respect to citizens, whose views and votes elected rulers must take seriously. And it delivers long-term benefits to those citizens. What happens when democracies become unable to provide the latter? At a minimum, that can lead to alienation, resignation, distrust, and withdrawal among many citizens. Even worse, it can spawn demands for authoritarian leaders who promise to cut through the dysfunction of the political process. And at an even more extreme, it can lead people to question the efficacy of democracy itself and become open to anti-democratic systems of government. The rise of a more prosperous China, and its model of one-party, authoritarian capitalism increases the risk that some citizens in democratic states might become tempted to look to non-democratic systems in search of effective governance.[6]

Analysis of modern democracies has not sufficiently recognized the emergence of political fragmentation as a major challenge. Nor has it grasped the range of implications this fragmentation has for the possible future of democratic processes, institutions, and governance. Political fragmentation is related to polarization, populism, and the risk of authoritarianism. But the most profound question it poses to democracies—both for those that seem fragile[7] and those that currently seem less so—is whether the ability to sustain legitimate democratic authority is coming into question. "Legitimate" here means broadly accepted authority, in the sociological sense (not the normative sense).

In Part I of this article, I define political fragmentation more fully and describe its various manifestations, including the different forms fragmentation takes today in proportional-representation (PR) political systems and in first-past-the-post (FPTP) ones.

The rest of the article aims to raise the question whether this fragmentation is likely to be a temporary, contingent feature of Western

4. Nolan McCarty, Polarization: What Everyone Needs to Know 140 (2019).

5. David Runciman, How Democracy Ends 169–71 (2018).

6. *See, e.g.*, MARTIN JACQUES, WHEN CHINA RULES THE WORLD: THE END OF THE WESTERN WORLD AND THE BIRTH OF A NEW GLOBAL ORDER (2009) (Martin Jacques anticipated that the rise of economic liberalism and a more prosperous China would not lead to political liberalism, but to China seeking to re-make it surrounding region more in the vein of the Chinese system of political order).

7. *See generally* Samuel Issacharoff, Fragile Democracies: Contested Power in the Era of Constitutional Courts (2015).

democracies or a more enduring one. Part II briefly provides a view of the main economic and cultural drivers of political fragmentation. This is a prelude to Part III, which turns to the role of the communications revolution in spawning political fragmentation. Part III argues that the challenge the communications revolution poses to democracy is deeper than familiar concerns with disinformation, misinformation, "hate speech," or anonymous speech funded through "dark" (undisclosed) money. Even apart from those issues—or even if those issues could be solved through platform self-regulation, governmental policies, or other means—the communications revolution weakens the authority and legitimacy of institutions, both public and private. To the extent the communications revolution is a significant contributor to the political fragmentation of Western democracies, this fragmentation is likely to be enduring.

In the political sphere, fragmentation is both effect and cause of the inability of democratic governments to deliver effectively on the issues their citizens care most about. The perceived failure of democratic governments to do so in recent decades has driven the search for alternatives to the long dominant structures of political authority, as well as the withdrawal of many from democratic politics. Yet the resulting fragmentation of political parties and governments perversely makes it all the more difficult for democratic governments to deliver the effective performance citizens demand. Are we becoming destined to temporarily successful forces of disruption, soon undermined in turn by other new disruptive forces, in an endless cycle that makes effective democratic governance more difficult to establish and sustain?

I. POLITICAL FRAGMENTATION

An image for our age: French President Emmanuel Macron, the great disruptor of the traditional two-party structure that had dominated French politics for six decades—elected in 2017 with two-thirds of the final-round vote—one year later effectively trapped in his office, trying to remain "invisible," because any public appearance would lead to the nearly instant mobilization of spontaneous, yet somehow organized, large street crowds of Yellow Vest protestors.[8] A year after Macron had swept aside the long-

8. Sylvie Corbet, *As Protests Rages in France, Macron Remains Invisible*, ASSOCIATED PRESS (Dec. 7, 2018), https://www.apnews.com/3b7d4a322df34823b448dabd46e2e03a; *see also* SOPHIE PEDDER, REVOLUTION FRANÇAISE: EMMANUEL MACRON AND THE QUEST TO REINVENT A NATION 47–79 (2018) (on Macron as the great disrupter of the long-dominant structure of French political parties and government).

dominant structures of traditional political authority, his own legitimacy and authority was in turn being eroded and undermined—not by the return of those traditional structures or conventional partisan opposition—but by leaderless, popular political forces. The disruptor was disrupted overnight: a particularly dramatic example of both the fragmentation of political authority and the resulting difficulty of sustaining legitimate authority.

Political fragmentation takes many different forms. But in general, I mean the myriad ways in which political power today is effectively dispersed among so many political parties, organized groups, non-organized groups, and independent political figures, including both governmental actors and non-governmental actors. No longer is political power, in most democracies, effectively controlled by, or contained within, the centralized, major institutions that had long been perceived to be the legitimate vehicles for organizing and exercising that authority (the leadership of the executive and legislative branches, the traditional political parties and their leaders, the governing majority coalition).

Concerns about political fragmentation have long been central in thought about the structural design of democratic institutions. That design involves tradeoffs among a range of significant democratic values and concerns. Should representative institutions, for example, be elected through proportional representation or first-past-the-post elections; the former might lead more segments of society to feel fairly represented, but the latter might produce more decisive, effective government. Will a federal system mitigate concerns about an overweening central state or fragment power to the point of hamstringing necessary centralized authority? Separated powers systems might provide a check against concentrated power but might disperse authority too broadly for government to function effectively. Pooled sovereignty arrangements might generate economic and other benefits, but fragment authority in ways that undermine political accountability.

Concerns about fragmentation have also been central to debates about the underlying social foundations necessary for democratic governments to exist and succeed. Reflecting a common nineteenth-century view, John Stuart Mill asserted that democracy required an underlying society not fragmented in certain ways: "Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow-feeling, especially if they read and speak different languages, the united public opinion, necessary to the working of representative

government, cannot exist."[9] But after the middle of the twentieth century, this social homogeneity no longer was thought necessary. Much of the West shifted to the belief that democratic systems are suitable regardless of religious, cultural, linguistic, tribal, racial, ethnic or other differences within a society, including those emerging from civil wars that took place along these lines.[10] As Amartya Sen puts it: "In the domain of political ideas perhaps the most important change to occur [in the twentieth century] has been the recognition of democracy as an acceptable form of government that can serve any nation . . . ."[11]

This essay addresses issues of fragmentation arising in the space between the design of democratic institutions and the social and cultural foundations of democratic societies. It focuses on fragmentation that has been emerging in the spheres of democratic politics and governance in recent years. We do not appreciate fully how pervasive are these developments, nor the depth of the challenge they pose to democracies.

A. PR Systems and Fragmentation

In the proportional-representation democracies, the most obvious and familiar expression of political fragmentation is the unraveling of the traditionally dominant, center-left and center-right major political parties or coalitions that had governed in most democracies since World War II. These parties and coalitions were largely organized along lines of class and education; higher income, more educated voters gave most of their votes to the parties of the right, while middle income and working-class voters[12] cast most of their votes for the party of the left. Over the last 25 years or so, this has changed dramatically. With respect to education, there has been a complete inversion: most highly educated voters are now more supportive of the parties of the left than are less educated voters.[13] In the

9. John Stuart Mill, Considerations on Representative Government 286 (1861).

10. *See* Richard H. Pildes, *Ethnic Identity and Democratic Institutions: A Dynamic Perspective*, *in* CONSTITUTIONAL DESIGN FOR DIVIDED SOCIETIES: INTEGRATION OR ACCOMMODATION? 173 (Sujit Choudhry ed., 2008).

11. Amartya Sen, *What's the Point of Democracy*?, 57 BULL. AM. ACAD. ARTS & SCIS. 8 (2004).

12. *See, e.g.*, Nicholas Carnes & Noam Lupu, *The White Working Class and the 2016 Election*, 19 PERSPS. ON POLS. 55, 57 (2021) (U.S. political scientists today define "working class" to be "those who do not hold a college degree *and* report annual household incomes below the median, as reported by the Census Bureau (in 2016, for instance, the median annual household income was nearly $60,000).").

13. Amory Gethin et al., *Brahmin Left Versus Merchant Right: Changing Political Cleavages in 21 Western Democracies, 1948–2020,* 137 Q. J. Econ. 1, 16 fig.1 (2022). (In the 1960s, the highest 10% of voters by educational level were fifteen points less likely to vote for the parties of the left than

U.S., the bases of the parties have also shifted dramatically with respect to income as well, a shift that began in 1992 or so. By the time of the 2016 election, Hillary Clinton did far better with high-income voters than low-income ones.[14] In that election and 2020, a majority of voters in the top 15% of the income distribution voted for Democrats (Democrats also won a majority of voters in the bottom 20% by income, meaning Democratic support by income has a U-shaped structure).[15] In Western Europe, more affluent voters have also moved somewhat toward the parties of the left, though not as dramatically as in the U.S. This fundamental reconfiguration of the class-based foundations of the parties of the left and right is both cause and effect of the ensuing political fragmentation that now characterizes many of the European democracies.

The most consequential, direct manifestation of that fragmentation is the decline of the vote share and hence political power of the traditional two major parties across various European democracies. Since World War II, many of the PR democracies in Europe that are formally multi-party systems had functioned instead as, in effect, two-and-one half party systems.[16] One of the two major parties governed either alone or with the support of one smaller party. That generated fairly stable and continuous government, even as control might shift from one of the two dominant parties to the other. Yet between 1970 and 2010, the number of new political parties grew from four to twenty-eight across Europe; the number of people who were members of these new parties grew by a factor of fifty-three.[17] Overall, the mean vote share for the traditional major parties declined from 68% to 72% between 2004 and 2015; emerging new parties doubled their vote share during this time to twenty-three percent.[18] This fracturing of power across more and smaller parties not only makes putting together effective governing coalitions more difficult, it also makes the

other voters; those high-education voters had become ten points *more* likely by 2015–20 to vote for the parties of the left across Western Europe).

14. *Id.* (explaining that in Western Europe, while higher income voters have moved to the left, it remains the case that they are more supportive of parties of the right than lower income voters, particularly when comparing the top 10% by income with the rest of voters).

15. Sam Zacher, *Polarization of the Rich: The New Democratic Allegiance of Affluent Americans and the Politics of Redistribution*, PERSP. ON POL. 1, 5 fig. 2 (2023).

16. Alan Siaroff, Two-and-a-Half-Party Systems and the Comparative Role of the 'Half', 9 PARTY POL. 267 (2003).

17. LUCIANO BARDI ET AL., *Which Face Comes First?: The Ascendancy of the Party in Public Office*, *in* ORGANIZING POLITICAL PARTIES: REPRESENTATION, PARTICIPATION, AND POWER 62, 68 tbl.3.3 (Susan E. Scarrow et al. eds., 2017).

18. *See generally* ROGER EATWELL & MATTHEW GOODWIN, NATIONAL POPULISM: THE REVOLT AGAINST LIBERAL DEMOCRACY (2018).

political sphere more volatile, as new parties pop up almost overnight and grab slices of power, including parties that style themselves as "anti-parties," reflecting a view that politics should somehow do away with parties altogether.[19] In various individual countries, the details of this general story are particularly dramatic.

Since WWII, for example, Germany had functioned as one of these two-and-a-half party systems, with the traditionally dominant large parties of the center-left (the Social Democrats) and center-right (the Christian Democrats) alternating in government. In the 1970s, these parties regularly combined to receive over ninety percent of the vote.[20] But in recent years, Germany has fragmented into a six-party system. In the 2017 elections, the two previously dominant parties combined for only 53% of the vote[21]; in the recent, 2021 elections, they did not even manage together to receive over 50% of the vote.[22] The votes the major parties hemorrhaged were grabbed by smaller parties of the right and left, including the Alternative for German (AfD); the Free Democrats; the Greens; and the Left. After 2017, it then took six months to put together a governing coalition, the longest since the creation of Germany's post-WWII democracy. Since 2021, Germany has been governed by a three-party coalition, for the first time, and the ideological differences between those three parties, particularly on domestic issues, has raised questions about the capacity of the government to function effectively.[23]

In France in the last two presidential elections, neither of the two principal center-left (the Socialists) or center-right (the Republicans) parties that between them had governed France since WWII was able to garner sufficient support even to get a candidate into the second and final round of the election. Alienation from these long-dominant parties and their leaders was so great that Emmanuel Macron was able to create a new party virtually overnight and capture the Presidency. But two months after

19. Nadia Urbinati, *A Revolt Against Intermediary Bodies*, 22 CONSTELLATIONS 477, 480 (2015).

20. Stefan Wagstyl et al., *Merkel Wins Fourth Term but Far-Right Populists Make Gains*, FIN. TIMES (Sept. 25, 2017), https://www.ft.com/content/12de72a0-a11c-11e7-9e4f-7f5e6a7c98a2.

21. Id.

22. Sugam Pokharel et al., *SPD Narrowly Wins German Election Against Merkel's CDU but Uncertainty Remains Over Next Leader*, CNN (Sept. 27, 2021), https://www.cnn.com/2021/09/27/europe/spd-cdu-german-election-results-intl-hnk/index.html.

23. *What Lies Ahead for Germany's Coalition Government*, WORLDVIEW (Dec. 23, 2022, 15:33), https://worldview.stratfor.com/article/what-lies-ahead-germanys-coalition-government; Sarah Marsh, *German Coalition, Beset by Crises, Could Get More Fractious After Vote*, REUTERS (Oct. 10, 2022, 10:59 PM), https://www.reuters.com/world/europe/german-coalition-beset-by-crises-could-get-more-fractious-after-vote-2022-10-10.

his most recent victory, when legislative elections were held, he lost control of the National Assembly, which suggests continuing instability and disaffection with government (at the time this article went to press, Macron's inability to gain majority support in the National Assembly to raise the retirement age to 64 led him to impose that policy through executive decree).

In Austria, the two major parties, the Christian democratic People's Party (ÖVP) and the social democratic (SPÖ), had dominated Austrian politics throughout the post-WWII decades of the twentieth century and into the twenty-first.[24] But in the 2016 presidential elections, their candidates fell to fourth and fifth place.[25] The far-right Freedom Party candidate received the plurality, with 35.1%, while the green party candidate received 21.3%, with a run-off election needed to find a winner. The country is now governed by an ideologically incoherent coalition of the conservative People's Party and the Green Party—as one Austrian political scientist noted, no party is ideologically further from the Greens than the People's Party.[26]

In 2010, the Sweden Democrats, a right-wing party with an anti-immigration platform, entered the scene. By the 2018 general election, it won the third-most votes (in 2019, it polled the highest of any party). It then took 134 days to form a coalition, which was a minority government, to govern. Then in June 2021, the Prime Minister lost a no-confidence vote—the first time that had happened in Sweden's modern political history.[27] In Denmark, the "four old parties"—"the Social Democrats,

24. Alicia Walker, *The Austrian Government and Political System*, EXPATICA (Jan. 17, 2023), https://www.expatica.com/at/living/gov-law-admin/austrian-government-95282.

25. Eva Zeglovits et al., *Was Austria's Presidential Election Really a Vote Against Populism?*, LSE BLOG (Dec. 14, 2016), https://blogs.lse.ac.uk/europpblog/2016/12/14/austria-presidential-election-populism ("The former 'grand coalition' that had never been less 'grand' than now had lost all of its former attraction as a bringer of stability – instead it was perceived as bringing Austria not towards stability, but to a standstill.").

26. Christopher F. Schuetze & Katrin Bennhold, *Head-Scarf Ban and Carbon Taxes: Austria Gets an Unlikely Government*, N.Y. TIMES (Jan. 2, 2020), https://www.nytimes.com/2020/01/02/world/europe/austria-kurz-greens-coalition-government.html (relating how the government elected in 2017 soon collapsed in the wake of political scandal involving parties on the far right, which triggered snap elections in 2019 that produced an ideologically incoherent coalitional government between the People's Party on the right and the greens on the left–as one story put it, yoking together those who support head-scarf bans and carbon taxes).

27. Magnus Blomgren, *Sweden's Political Crisis: How We Got Here and What's Next*, LSE BLOG (July 2, 2021), https://blogs.lse.ac.uk/europpblog/2021/07/02/swedens-political-crisis-how-we-got-here-and-whats-next/; Jon Henley, *Sweden Gets New Government Four Months After Election*, GUARDIAN (Jan. 18, 2019, 8:02 AM), https://www.theguardian.com/world/2019/jan/18/sweden-gets-new-government-more-than-four-months-after-election; Rafaela Lindeberg, *Sweden's Far Right Party Surges Into First Place in Shock New Poll*, INDEPENDENT (Nov. 18, 2019, 16:06),

Social Liberals, Conservatives and Liberals" have seen their combined vote share fall from a height of nearly 80% in 1994 "to just over 60 percent today."[28]

Spain offers another example. Since Spain's first democratic elections in 1977, after the fall of Franco's dictatorship, two dominant political parties—on the center-left, the Socialist Worker's Party (PSOE), on the center-right the Popular Party (PP)[29], had alternated governing Spain. But in 2014, a new party, Podemos, was born partly out of the spontaneous Indignados, street-protest movement (more on that below). In the immediate 2014 European Parliament election, Podemos stunned even itself by winning eight percent of the vote. It draws from those with high income and high educational levels in urban areas, but also from the unemployed, manual workers, and the self-employed. In the ensuing national elections in December 2015, the first Podemos contested, the results were so fragmented that Spain could not put together a functioning government. The PP was the leading party, but with only 28.7% of the vote—the lowest ever for the party that "won"—while the Socialists garnered 22% of the vote and Podemos, having been formed the year before, received 20.7%.[30] Among students and people with a university degree, roughly 30% supported Podemos.[31] Another new party, strongly opposed to Catalan independence, took 14% of the vote.[32] The two-party system in Spain had collapsed. After two months of failed negotiations over how to form a governing coalition, new elections had to be held.[33]

Spain ended up holding four national elections from 2015 to 2019 in the effort to find a stable governing coalition.[34] In the spring of 2016, the results largely split along the same lines as the election five months

https://www.independent.co.uk/news/world/europe/sweden-far-right-democrats-jimmie-akesson-party-election-a9207741.html.

28. Rune Stubager et al., *The State of Denmark: What Voters Can Tell Us About the Future of the Danish Ideal*, LSE BLOG (May 28, 2021), https://blogs.lse.ac.uk/europpblog/2021/05/28/the-state-of-denmark-what-voters-can-tell-us-about-the-future-of-the-danish-ideal.

29. Peter Matuschek, *Who Learns from Whom?: The Failure of Spanish Christian Democracy and the Success of the Partido Popular*, *in* CHRISTIAN DEMOCRATIC PARTIES IN EUROPE SINCE THE END OF THE COLD WAR 243 (Steven Van Hecke & Emmanuel Gerard eds., 2004) (the original party of the center-right has been the Union of the Democratic Centre, which the PP eventually replaced).

30. Thomas D. Lancaster*, The Spanish General Elections of 2015 and 2016: A New Stage in Democratic Politics?*, 40 W. EUR. POL. 919, 927 tbl.1 (2017).

31. *Id.*

32. *Id.*

33. *Id.* at 931; *see also* John B. Judis, The Populist Explosion: How the Great Recession Transformed American and European Politics 119–30 (2016).

34. Matuschek, *supra* note 29.

earlier.[35] After 300 days of deadlock, a minority government was formed. But that weak government collapsed in 2019, and elections were held again.[36]

By then another new party, on the right, had come onto the scene: Vox (or "Voice"), which is strongly nationalist, against Catalonian independence, skeptical of the European Union, and whose emergence was also attributable to its anti-immigration stance, an issue that became more salient as immigration from Africa increased significantly.[37] The first national election in 2019 once again failed to produce a governing coalition; in November 2019, Spain then held its fourth general election in four years.[38] At this point, the Socialists received the most votes, but Vox became the third largest party in Spain.[39] A year earlier, Vox held no seats in Spain's 350-person Congress of Deputies; now it held fifty-four; by 2022, Vox had become part of the governing coalition in one region.[40] In five years, Spain had gone from a two-party to a five-party system. For the first time since democratic elections began in the 1970s, Spain since 2020 has been led by a coalitional government, led by the Socialists, with Podemos as its junior partner.

Portugal had been thought to be more insulated from some of the forces driving fragmentation in European democracies, because it has low immigration and refugee levels.[41] But it too is manifesting the effects of

35. *Spanish Election: PP Wins Most Seats but Deadlock Remains*, BBC (June 27, 2016), https://www.bbc.com/news/world-europe-36632276.

36. Raphael Minder, *Spain Heads to 4th Election in 4 Years After Failure to Form Government*, N.Y. TIMES (September 17, 2019), https://www.nytimes.com/2019/09/17/world/europe/spain-election-government-collapse.html.

37. *See* Guy Hedgecoe, *Spain's Far-Right Vox Seeks Italian Inspiration*, POLITICO (Nov. 14, 2022, 4:00 AM), https://www.politico.eu/article/spain-far-right-vox-inspiration-giorgia-meloni-brothers-of-italy/; Sofia Sanchez Manzanaro & Marta Rodríguez, *Vox: Who are Spain's Far-Right Party and What Do They Stand For?*, EURONEWS (Nov. 11, 2019), https://www.euronews.com/2019/11/10/vox-who-are-spain-s-far-right-party-and-what-do-they-stand-for; José Rama et al., *Who Are Vox, and Who Are Their Voters?*, LSE BLOG (July 30, 2020), https://blogs.lse.ac.uk/europpblog/2020/07/30/who-are-vox-and-who-are-their-voters/ (Vox's support is strongest among relatively younger urban populations with higher income and educational levels.)

38. Minder, *supra* note 36.

39. *Socialists win repeat Spanish election, Vox becomes third-biggest force in Congress*, EL PAÍS (Nov. 11, 2019), https://english.elpais.com/elpais/2019/11/10/inenglish/1573407794_574125.html.

40. Sam Jones, *Spain's Far-Right Vox Breaks Through into Regional Government,* THE GUARDIAN (Mar. 10, 2022, 11:46 PM), https://www.theguardian.com/world/2022/mar/10/spain-far-right-vox-regional-government-castilla-y-leon-peoples-party-deal.

41. *See generally* Jorge M. Fernandes & Pedro C. Magalhães, *The 2019 Portuguese General Elections*, 43 W. EUR. POLS. 1038 (2020) (explaining that the government was based on bilateral policy agreements with these parties, so that they did not formally enter government, a form of government that has been called "contract parliamentarism").

political fragmentation. After its 2015 election, a government eventually had to be cobbled together from such disparate parties that it was called a *geringonça*—a "contraption," made of odd-fitting components.[42] This was still a minority government, led by the Socialist Party, and a controversial one as well, because it had to form agreements with parties on the far left (the Communists, the Left Bloc) that, since the time Portugal had become a democracy, had been considered too extreme for a major party to govern with. In 2019, the Socialists formed a single-party minority government, determined to negotiate with different parties from across the spectrum on specific policy issues. In these two recent elections, four new parties entered the parliament. And after just two years, the government collapsed, forcing new elections to be held in 2022, two years early—a rare situation for Portugal. Commentators suggest Portugal might be facing a permanent *geringonça*, a term that might describe many of the governing coalitions across the West.[43] In its recent 2022 elections, however, the Socialist Party won an outright majority; it remains to be seen whether this means the era of *geringonça* is over. Not surprisingly, the changing nature of the party composition of the European Parliament also reflects the fragmentation of party politics across Europe. In the most recent elections to the EP, in 2019, its two main blocs, the European People's Party and the Socialists and Democrats, failed collectively to reach a majority for the first time in the EP's history.[44]

Italy's party system has also become more fragmented, though with a more convoluted history. From WWII until the mid-1990s, Italy was considered an "imperfect two-party system," with one party, the Christian Democrats, always part of the government.[45] That system collapsed in

42. Joana Ramiro, *The Left Can Win in Portugal*, JACOBIN (Oct. 6, 2019), https://jacobin.com/2019/10/portugal-elections-geringonca-left-bloc-socialist-party.

43. *Snap Elections Are Called After Portugal's Government Collapses,* ECONOMIST (Nov. 6, 2021), https://www.economist.com/europe/2021/11/06/snap-elections-are-called-after-portugals-government-collapses.

44. *Centrist Liberals Gained the Most Power in the EU Parliament*, ECONOMIST (June 1, 2019), https://www.economist.com/graphic-detail/2019/06/01/centrist-liberals-gained-the-most-power-in-the-eu-parliament.

45. Paolo Pombeni, *Christian Democracy in Power, 1946–63*, *in* THE OXFORD HANDBOOK OF ITALIAN POLITICS 255, 255–60 (Erik Jones & Gianfranco Pasquino eds., 2015); Carol Mershon, *Party Systems in Post-World War II Italy*, *in* THE OXFORD HANDBOOK OF ITALIAN POLITICS, 144 (Erik Jones & Gianfranco Pasquino eds., 2015); Stephen Gundle & Simon Parker, *Introduction: The New Italian Republic*, *in* THE NEW ITALIAN REPUBLIC 1 (Stephen Gundle & Simon Parker eds., 1996); Enrico Borghetto et al., *The Impact of Party Policy Priorities on Italian Lawmaking from the First to the Second Republic, 1983-2006*, *in* AGENDA SETTING, POLICIES, AND POLITICAL SYSTEMS 164, 164 (Christoffer Green-Pedersen & Stefaan Walgrave eds., 2014) (Italy has used several different electoral systems over these years; since 2017, it has used a closed-list, mixed-member PR system.).

1994 and after a prolonged period of more fragmented politics, two major parties emerged that in 2008 together captured more than 70% of the vote, suggesting a new two-party system. But starting in 2013, elections have generated "a return to the fragmented and unstable politics of the mid-1990s, with no stable majority available and an increasingly unpredictable electorate."[46] By 2018, Italy's government was formed completely by anti-system parties.[47] In its most recent, 2022 elections, a three-party right-wing coalition managed to capture majority control, but tensions within that coalition suggest continuing fragmentation and instability in Italian politics.[48] Fragmentation is also reflected in political attitudes that reveal a sharp decline in those who strongly identify with any political party. This decline, too, has been developing over a long period of time. The percent of those in Western European democracies who strongly identify with a political party declined between the 1960s and the 1990s in Austria by 66%; in Italy and Ireland, by 77%; in Sweden and Norway, by 54% and 45%; in France, by 32%.[49] Put another way, in earlier decades in countries such as Sweden, two-thirds of people felt loyal to a particular party, but by 2010, that had fallen to twenty-eight percent. So too with formal membership in the parties: between 1980 and 2009, party membership declined dramatically in nearly all European countries, with a falloff of more than 30% in the UK, Norway, France, Sweden, Ireland, Switzerland, Finland, Denmark, Italy, and Belgium.[50] The magnitude of these declines, the consistency of their direction, and the fact that they have occurred in nearly all Western democracies for which data is available suggests that general structural forces are at work fracturing all these democracies.

Using one standard measure of volatility, the frequency in Western Europe of high-volatility elections soared in the 1990s and 2000s.[51] In the

46. Jonathan Hopkin, *Bipolarity (and After)*, *in* THE OXFORD HANDBOOK OF ITALIAN POLITICS 325, 335 (Erik Jones & Gianfranco Pasquino eds., 2015).

47. Jonathan Hopkin, Anti-System Politics: The Crisis of Market Liberalism in Rich Democracies 217 (2020).

48. Nick O'Connell, *Can Meloni Hold Together Italy's Fractious Governing Coalition While Staying Tough on Russia?*, ATL. COUNCIL: NEW ATLANTICIST (Nov. 10, 2022), https://www.atlanticcouncil.org/blogs/new-atlanticist/can-meloni-hold-together-italys-fractious-governing-coalition-while-staying-tough-on-russia.

49. Russell J. Dalton, Democratic Challenges, Democratic Choices: The Erosion of Political Support in Advanced Industrial Democracies 33 tbl.2.3 (2004).

50. PETER MAIR, RULING THE VOID: THE HOLLOWING OF WESTERN DEMOCRACY 41 tbl.4 (2013).

51. *Id.* at 31 (This measure calculates the level of volatility by summing the (total) electoral gains of all the winning parties in an election. This measure reveals the extent to which party strength shifts from one election to the next between winning and losing parties.); *see* Mogens N. Pedersen,

1990s and 2000s, the percentage of high volatility elections was 23% and 27%, respectively; in each of the four decades before then, it had ranged from only 14% to 15%.[52] For the fifteen long-standing democracies in Europe, in particular, the level of electoral volatility hardly changed from 1950 to the 1980s, until electoral shifts started becoming more volatile in the 1990s.[53] As Peter Maier, one of the first and most astute analysts of the unraveling of strong political parties in post-war Europe put it, "[i]n contemporary politics, in other words, it has become less and less easy for any one party or bloc of parties to monopolize power, with the result that shared government has become more common."[54] But amidst increasing political fragmentation, even putting together coalitions capable of governing has become much more difficult, leading to considerably longer delays in the time it takes to form a government.

After the 2017 elections in the Netherlands, "[i]t took a record 225 days" to form a government.[55] In earlier years, the three largest political parties were able to forge a government among themselves. But just as in many other European countries, between 1986 and 2012, the proportion of parliament those long-dominant (three) parties won plunged from 75% to around 37%.[56] The proliferation of small, successful fringe parties doesn't only make it more difficult to form governments; it also makes those governments more precarious, for when more small parties are needed to form a government, the withdrawal of any of them can bring down the government and force new elections. Belgium and Israel have their own unique polities and circumstances, but they represent these developments in among their most extreme forms. After its most recent elections, in 2019, Belgium took nearly sixteen months to form a government; Israel was forced to hold five national elections in four years between 2019 and 2022 in the effort to find a governing coalition.[57]

The Dynamics of European Party Systems: Changing Patterns of Electoral Volatility, 7 EUR. J. POL. RSCH. 1, 6 (1979).

52. *See* MAIR, *supra* note 50, at 33 tbl.2.

53. *See* MAIR, *supra* note 50, at 31; Pederson, *supra* note 51.

54. MAIR, *supra* note 50, at 52.

55. Aamna Mohdin, *It Took a Record 225 Days for the Dutch to Get a Government*, QUARTZ (Oct. 26, 2017), https://qz.com/1112509/the-dutch-took-a-record-long-225-days-to-form-a-government.

56. Koen Damhuis, *"The Biggest Problem in the Netherlands": Understanding the Party for Freedom's Politicization of Islam*, BROOKINGS fig.1 (July 24, 2019), https://www.brookings.edu/research/the-biggest-problem-in-the-netherlands-understanding-the-party-for-freedoms-politicization-of-islam.

57. Marine Strauss & Philip Blenkinsop, *Belgium Forms New Government After 16-Month Deadlock*, REUTERS (Sept. 30, 2020, 1:37 AM), https://www.reuters.com/article/uk-belgium-government-idUKKBN26L14L; Hadas Gold, *Netanyahu Eyes Comeback as Israel Votes in Fifth*

Political fragmentation in PR systems has at least five corrosive effects on the ability to deliver effective government. As chronicled above, it can make it far more difficult to form governing coalitions, which can also lead to the need for repeated national elections. If this instability is overcome, the governments that do manage to form are nonetheless more likely to lack the kind of political coherence and mandate needed to take on major issues effectively. They are also more fragile, more likely to collapse as well, as coalitional partners withdraw support or votes of no-confidence are failed. Fragmentation can also make governments less accountable to voters and make voting less meaningful. Voters might have little sense in advance of which parties will be able to cobble together a majority in post-election negotiations and under what terms. Fragmentation is a sign of voter dissatisfaction with how effectively their governments are delivering on the issues they care most about, but fragmentation makes it even less likely democratic governments will be able to do so.

B. First-Past-the-Post Systems and Fragmentation

In FPTP countries, political fragmentation has also emerged as an obstacle to effective governance, though fragmentation gets expressed differently than in PR countries. Minor parties face significant structural barriers in FPTP systems. Yet despite this, the U.K. has been experiencing similar effects on the major parties as in the PR countries. Indeed, "[o]ne of the biggest long-term stories in British politics [over the last several decades] is that of declining [voting] support for the two largest parties."[58] In 1970, around 90% of people voted for either Labour or the Conservatives; by 2010, that had fallen to 65%.[59] Some of this reflects the rise of regional parties in Northern Ireland, Scotland, and Wales, but even in England alone, the vote share for the two major parties declined from a peak of 97.6% in 1950 to 67.6% in 2010.[60] Turnout in UK elections had been in the mid-seventy-percent range from WWII until 1997; it reached

Election in Four Years, CNN (Nov. 1, 2022, 2:30 PM), https://www.cnn.com/2022/11/01/world/israel-election-walkup-intl/index.html.

58. Simon Kaye, *2015 and the State of Two-Party Politics in the UK*, BRIT. DEMOCRACY BLOG (Sept. 6, 2015), https://britishdemocracy.com/2015/06/09/2015-and-the-state-of-two-party-politics-in-the-uk.

59. *Id.*

60. Peter Riddell, *Douglas Carswell's Defection: No Longer Just Big Party Dominance*, INST. FOR GOV'T (Aug. 28, 2014), https://www.instituteforgovernment.org.uk/blog/no-longer-just-big-party-dominance.

a nadir of 59% in 2001 and since then it has mostly been in the 60% range.[61]

This political fragmentation culminated in the UK being forced to hold three elections between 2015 and 2019. The minority government elected in 2017 quickly fell, requiring a new election just two years later.[62] Effective governing majorities were put back together in the 2019 election, at least temporarily, when the election was clearly based on a single, overriding issue: who to put in charge of managing Brexit. The Conservative Party won a landslide, enabling decisive action on Brexit finally to be taken. But whether this recent election put only a temporary pause on the splintering of the political sphere remains to be seen. Even this victory exposed the underlying ferment and turmoil of the political dynamics at work in the UK, as elsewhere; it was the unscrambling of traditional party alliances, with the Conservative Party winning over traditional Labour Party working-class voters in the north, that generated this electoral mandate. Whether these voters remain with the Conservatives, switch back to Labour, support other parties, or withdraw from politics will shape how strong and durable a governing coalition is capable of being these days in the UK. Moreover, voters in 2019 identified far more strongly with their position on Brexit than with a particular political party. 76% strongly identified with their position on Brexit, but only 48% strongly identified with a political party.[63]

Public opinion might suggest fragmentation will resurface, now that the clarifying nature of "the Brexit election" has passed.[64] The governing Conservative Party has churned through three leaders since its election victory. In terms of public attitudes, the percentage of those in the U.K. who strongly identify with a party declined by fifteen percentage points between the 1960s and the mid-2000s;[65] from 1980 to 2009, political-party

61. House of Commons & BBC, *Voter Turnout in General Elections and in the Brexit Referendum in the United Kingdom from 1918 to 2019*, STATISTA (Dec. 2019), https://www.statista.com/statistics/1050929/voter-turnout-in-the-uk.

62. Gavin Freeguard, *The 2017 General Election, in Seven Charts*, INST. FOR GOV'T (June 9, 2017), https://www.instituteforgovernment.org.uk/blog/2017-general-election-seven-charts.

63. Adam McDonnell, *Brexit Comes Before Party in this Election*, YOUGOV (Nov. 14, 2019, 9:30 AM) https://yougov.co.uk/topics/politics/articles-reports/2019/11/14/brexit-comes-party-election.

64. *See, e.g.*, ERIC KAUFMANN, WHITESHIFT: POPULISM, IMMIGRATION, AND THE FUTURE OF WHITE MAJORITIES 209 (2018) ("Brexit helped marginalize UKIP, but those who consider this a permanent blow to populism should think twice. The return to two-party dominance in 2017, far from a new normal, may represent an unstable prelude to populist-right renewal.").

65. Russell J. Dalton, *Party Identification and its Implications*, *in* OXFORD RESEARCH ENCYCLOPEDIA: POLITICS (2021).

membership in the U.K. declined by 66%.[66] Similarly, in the 2019 UK elections for the European parliament, a few months before the 2019 general election, in which voting can be more purely expressive and less directed toward the need to form a workable government, the two major parties received only a *combined* vote share of 23.2%.[67] The rest of the vote was splintered between the Brexit Party (31.6%); the Liberal Democrats (20.3%); the Greens (12.1%); and other parties.[68]

In the United States, the hyperpolarization of the two major political parties[69] can obscure the extent to which the United States is experiencing its own form of political fragmentation. Indeed, we see the same declines in public attitudes toward the two major political parties. In the early 1960s, 70% to 75% of people identified with either the Democratic or Republican Party; by 2014, that figure had fallen to 56%.[70] Asked whether the main parties were doing an "adequate job," 56% said yes in 2003 but only 34% by 2017.[71] Reflecting this alienation from the major parties, the desire for a new third party rose from 40% in 2003 to a significant majority of 62% by 2021.[72] Well before the 2016 election (in January of that year), Gallup reported that American's attachment to the two major parties was the weakest since polling on this issue had begun.[73]

Even with the powerful incentives that the FPTP system in the U.S. that drive politics to be organized through only two major parties, the United States has nonetheless seen emergence of new parties and independent candidates. In the 2012 presidential election, candidates ran on the Libertarian (Gary Johnson) and Green Party (Jill Stein) ballot lines but received few votes; the former was below 1% and the latter got just 0.36%. But in the 2016 election, Johnson more than tripled his to 3.27%; Stein nearly tripled hers, to 1.06%; and an independent, Evan McMullin, received another 0.4% (nearly 8 million votes in total).[74] The Trump or

66. MAIR, *supra* note 50, at 41 tbl.4.

67. *European Election 2019: UK Results in Maps and Charts*, BBC NEWS (May 27, 2019), https://www.bbc.com/news/uk-politics-48403131.

68. *Id.*

69. *See generally* Richard H. Pildes, *Why the Center Does Not Hold: The Causes of Hyperpolarized Democracy in America*, 99 CAL. L. REV. 273 (2011).

70. EATWELL & GOODWIN, *supra* note 18, at 237.

71. *Id.*

72. *Id.*

73. Jeffrey M. Jones**,** *Democratic, Republican Identification Near Historical Lows*, GALLUP (Jan. 11, 2016), https://news.gallup.com/poll/188096/democratic-republican-identification-near-historical-lows.aspx.

74. Matthew Yglesias, *What Really Happened in 2016, in 7 Charts*, VOX (Sept. 18, 2017, 8:30 AM), https://www.vox.com/policy-and-politics/2017/9/18/16305486/what-really-happened-in-2016; Stuart Rothenberg, *How Third-Party Votes Sunk Clinton, What They Mean for Trump*, ROLL CALL

Clinton margin of victory was smaller in several key states than the aggregate third-party vote, including in Florida, Michigan, Wisconsin, Pennsylvania, and New Hampshire.[75] That's not to say third parties will become significant in the US; the FPTP makes that highly unlikely. But given the constraints of the two-party system, these are signals of similar pressures to those expressed in the PR systems.

But the main way political fragmentation takes shape in the United States, given its FPTP system, is through internal fragmentation *within* the two major parties. The 2016 elections saw the emergence of a more socialist left within the Democratic Party, in the Sanders candidacy, and a more economically protectionist right within the Republican Party, in the Trump campaign. These fissures inside the two parties are most evident in the domain of governance.

The system of separation of powers and bicameralism makes enacting national legislation difficult. As a result, political dysfunction can arise from sources other than fragmentation. During divided government, strongly unified but highly polarized parties unable to work together can also paralyze the political process. But if the parties are internally fragmented, the situation is even worse. Even during unified government, the party in power might not be able to deliver effective action. During divided government, internally fragmented parties make it all the more difficult to forge legislative deals, particularly if the parties are fragmented along multiple dimensions, or if fragmentation splits the parties toward the wings, not the center—and party leaders lack the effective power to bring enough party members together. All this makes effective governance even more difficult. Examples are abundant. In recent years, when the Republican Party has controlled the House, the party's internal factions have devoured its own Speakers of the House. Two Republican Speakers gave up the most powerful position in the House, due to their inability to manage factions within the party. Similarly, in 2014, the party's second-in-command, the House Majority Leader, was defeated in his party's

(July 29, 2019, 11:47 AM), https://www.rollcall.com/2019/07/29/how-third-party-votes-sunk-clinton-what-they-mean-for-trump.

75. *Libertarian Johnson Second Ever to Win 1 Million Votes*, CQ PRESS: VOTING & ELECTIONS COLLECTION (2017), https://library.cqpress.com/elections/document.php?id=rcookltr-1527-102581-2776775 (Whether the outcome in any state would have changed had voters only voted for the two-major party candidates is hard to say. About half of third-party voters typically say they would not vote at all, rather than vote for one of the two major party candidates.); Stanley Feldman & Melissa Herrmann, *CBS News Exit Polls: How Donald Trump Won the U.S. Presidency*, CBS NEWS (Nov. 9, 2016, 4:51 AM), https://www.cbsnews.com/news/cbs-news-exit-polls-how-donald-trump-won-the-us-presidency/ ("A quarter of Johnson voters said Clinton, 15 percent said Trump, and 55 percent said they would not have voted.").

primary in 2014, the first time that had happened in the 115 years since that leadership position had been created.[76]

In the area of legislation, the most vivid recent example of Republican Party fragmentation was its inability to enact legislation on one of its signature issues over the last decade—health-care—even with unified Republican control of the House, Senate, and White House. Despite the conviction of party leaders in both the White House and Congress that the party's credibility with its voters hinged on this issue, the factional divisions within a fragmented Republican party made it impossible for a party fully in control of government to deliver on one of its key issues (with Democrats currently having unified control, deep internal factional differences on health care are similarly emerging to the surface).[77] Indeed, the central theme of former House Speaker John Boehner's recent memoir is precisely how ungovernable his own party caucus was, because it had come to include a sizable contingent of what he calls "insurgents" and "the chaos caucus" which, in today's communication environment, he simply lacked the power to bring together to enable unified party positions on policy.[78]

The Democratic Party is internally divided between its more moderate and progressive wings. The unusually bitter Clinton-Sanders nomination fight in the 2016 presidential primaries is one example, with Clinton supporters accusing Sanders supporters of undermining Clinton's general election and Sanders supporters accusing the national Democratic party of having "rigged" the nominations contest against them. More recently, these conflicts have broken out publicly in ways that reveal bitter internal division. In June 2019, Democrats in the House were riven in half by a bill to provide humanitarian assistance to migrants at the border. Backed by Speaker Pelosi, liberals sought to hold out for additional protections for children; moderates revolted against Pelosi and refused to do so. When it came to vote, 60% of House Democrats rejected their Speaker's position and backed the bill (which was enacted into law), 40% did not. The House has a Progressive Caucus and a Problem Solvers Caucus, the latter made up of twenty-three moderate Democrats and twenty-three moderate Republicans. In the internal party fight over the bill, the Democratic Chair of the Progressive Caucus, who represents Madison, Wisconsin, made use

76. JOHN BOEHNER, ON THE HOUSE: A WASHINGTON MEMOIR 153 (2021).

77. *See* Politico Staff, *Pelosi vs. Everybody: Dems' High-Wire Health Care Act*, POLITICO (Sept. 17, 2021, 5:00 AM), https://www.politico.com/news/2021/09/17/playbook-deep-dive-health-care-pelosi-democrats-512372.

78. BOEHNER, *supra* note 76, at 167.

of social media's capacity to drive divisions deeper by viciously tweeting this at his fellow Democrats on the Problem Solvers Caucus: "Since when did the Problem Solvers Caucus become the Child Abuse Caucus?"[79] Moderates, in turn, were infuriated; as one said, this "[j]ust speaks to why everyone hates this place."[80] After the disappointing 2020 elections for the House, similar public fights broke out between moderate and progressive Democrats in the House over accusations about which side was responsible for the party's losses.[81]

In the first months after Joe Biden took office, these internal differences were subordinated to the urgent need to address the ongoing pandemic and its economic fallout.[82] But the party's conflicts bottled up for several crucial months the passage of President Biden's infrastructure bill, as progressives fought with moderates over whether to link that bill with major social-welfare legislation.[83] That impasse was broken only after the Democrats suffered major electoral losses in state elections in 2021, after which progressives relented and let the infrastructure bill pass on its own.[84]

President Biden is acutely and self-consciously aware of the dangers to democratic governments today of political fragmentation and dysfunction. In numerous statements, he has defined the overarching role that has fallen to him in our era as demonstrating—to both democratic and non-democratic states—that democratic systems are still capable of

79. Zach Budryk, *Progressive Democrat After Border Defeat: Since when did Problem Solvers Become 'the Child Abuse Caucus'*, THE HILL (June 27, 2019, 3:51 PM), https://thehill.com/homenews/house/450717-progressive-democrat-after-border-defeat-since-when-did-problem-solvers-become.

80. Julie Hirschfeld Davis & Emily Cochrane, *House Passes Senate Border Bill in Striking Defeat for Pelosi*, N.Y. TIMES (June 27, 2019), https://www.nytimes.com/2019/06/27/us/politics/border-funding-immigration.html.

81. Elaine Godfrey, *The Democratic Truce is Over*, THE ATLANTIC (Nov. 10, 2020), https://www.theatlantic.com/politics/archive/2020/11/conor-lamb-aoc-democrats-fighting-socialism/617045/; Michelle Goldberg, *Leftists and Moderates, Stop Fighting. You Need One Another.*, N.Y. TIMES (Nov. 16, 2020), https://www.nytimes.com/2020/11/16/opinion/leftists-moderates-democratic-party.html.

82. Richard Cowan et al., *Democrats Push Biden's $1.9 Trillion COVID Bill Through Senate on Party-Line Vote*, REUTERS (Mar. 5, 2021, 11:03 PM), https://www.reuters.com/article/us-health-coronavirus-usa-congress/democrats-push-bidens-1-9-trillion-covid-bill-through-senate-on-party-line-vote-idUSKBN2AY07M.

83. Emily Cochrane, *Liberals Dig in Against Infrastructure Bill as Party Divisions Persist*, N.Y. TIMES (Sept. 28, 2021), https://www.nytimes.com/2021/09/28/us/politics/pelosi-infrastructure-house-vote.html.

84. Susan Cornwell & Makini Brice, *U.S. Democrats Pass $1 Trillion Infrastructure Bill, Ending Daylong Standoff*, REUTERS (Nov. 6, 2021, 1:15 AM), https://www.reuters.com/world/us/bidens-sweeping-infrastructure-social-spending-bills-finally-get-vote-2021-11-05.

delivering effective governance.[85] That he defines his historical role in those terms reveals much about the challenge to democracies that political fragmentation poses.

II. STRUCTURAL CAUSES OF FRAGMENTATION

The fragmentation of democratic politics in decades across Western democracies is dramatic and has weakened the capacity to deliver effective governance. The critical issue is whether this fragmentation is a temporary, contingent state of affairs that will soon resolve or whether it is likely to define the nature of democratic politics in a more enduring way. The answer depends on the causes driving political fragmentation.

At the broadest level, political fragmentation reflects the great reconfiguration and realignment of politics and political parties that has taken place throughout the west in the last two decades or so. As political scientists have documented for years[86] and Thomas Piketty and co-authors have recently detailed more fully,[87] since the New Deal in the United States and WWII in Europe, politics in the West had been structured through two dominant parties of the center-left and center-right (in the United States) or two such dominant coalitions (in Europe). The differences between the parties were perceived primarily in educational and economic terms, which was reflected in each coalition's base of support. The coalitions of the left tended to be supported by less well-off, less educated voters; the parties and coalitions of the right, by more affluent and more highly educated voters.

In the United States in the 1940s, for example, Democratic candidates received twenty-two points less support from voters in the top ten percent of the income bracket than those in the bottom 90%. By 2012, that gap had dropped to only an eight-point difference; in 2016, voters in the top 10%

85. *See Biden: Democratic Nations in a Race to Compete with Autocratic Governments,* REUTERS (July 13, 2021, 8:34 AM), https://www.reuters.com/world/biden-democratic-nations-race-compete-with-autocratic-governments-2021-06-13/ (quoting President Biden as saying: "We're in a contest, not with China per se, . . . with autocrats, autocratic governments around the world, as to whether or not democracies can compete with them in a rapidly changing 21st century"); David Brooks, *The Heart and Soul of the Biden Project*, N.Y. TIMES (Apr. 8, 2021), https://www.nytimes.com/2021/04/08/opinion/biden-economic-plan.html (discussing conversation with senior Biden advisor Anita Dunn: "President Biden, Dunn said, believes that democracy needs to remind the world that it, too, can solve big problems. Democracy needs to stand up and show that we are still the future.").

86. *See generally* Everett Carll Ladd, Jr., *Liberalism Upside Down: The Inversion of the New Deal Order*, 91 POL. SCI. Q. 577 (1976–77) (Astute political scientists began seeing these new patterns emerging as early as the mid-1970s).

87. Gethin et al., *supra* note 13, at 5.

had become eight points *more* likely to vote for Democratic candidates; and by 2020, fifteen points more likely.[88] Similarly, in the 1940s, those with university degrees in the United States were twenty points less likely to vote for Democrats, while in 2000 there was no difference and by 2016, they were thirteen points more likely to vote for Democrats. Republicans were the party of professionals, corporate managers, and small business owners. Some still remain, but many have migrated to the Democratic Party. Piketty and his co-authors document similar patterns of movement across the major Western democracies. In the UK, 55% of white working-class voters identified with the Labour Party; by 2010, that had fallen to 30%.[89] Put most simply, the socio-economic bases of the major parties/coalitions on the left and right have gradually inverted, to the point that the parties/coalitions of the left now draw most of their support from the more affluent, more highly educated voters, and the parties/coalitions of the right, from the less well-off, less educated voters.

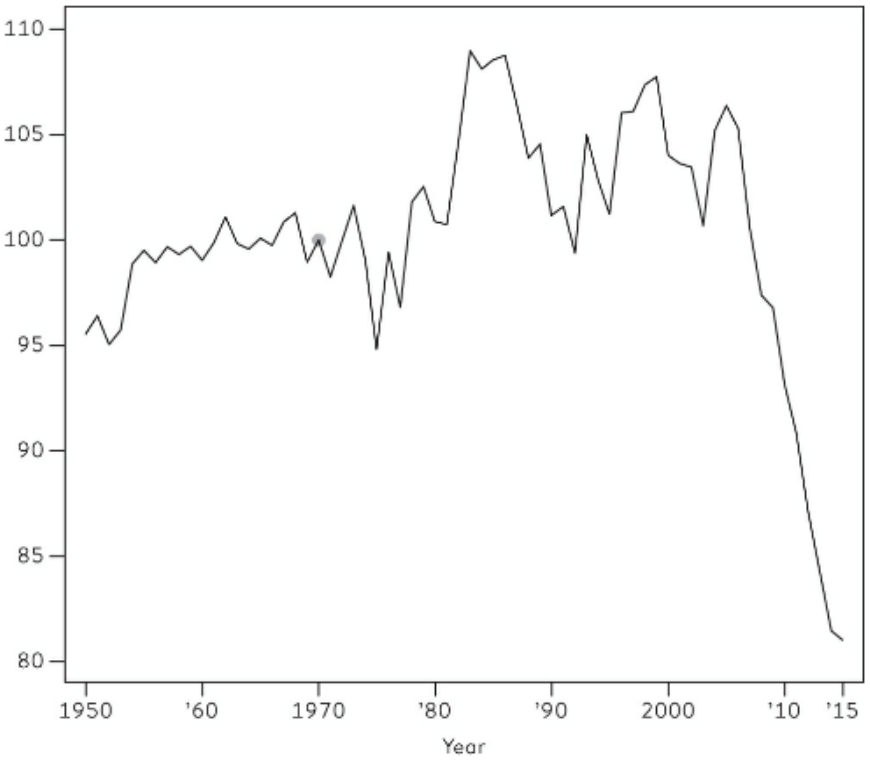
In the first decade of the twenty-first century, the biggest losers in this realignment were the parties of the left. This figure shows the weighted vote share of the social democratic parties in Western Europe, with their share set at 100 in 1970:[90]

88. Zacher, *supra* note 15, at 5.

89. *Id.*

90. EATWELL & GOODWIN, *supra* note 18, at 260–61 fig. 6.4.

Figure 1



This trend continued through 2020, when the vote share for social democratic parties across Western Europe fell to 25%, compared to the 34% these parties tended to win from 1960–80, though a few more recent elections in Germany, Norway, and Portugal run counter to this trend.[91]

In many of these countries, large shares of working-class voters had simply withdrawn from political participation by the late 1990s. Starting in the 1990s, turnout across several countries fell sharply among the bottom 50% of voters by education, but not among the top 50%.[92] In the U.K., for example, the gap in turnout between working-class and middle-class voters in 1980 was only 5 points; by 2010, that had become a

91. *See* Matt Polacko, *Has Economic Moderation Contributed to the Decline of Social Democratic Parties?*, LSE BLOG (Oct. 12, 2021), https://blogs.lse.ac.uk/europpblog/2021/10/12/has-economic-moderation-contributed-to-the-decline-of-social-democratic-parties/, at fig. 1 (similarly concluding that the combined vote share of twenty-two social democratic parties fell from around 34% from 1960–80 to 25% in 2020).

92. Gethin et al., *supra* note 13, at 5.

dramatic 19-point gap.[93] Even when the Labour Party was winning elections, these developments were at work. When Blair first won in 1997, the composition of Labour support had become more middle-class and more concentrated in the home counties, around London.[94] When he again became Prime Minister in the 2001 elections, voter turnout had plummeted from 71% to 59%; "New Labour" had three million fewer votes than in the prior election.[95] When he won again in 2005, it was with only 35.2% of the vote, the weakest victory in modern British history at the time (victory came from Labor voters being more efficiently distributed geographically).[96] In 2010, turnout for the election was the third lowest since universal suffrage in the UK.[97] On the eve of the Brexit vote, more than half of all working class and non-degree holders were no longer voting in the U.K. For years, those voters had withdrawn, but when they started voting again, in Brexit and after, they had become Tory supporters.[98] Support for Brexit increased the less interested in politics voters reported being, particularly for Labour voters.[99]

Sweden offers a similar example. In 1982, that participation gap was around five points; by the mid-2000s, it had become twenty points, before starting to close more recently.[100] But with certain new issues on the agenda, or newly formed parties seeking to mobilize these voters, they have returned to politics. In the Brexit vote, around two million working-class voters who had voted in recent elections turned out; the turnout models of pollsters did not foresee this, which is part of the reason the pre-Brexit polls turned out to be so wrong.[101] The far-right AfD in Germany was formed only in 2013, but when it stunned German politics by coming in third in the 2017 general elections, with 12.6% of the vote, its top source of support came from those who had not voted in recent elections (in the last year, parties on the left have won elections in several countries, partly

93. Oliver Heath, *Policy Alienation, Social Alienation and Working-Class Abstention in Britain*, 1964–2010, BRITISH J. OF POL. SCI. 1053, 1061 fig. 1 (2016).

94. *Id.* at 1058.

95. Harry Lambert, Labour's Lost Future: The Inside Story of a 20-Year Collapse, NEW STATESMAN (Sept. 1, 2021), https://www.newstatesman.com/politics/labour/2021/09/labours-lost-future-the-inside-story-of-a-20-year-collapse.

96. *Id.*

97. HOPKIN, *supra* note 47, at 135.

98. Grace Blakeley, *How the UK Labour Party Lost the Working Class*, JACOBIN (July 2, 2020), https://jacobin.com/2020/07/labour-party-brexit-corbyn-boris-johnson-tories.

99. KAUFMANN, *supra* note 64, at 196.

100. Henrik Oscarsson & Sören Holmberg, Swedish Voting Behavior 4 (2017).

101. Jim Edwards, *Pollsters Now Know Why They Were Wrong About Brexit*, INSIDER (July 24, 2016, 1:05 AM), https://www.businessinsider.com/pollsters-know-why-they-were-wrong-about-brexit-2016-7.

by moving to the right on immigration, but it's too soon to declare this decade long trend over).[102] In the wake of Covid, the center-left parties have returned to control government in a few European countries, though how long-lived this will be remains to be seen.[103]

Seen against this larger backdrop, Donald Trump's 2016 election victory is not as surprising. He was the first major Republican in recent decades to grasp fully, whether by instinct or strategy, that the party's prospects now lay with white working-class, less-educated voters. Not only were his stances on the key economic (trade) and cultural (immigration) issues ones those voters endorsed, but they were among the only policy positions on which he had been consistent since the 1980s.

In the two-party system of the United States, the long-standing strong correlation between income status and support for the Democratic Party has broken down. Indeed, in 2016, the Democratic Party became the party of high-income voters, while the Republican Party dominated among lower-income voters. Hilary Clinton won a majority of the precinct-level vote only in precincts whose median income was $150,000 or higher; in contrast, Donald Trump's vote share consistently increased the lower the median precinct income, with his winning margin ranging from 35–42 points in precincts with median income of $50,000 or less.[104] Democrats now win a majority among the top 5% by income, the top 1%, among stock owners, and among those in the highest-income occupations.[105]

White working-class voters are a larger share of the electorate in the United States than many realize. In 2020, they constituted 42% of the electorate (and a majority in states such as Michigan, Pennsylvania, Ohio, and Wisconsin).[106] Indeed, the primary reason the Democratic Party in the United States is holding on slightly better than many of the parties of the left in Europe is that working-class Black voters, and to a lesser extent Latino voters, are (1) a larger share of the electorate here[107] and (2) are not

102. Michael A. Hansen, *German Federal Elections: Is the AfD Broadening Its Appeal to Voters?*, LSE BLOG (Sept. 21, 2021), https://blogs.lse.ac.uk/europpblog/2021/09/21/german-federal-election-is-the-afd-broadening-its-appeal-to-voters.

103. *See* Paul Taylor, *How Coronavirus Saved the European Left*, POLITICO (Sept. 22, 2021, 4:02 AM).

104. Nate Cohn, *Precinct Data Shows Rich, White Neighborhoods Flipping Democratic in 2016. Will it Last?*, N.Y. TIMES (July 27, 2018), https://www.nytimes.com/interactive/2018/07/27/upshot/white-voters-precinct-analysis.html.

105. Zacher, *supra* note 15, at 5.

106. Ruth Igielnik et al., *Behind Biden's 2020 Victory*, PEW RSCH. CTR. (June 30, 2021), https://www.pewresearch.org/politics/2021/06/30/behind-bidens-2020-victory.

107. NICOLE MARTIN & OMAR KHAN, RUNNYMEDE, ETHNIC MINORITIES AT THE 2017 BRITISH GENERAL ELECTION 1 (2019), https://www.runnymedetrust.org/publications/ethnic-minorities-at-the-2017-british-general-election ("There are no official estimates of the ethnic minority electorate in

yet voting in large numbers in the same way as working-class white voters. African-American voters, in particular, remain overwhelmingly supportive so far of the party of the left, due to the distinct role race has long played in American politics and the two parties' relationship to that issue; Biden received 90% of the vote from Black voters (though that was seven points less than Obama in 2012 and three points less than Clinton in 2016).[108] But signs already exist suggesting that those patterns might be breaking down, particularly for Latino voters. Overall, Biden won 63% of the Latino vote, but that was eight points lower than Clinton.[109] Support among working-class Latinos dropped even more, by eleven points.[110] (based on ideology, not class, Democratic support plunged from 49% to 17% among Hispanic conservatives between 2012 and 2020 and from 49% to 32% among Hispanic moderates).[111] These changes suggest that ideology and class are beginning to provide more of a voting basis among some Hispanics than in the past.[112] If a significantly greater number of working-class Latino or Black voters start to vote as do white working-class voters, the ability of the Democratic Party to win national elections will be severely weakened.

2017. We estimate that around 11% of people eligible to vote in the 2017 general election were from an ethnic minority background."); Igielnik, *supra* note 106 ("White non-Hispanic adults were 72% percent of voters in 2020 . . . .").

108. Yair Ghitza & Jonathan Robinson, *What Happened in 2020*, CATALIST, https://catalist.us/wh-national (last visited Feb. 28, 2023); *see also* David Shor (@davidshor), TWITTER (Feb. 1, 2022, 4:31 PM), https://twitter.com/davidshor/status/1488656186513805314 (One striking example of the difference in racial voting patterns is that, for whites, the interaction between a voter's religious beliefs and educational level strongly affects voting patterns. To take a couple data points: 37.6% of whites who believe the Bible is the "inspired word of God" and do not have a college degree voted for Hilary Clinton in 2016; but 50.3% of whites with similar beliefs about the Bible but who had a college degree voted for Clinton. Those who believed the Bible was the "literal word of God" gave about fifteen percent of their vote to Clinton, regardless of whether they had a college degree. Yet for Black voters, neither religious belief nor educational level changed voting patterns. Clinton received ninety-six percent of the vote from Black voters whether those voters lacked a college degree and believe the Bible is the "literal word of God" or whether they had a college degree and believed the Bible was a "book of fables.").

109. Ghitza & Robinson*, supra* note 108.

110. Aaron Zitner & Bryan Mena, *Latino Voters, Once Solidly Democratic, Split Along Economic Lines*, WALL ST. J. (Sept. 14, 2022, 10:41 AM), https://www.wsj.com/articles/latino-voters-republican-midterm-elections-11663166135.

111. Mark Murray & Alexandra Marquez, *This One Demographic Group Has Driven Much of the GOP's Gains with Latino Voters*, NBC NEWS: MEET THE PRESS BLOG (Oct. 5, 2022, 11:42 AM), https://www.nbcnews.com/meet-the-press/meetthepressblog/one-demographic-driven-much-gops-gains-latino-voters-rcna50844.

112. *See* Jack Herrera, *Why Democrats Are Losing Texas Latinos*, TEXAS MONTHLY (Oct. 2021), https://www.texasmonthly.com/news-politics/democrats-losing-texas-latinos-trump/ (giving a detailed account of Hispanic voting patterns in South Texas in 2020, including large increases in Hispanic support for Republican candidates from 2016 to 2020, and the reasons behind those patterns).

This realignment across the West has two, related consequences for fragmentation. First, the parties and coalitions are still struggling to work out precisely where they need to locate themselves to put together nationally winning electoral coalitions, in light of the shift in their base of support. Second, this realignment creates new lines of tension and faction within the parties. The parties now must struggle with how to pursue policies their main bases of support want, without alienating too many of their legacy supporters. In the United States, this gets expressed through internal factional conflict within the two-party system. In Europe, it accounts for the rise of insurgent, smaller parties on both left, right, and less easily characterized positions.

If fragmentation mainly reflects the turmoil arising from the process of this new realignment, current fragmentation might then be an intermediate, contingent stage until a stable, new alignment gets established. To consider that theoretical possibility, it is worth exploring the major economic and cultural issues driving this historical realignment, along with the multiple dimensions of conflict around which political struggle is now organized. This is not the place to unravel all the subtleties of that realignment, which others have explored in depth, but highlighting certain major causes provides perspective on what the major parties and coalitions must successfully navigate politically to give birth to a stable, new configuration of politics–one in which effective governing power could be marshaled and sustained. In exploring those causes, I also want to draw attention to a few elements in this larger story that might be less well known and help put the discussion to come in Part III in context.

A. The Economic Sphere

In the economic sphere, one defining moment in this transformation traces to the 1990s, when the elected leaders in the West from the parties of the left–Clinton, Blair, and Schroeder – began to realign their parties toward what they called "The Third Way" (in the United States and UK) or the "New Middle" (in Germany). This realignment, it is worth recalling, was an effort to bring the parties of the left out of the electoral wilderness in which they had languished for years. In the UK before Blair's 1997 electoral triumph, the Labour Party had been out of power for eighteen years; in Germany for sixteen years before Schroeder's win; and in the US, Democrats had been out of power for twelve years until Clinton's 1992 victory (or perhaps for twenty-four years, since 1968, other than the brief interlude of the post-Watergate, one-term Carter presidency).

In the economic sphere, this electorally successful re-orientation of the parties of the left involved embracing globalization and rejecting the long-standing resistance of labor unions to free trade, along with reducing the role of the state and regulation in various sectors, which further weakened unions. In 1964 almost half the British workforce did blue collar jobs, forty percent were in unions, and seventy percent had no formal educational qualifications. Now manual jobs represent less than thirty percent of the total, fewer than twenty percent of people are in unions, and voters with educational qualifications equal those without. The apex of the embrace of globalization came with China's entry into the WTO, which the economist David Autor found destroyed 2 to 2.4 million U.S. jobs in manufacturing and related industries between 1999 and 2011—a single decade.[113] Put another way, in one decade one-third of all manufacturing jobs in the United States disappeared, a pattern repeated elsewhere. Autor also found that counties with the most exposure to these effects shifted toward supporting Republicans in presidential elections. Globalization amounted to a dramatic wealth transfer from the middle and working classes of the West to the poor in China and other developing countries. It also accelerated the rise of the knowledge economy, which furthered economic inequality and left those whose jobs globalization displaced further behind.[114] As the political leader of the AFL-CIO expressed his perspective in 2006: "The Democratic Party stopped being for unions, stopped being for workers, and those people in the way it had been since the 1930s."[115]

The less well-known aspect to the story is the specific way in which layering the 2008 financial crisis onto this fertile ground contributed to political fragmentation. In a fascinating study of financial crises in democracies since 1870, the authors found that the political after-effects of financial crises are both dramatic and sharply different from those that follow economic recessions. In the decade after financial crises, the vote shares for populist political parties–mainly on the right–increase by 30%.[116] Voters respond differently to financial crises than economic

113. David H. Autor et al., *The China Shock: Learning from Labor-Market Adjustment to Large Changes in Trade*, 8 ANN. REV. ECON. 205, 228 (2016).

114. *See, e.g.*, Hanas A. Cader, *The Evolution of the Knowledge Economy*, 38 J. REG'L ANALYSIS & POL'Y 117 (2008).

115. DAVID PAUL KUHN, THE HARDHAT RIOT: NIXON, NEW YORK CITY, AND THE DAWN OF THE WHITE WORKING-CLASS REVOLUTION 293 (2020).

116. MANUEL FUNKE ET. AL., POLITICS IN THE SLUMP: POLARIZATION AND EXTREMISM AFTER FINANCIAL CRISES, 1870-2014 1 (2015) https://ec.europa.eu/economy_finance/events/2015/20151001_post_crisis_slump/documents/c._trebesch.pdf.

recessions. They perceive financial crises as caused by human agency–the actions of individuals who run the major financial institutions and those who regulate (or fail to regulate) them. Moreover, financial crises often require the government to bail-out these very actors with financial rescue packages, to stabilize the overall economy. In the US, blue-collar workers made up seventy-five percent of those who lost jobs during the height of the crisis.[117] These factors regularly produce rage against both the political and financial leaders perceived to be in control during these episodes.[118] That anger drives support for outsider parties, which drives fragmentation of the political sphere.[119]

In addition to insurgent parties on the left also emerging in response to the financial crisis, increasing concerns among young voters, in particular, that the major parties are not addressing climate change urgently enough led to increased support for Green Parties through parts of Europe. This has further contributed to fragmentation. Major parties might try to recapture some of these voters by shifting policy in their direction, but their problem is figuring out how to do so without losing as many or more of their existing voters. At the same time, the PR systems of Europe enable significant minority factions with intense policy preferences to endure as distinct, challenger parties.

In the two-party system of the US, this issue might become another source of fracture within the party of the left, as "Green New Deal" proponents and others clash over the pace of implementing various climate-change policies. With the party trying to navigate the tensions between satisfying more affluent, highly-educated voters while holding on to enough working-class voters to be electorally viable nationally, these tensions might become more acute as concrete policy choices are confronted.

117. *Id.*

118. The Good Fight with Yascha Mounk, *Javier Cercas on How to Deal with Your Nation's Past*, PERSUASION (Jan. 29, 2022), https://www.persuasion.community/p/cercas#details (Speaking of the rise of right-wing populism in Spain, the Spanish writer Javier Cercas notes: "The 1929 crisis provoked the rise of totalitarianism in Europe, fascism especially, and ended in the Second World War. Well, the 2008 crisis provoked the rise of what we call 'national populism.' It is one of the main reasons for that.").

119. Moritz Schularick et al., *The Political Aftermath of Financial Crises: Going to Extremes*, VOXEU (Nov. 21, 2015), https://voxeu.org/article/political-aftermath-financial-crises-going-extremes.

B. The Educational Divide

In the last few years, the powerful role of the educational divide in voting patterns across the West—a divide which had been growing gradually—has become more widely known.[120] As noted above, not only do levels of education correlate strongly with political preferences, but in addition to the class-based great reconfiguration of politics, the educational divide has also fueled the inversion of the traditional bases of the parties of left and right across the West (gender is the only other divide that has similarly inverted; across most Western democracies women had voted more conservatively than men from the 1950s to the 1980s; from the 1990s on, that pattern has flipped).[121]

But it is not just in terms of voting patterns that the gap between the educational elite and others has become central. In the words of the scholars Mark Bovens and Anchrit Wille, the Western democracies have become "diploma democracies" more generally.[122] Whether in government, political campaigns, or the media, those at higher-educational levels dominate well out of their proportion in the population. The values and policy preferences of more highly educated voters differ on many salient issues from those of working-class voters across the West, whether on immigration, environmental issues, free trade, globalization v. nationalism, the European Union (in Europe), trust in government, and others. As a result, the educational divide has further propelled the movement of working-class voters to the parties of the right, to insurgent parties, or to withdrawal from voting. This divide is now widely recognized, but this chart provides a concise visualization of the profound transformation that has taken place since WWII[123]:

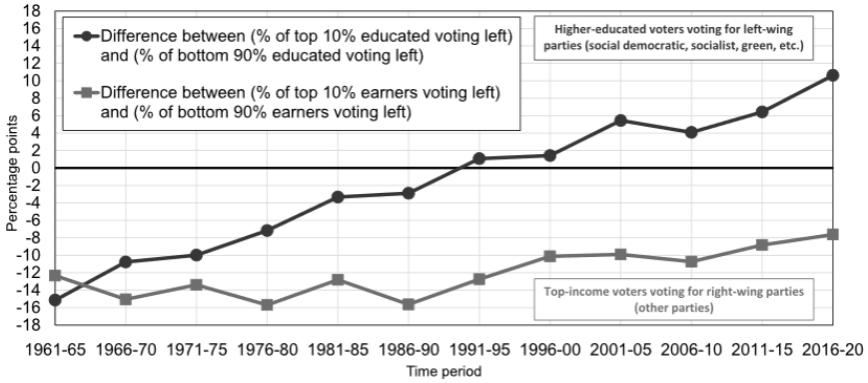
120. *See* Gethin et al., *supra* note 13, at 18 fig.2.

121. *Id.* at 40–41.

122. *See generally* MARK BOVENS & ANCHRIT WILLE, DIPLOMA DEMOCRACY: THE RISE OF POLITICAL MERITOCRACY (2017).

123. Gethin et al., *supra* note 13, at 16 fig.1.

Figure 2



The changing size of these segments of the overall electorate across the West must be kept in mind as well. In the US, during the New Deal era and initial post-war period, around 5% of adults over twenty-five had graduated college (1950), while 75% of adults had less than a high-school education.[124] By 2020, around 35–38% of adults had a college degree or higher, and they constituted 39% of those who voted.[125]

As a result, it became possible in recent decades, for the first time, for parties of the left in the United States and other Western democracies to believe they could win major elections (particularly primary elections, in the US) by appealing to the values and interests of this group. Nonetheless, it remains the case that the large majority of voters do not have college degrees, at least in the United States (61% in 2020, with around 32% of registered voters having a high school degree or less).[126]

In the United States, some political analysts conclude "[t]he changing demographic makeup of the Democrats has become a self-fulfilling dynamic, in which the growing power of liberal college graduates helps alienate working-class voters, leaving college graduates as an even larger

124. CAMILLE L. RYAN & KURT BAUMAN, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2015 4 fig. 2 (2016).

125. Igielnik et al., *supra* note 106; *see also* Nate Cohn, *How Educational Differences Are Widening America's Political Rift*, N.Y. TIMES (Oct. 8, 2021), https://www.nytimes.com/2021/09/08/us/politics/how-college-graduates-vote.html.

126. Igielnik et al., *supra* note 106; John Gramlich, *What the 2020 Electorate Looks Like by Party, Race and Ethnicity, Age, Education and Religion*, PEW RSCH. CTR. (Oct. 26, 2020), https://www.pewresearch.org/fact-tank/2020/10/26/what-the-2020-electorate-looks-like-by-party-race-and-ethnicity-age-education-and-religion.

share of the party."[127] In the PR systems of Europe, this has similarly led to movement away from the social democratic parties, as well as to support for newly emergent insurgent parties. As a typical example, a Swedish opinion poll in 2015 showed that the nationalist and anti-immigrant Sweden Democrats party had greater support among blue-collar union members than any other party, including the Social Democrats.[128] This divide also maps onto the geographic divides that have emerged in Western democracies. Not only are those living in places like London twice as likely to get university degrees as those in towns in northern England, for example, but by age twenty-seven, London has four times as many degree holders—because those who get degrees in these smaller areas then move to places like London.[129]

But it is not just policy differences that divide working class and high education voters, fractures which the political parties of the left have to navigate, and which contribute to fragmentation of the party structure. A recent spate of books on meritocracy in the United States argue that, as higher educational degrees have become more central to the most respected and well-off work, the cultural consequences have too often come to include disdain and condescension for the less educated. Michael Sandel, who calls "credentialism" the last acceptable prejudice, points to surveys in the United States, England, the Netherlands and Belgium showing that the college-educated express more bias and dislike toward less educated people than virtually any other cultural group.[130] Indeed, educated elites are unembarrassed by holding these views.[131] The headline of a recent New York Times opinion piece, while appropriately critical of recent political attacks on school curricula, nonetheless expressed this criticism in a way that confirms Sandel's point: "The Right Don't Need No Education," the headline condescendingly read.[132] The domination of the parties of the left by the priorities and views of the highly educated, in combination with these cultural conflicts and policy differences, are an

127. Cohn, *supra* note 104.

128. Bo Rothstein, *The Long Affair Between the Working Class and the Intellectual Cultural Left Is Over*, SOCIAL EUROPE (Feb. 10, 2017), https://socialeurope.eu/long-affair-working-class-intellectual-cultural-left.

129. JACK BRITON ET AL., LONDON CALLING? HIGHER EDUCATION, GEOGRAPHICAL MOBILITY AND EARLY-CAREER EARNINGS 42 fig.20 (2021).

130. MICHAEL J. SANDEL, THE TYRANNY OF MERIT: WHAT'S BECOME OF THE COMMON GOOD? 94 (2020).

131. *Id.* at 95.

132. Paul Krugman, Opinion, *The Right Don't Need No Education*, N.Y. TIMES (Feb. 16, 2023), https://www.nytimes.com/2023/02/16/opinion/education-desantis.html.

important element in the shift of less educated, less affluent voters away from the parties of the left.

Moreover, the "political elites" in power are now themselves "educational elites." In recent years, legislatures across the United States and Western Europe have become more dominated by those with high educational levels.[133] The social democratic parties, in particular, have had sharp increases in the percentage of their members in parliament who have university degrees. In Germany, a majority of representatives from the Social Democrats possessed only an elementary education in 1950; now, 87% of the entire Bundestag has graduated from an institution of higher education.[134] In the UK, around 40% of Labour MPs had university degrees in 1950; today that percentage is around 87%.[135] Members from the Tory party had higher educational degrees than Labour members until more recently; from WWII-1974, around 65% of Tory MPs graduated from universities, while more recently, it is 91%. In the 1940s and 1950s, around 40% of legislators had university degrees; in recent years, that figure has been around 80%.[136] More than a quarter of the members of the European parliament actually have PhDs.[137] In the United States as late as the early 1960s, about 25% of members of Congress lacked a college degree.[138] Today, 99 Senators and 94% of House members have a college degree; 78% of the Senate and 64% of the House have graduate degrees.[139] Only around 38% of Americans have a college degree.[140]

A top American progressive campaign consultant, David Shor, argues that the educational divide also distorts political campaigns and media coverage. Young white college graduates constitute a small portion of the electorate, he notes, yet make up a majority of those who work in Democratic party campaigns[141] (the same dynamic applies in many

133. BOVENS & WILLE, *supra* note 122.

134. *Id.* at 115.

135. *Id.* at 116

136. *Id.*

137. *Id.* at 118.

138. Katherine Schaeffer, *Nearly All Members of the 188th Congress Have a Bachelors Degree–And Most Have a Graduate Degree Too*, PEW RSCH. CTR. (Feb. 2, 2023), https://www.pewresearch.org/fact-tank/2023/02/02/nearly-all-members-of-the-118th-congress-have-a-bachelors-degree-and-most-have-a-graduate-degree-too.

139. *Id.*

140. *Id.*

141. Harry Lambert, *"The Democrats Risk Being out of Power for the Next Decade": David Shor on How His Party Must Change*, NEW STATESMAN (Sept. 21, 2021, 5:47 AM), https://www.newstatesman.com/world/americas/north-america/2021/08/democrats-risk-being-out-power-next-decade-david-shor-how-his-party-must.

Western democracies[142]). Academic studies highlight the differences in policy priorities and ideologies of Democratic campaign workers compared to Democrats overall, which suggest the former are not representative of the latter. Democratic campaign workers, for example, were over twenty times more likely to list income inequality as the most important issue facing the country than Democrats overall; in general, 35.4% of these campaign workers in this 2015 study called themselves "very liberal," while 15.6% of Democrats and 2.1% of undecided voters did.[143] This educational tilt pushes Democratic candidates and campaign messaging to lean even more heavily toward the values and policy preferences of highly educated whites, who are often, in Shor's view, "unaware of, or uninterested in, the *unpopularity* of their own biases"[144] (other Democratic data analysts disagree with Shor's views[145]). Controlled studies showed that 20% of certain Clinton campaign ads that were highly popular with her staff actually made voters more likely to vote Republican.[146] Not only does this contribute to working-class defection from the left, but it risks the electability of Democrats, in his view (Shor asserts that while Republican campaign workers are also more highly educated than Republican voters, this dynamic pushes Republican campaigns toward the center).

Moreover, many of the "participatory democracy" reforms that highly educated, younger, technologically proficient reformers advocate—like online petitioning and voting on issues, discussed below–actually exacerbate these educational divides. As scholars of this divide have

142. *See, e.g.*, ROBERT FORD & MATTHEW GOODWIN, REVOLT ON THE RIGHT: EXPLAINING SUPPORT FOR THE RADICAL RIGHT IN BRITAIN (2014); CAS MUDDE, POPULIST RADICAL RIGHT PARTIES IN EUROPE (2007).

143. Ryan D. Enos & Eitan D. Hersh, *Party Activists as Campaign Advertisers: The Ground Campaign as a Principal-Agent Problem*, 109 AM. POL. SCI. REV. 252, 261 tbl.1 (2015).

144. Lambert, *supra* note 141 (emphasis added) (Shor further speculated that the educated elite have always had more cosmopolitan values than the general electorate, but in the post-WWII era, they constituted only 4 percent of the electorate. They ran both parties, which provided support for democracy, the creation of international institutions, and rule of law values. But both sides knew they could not campaign on these cosmopolitan values, and so campaigns focused on disagreements between these elites and their parties on issues like economic policy. Once the educational elite became large enough, and part of the base of the center-left parties, they campaigned on values and policies they had always believed in, but which had been electorally toxic before enough highly educated voters existed who shared those values.).

145. David Freedlander, *Drinking Enemies: Two Cocktail Parties That Reveal the Schism in the Millennial Left*, POLITICO (Nov. 4, 2022, 4:30 AM), https://www.politico.com/news/magazine/2022/11/04/cocktail-parties-that-could-define-democrats-00064560.

146. Ian Ward, *The Democrats' Privileged College Kid Problem*, POLITICO (Oct. 9, 2021, 7:00AM), https://www.politico.com/news/magazine/2021/10/09/david-shor-democrats-privileged-college-kid-problem-514992

found, "the more demanding the act of participation is, the more likely it . . . will be disproportionately engaged in by higher-educated citizens."[147]

C. The Cultural Sphere

The role that conflicts over immigration have played in the emergence of political fragmentation is now more widely recognized, though that recognition came only after immigration conflicts had already dramatically reshaped political parties and politics throughout the West. These conflicts have also played a significant role in the shift of working-class white voters to conservative parties and—where the major parties were unable or unwilling to engage their concerns—in spawning the rise of insurgent parties.

Whatever one's own views on immigration policy, it is necessary to understand the role that issue has played in the reconfiguration of party politics and the rise of political fragmentation. Notably, changes in *attitudes* towards immigration do not appear to have made these conflicts so politically potent. What changed was that immigration became a highly *salient* political issue, a fact closely tied to rapid increases in the number of immigrants; as it became salient, immigration played a major role in reshaping politics in much of the West. The aim here is not to attempt to discern or judge the underlying bases for conflicts over immigration in different countries, but to describe and highlight certain aspects of the role political responses and non-responses to rapid increases in immigration play in the emergence of political fragmentation. [148]

Labor unions in the United States had long pressed for restrictive immigration policies, partly in the belief that keeping out immigrants with similar skills to working-class members protected wages. From the time labor unions became legalized in the US, for example, they had proposed or supported every effort of Congress to restrict legal immigration; in 1986, the labor movement strongly supported the enactment of controversial sanctions on employers who hired undocumented immigrants.[149] In the United States in the 1990s, President Clinton created the U.S. Commission on Immigration Reform, a bipartisan commission

147. BOVENS & WILLE, *supra* note 122, at 88.

148. Jens Hainmueller & Daniel J. Hopkins, *Public Attitudes Toward Immigration*, 17 ANN. REV. POL. SCI. 225, 231–32 (2014) (a comprehensive review of academic studies in 2014 on attitudes toward immigration across Western democracies concludes that cultural attitudes, rather than income or economic circumstances, better explain attitudes on immigration).

149. *See* VERNON M. BRIGGS, JR., AMERICAN UNIONISM AND U.S. IMMIGRATION POLICY (2001).

chaired by former Democratic Rep. Barbara Jordan, the first African-American woman to be elected from the South to Congress.[150] After sixty years in which the immigrant population of the United States had been declining, reaching a low of less than five percent in 1970, rates had been on a steady upswing since then; between 1970–1990, the number of immigrants in the United States had doubled.[151] The Commission's reports reflected the historical resistance of the labor movement to immigration and the support for that resistance within the Democratic Party. The reports concluded by recommending limiting entry to "all but the most talented–or truly needed–foreign workers" and eliminating "the entry of low-skilled immigrants and temporary workers who are most likely to compete with qualified U.S. workers for entry-level jobs."[152] And the Commission declared unlawful immigration "unacceptable."[153]

In his campaign for the Democratic presidential nomination in 2015 and 2016, Bernie Sanders still reflected this view. He lambasted support for easy immigration as a "Koch brothers proposal." Arguing that such policies would lead to lower wages and increase poverty, Sanders said:

> It would make everybody in America poorer—you're doing away with the concept of a nation state, and I don't think there's any country in the world that believes in that. If you believe in a nation state or in a country called the United States or UK or Denmark or any other country, you have an obligation in my view to do everything we can to help poor people. What right-wing people in this country would love is an open-border policy. Bring in all kinds of people, work for $2 or $3 an hour, that would be great for them. I don't believe in that.[154]

Indeed, Sanders opposed comprehensive immigration reform in 2007. But between 2016 and 2020, the class-based politics of Sanders had come to be out of touch with the increasingly dominant view on immigration within the Democratic Party. In his 2020 presidential campaign, Sanders

150. *See* MICHAEL LIND, THE NEW CLASS WAR: SAVING DEMOCRACY FROM THE MANAGERIAL ELITE 76–77 (2020).

151. *See* William H. Frey, *The past decade's foreign-born population gains will be the smallest since the 1970s*, BROOKINGS (Sept. 28, 2020), https://www.brookings.edu/research/the-past-decades-foreign-born-population-gains-will-be-the-smallest-since-the-1970s; s*ee* also BRIGGS, JR., *supra* note 149, at 2.

152. U.S. COMM'N ON IMMIGR. REFORM, TEMPORARY MIGRANTS IN THE UNITED STATES 56 (B. Lindsay Lowell ed., 1996) ("The threshold for the points test and related requirements virtually would eliminate the entry of low-skilled immigrants and temporary workers who are most likely to compete with qualified U.S. workers for entry-level jobs.").

153. U.S. COMM'N ON IMMIGR. REFORM, BECOMING AN AMERICAN: IMMIGRATION AND IMMIGRANT POLICY 90 (1997).

154. Ezra Klein, *Bernie Sanders: The Vox Conversation*, VOX (July 28, 2015, 6:00 AM), https://www.vox.com/2015/7/28/9014491/bernie-sanders-vox-conversation.

shifted gears and endorsed "the most progressive immigration proposals of the [primary] field on immigration.[155] In another striking example of how the parties of the left changed course on this issue over two decades, Republican Senators Cotton and Perdue introduced a bill in 2017 whose provisions were very similar to those of Clinton's 1997 Commission, but by this time, the Democratic party was firmly opposed.[156]

The transformation in party politics driven by this issue is largely the same in the UK. Tony Blair's "New Labour" endorsement of globalization was not just about free trade, but about immigration as well. In the thirty-five years before Blair's first election, the UK had one of the most restrictive immigration policies among Western democracies. The number of Commonwealth immigrants was about 55,000 annually in the 1980s and 1990s.[157] But New Labour self-consciously chose to expand those numbers. By 2004, the number had gone up to 156,000;[158] in addition, asylum claims from wars in Yugoslavia, Iraq, and Afghanistan reached over 100,000 by 2000.[159] Even more importantly, the Labour government made the decision in 2004 to implement immediate open borders to the ten new countries, mostly ex-communist ones, that joined the European Union in 2004 and 2007; nearly all the existing EU countries instead imposed transitional controls on immigration from these countries, which the EU permitted.[160] The UK was the only large economy that chose not to do so (Ireland and Sweden also chose to open their borders immediately to these new EU countries).[161] At the time, this was not considered likely to have major consequences. Academic experts advised the UK government that immediately permitting immigration from these new EU countries would lead to only 5,000–13,000 migrants annually.[162] In fact, the rate of increase from these countries turned about to be six times as high, around 127,000 per year.[163] By the early 2010s, the actual number of immigrants to the UK

155. *See* Nicole Narea, *Bernie Sanders's Evolution on Immigration, Explained* VOX (Feb. 25, 2020), https://www.vox.com/policy-and-politics/2020/2/25/21143931/bernie-sanders-immigration-record-explained.

156. JOHN B. JUDIS, THE NATIONALIST REVIVAL: TRADE, IMMIGRATION, AND THE REVOLT AGAINST GLOBALIZATION 79 (2018).

157. KAUFMANN, *supra* note 64, 150.

158. *Id.*

159. *Id.* at 151.

160. Geoffrey Evans & Jonathan Mellon, *Immigration, Euroscepticism, and the rise and fall of UKIP*, 25 PARTY POL. 76, 78 (2019).

161. KAUFMANN, *supra* note 64 at 161.

162. *Id.* at 161.

163. *Id.* at 78.

from these newly ascendant EU countries was 1.5 million.[164] After 2001, immigration regularly ranked as the first or second most important issue for those in the UK—long before the 2015 migration crisis in Europe.[165] When the Tories ousted the Labour government in 2010, Labour voters reported in polls that immigration was the main factor in their decision to switch to voting conservative.[166]

The role of immigration in the Brexit vote is well-documented. Around 75% of "'leave' voters cited immigration as the most important issue in the referendum" on Brexit, which occurred during a period in which "migrants were coming to the UK at near-record levels."[167] The particularly vivid or inflammatory ways in which the UK Independence Party (UKIP), formed to push for Brexit, sought to tie Brexit to immigration might not be well known outside the UK. UKIP repeatedly deployed posters and banners showing large numbers of migrants as one of its principal arguments for Brexit; these posters were decried as racist and unethical.[168] As one study puts it, "attitudes toward the EU were increasingly 'fused' with concerns about immigration."[169] One widely seen UKIP poster was known as the "White Cliffs of Dover" poster; it depicted the Dover cliffs, which had been impregnable to the Nazis in WWII, as now having an escalator running right through them to the top; the poster read "No border. No control.", with a subtitle stating, "the EU has opened our borders to 4,000 people every week."[170]

The relationship between the *rate* of immigration and its political reverberations is starkly illustrated in Germany. Few countries have experienced as rapid a change as when Angela Merkel decided to accept 1.2 million refugees from Syria during the 2015 migration crisis

164. *Id.* at 161.

165. *Id.* at 162.

166. *Id.* at 178.

167. Richard Hall, *How the Brexit Campaign Used Refugees to Scare Voters*, THE WORLD (June 24, 2016, 1:45 PM), https://theworld.org/stories/2016-06-24/how-brexit-campaign-used-refugees-scare-voters; *see also Matthew Goodwin, Values Voice and Virtue: The New British Politics* 54 (2023) ("Between 2011 and 2021, the Office for National Statistics estimates net migration added 2 million people to England and Wales. Britain simply experienced one of the sharpest increases in immigration in the Western world").

168. Heather Stewart & Rowena Mason, *Nigel Farage's Anti-migrant Poster Reported to Police*, THE GUARDIAN (June 16, 2016, 10:22), https://www.theguardian.com/politics/2016/jun/16/nigel-farage-defends-ukip-breaking-point-poster-queue-of-migrants.

169. Evans & Mellon, *supra* note 160, at 77; *see also* Christopher Tugendhat, The Worm In The Apple: A History Of The Conservative Party And Europe From Churchill To Cameron 193–205 (2022).

170. Maisie McCabe, *UKIP Releases Family Ad*, CAMPAIGN LIVE (May 2, 2024), https://www.campaignlive.com/article/ukip-releases-family-ad/1292802.

(equivalent to 5 million in a year in the US). There was no public debate within the major parties on the issue; Merkel's CDU would of course not challenge her decision, while the parties on the left were unwilling even to discuss the issue out of concerns for seeming xenophobic.[171] As one German journalist put it, the sizable segment of the population concerned about Merkel's decision "were morally compelled to shut up . . . . They were excluded from the political community."[172] When subsequent events helped break this taboo, those voters sustained the rapid rise of an outsider, anti-immigration, and far-right party, the AfD—thus illustrating how immigration conflicts fueled political fragmentation (the heart of the AfD's support is in the former East Germany, areas that have half the per capita income of well-off areas in Munich or Frankfurt). There was a striking correlation between the number of asylum applications and the level of AfD support; the two rose in tandem.[173]

In Europe, the size of net migration correlated directly with the number of news stories about immigration and the significance voters placed on the issue.[174] In Europe, the politics of immigration was not an elite-led one in which political elites mobilized public opinion to demand greater control of immigration rates. Studies suggest the larger political parties in Europe instead gradually responded to public opinion rather than leading it. In the US, matters are more complicated. Grassroots political opposition, mobilized by the internet, scuttled the major bipartisan immigration reform package congressional leaders had negotiated, well before the rise of Donald Trump. But there is no question Trump also galvanized anti-immigration sentiment from the moment he announced his campaign and made immigration its central issue.

In the US, as elsewhere, it appears to be not immigration per se, but its rate of increase and the overall size of the immigrant population that turns immigration into a salient political issue. In the United States, the percentage of the overall population who were immigrants between 1980 and 2000 was between 5% and 7%.[175] During this period, little difference

171. JUDIS, THE NATIONALIST REVIVAL, *supra* note 156, at 101 (as a German sociologist put it: "It was very hard for the left to even discuss these issues because it is considered racist or xenophobic to discuss it.").

172. *Id.*

173. KAUFMANN, *supra* note 64, at 174–76.

174. *Id.* at 97–100.

175. Nicole Ward & Jeanne Batalova, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POL'Y INST. (Mar. 14, 2023), https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#immigrants_now_historically.

existed between the views of Democratic and Republican voters on immigration: most people in both parties reported wanting less of it.[176] In the mid-1990s, 65% thought the level of immigration should be decreased, while only 6% that it should be increased.[177] In the 1995 General Social Survey, a standard social-science survey, 66% of Americans supported decreasing immigration; 89% thought immigrants would increase unemployment; and 73% were concerned immigrants would "reduce unity."[178] Nonetheless, while the issue was politically significant in some states, it was not an issue that roiled national politics or on which presidential campaigns were run.

But as immigration continued to rise rapidly in the US, immigrants became 13.7% of the overall population by 2018, a level not seen since the 1890–1910 period.[179] This was less a matter of deliberate policy choice than the unforeseen consequences of policy change. When the immigration laws were changed in the mid-1960s, immigration was still capped at a low level.[180] But the bill provided for family reunification, which allowed relatives of those in the United States to emigrate without regard to the cap on immigration the bill had set.[181] The supporters of the 1965 legislation didn't anticipate the extent to which those from Mexico, Central America, the Caribbean, and Asian nations would make use of the family reunification provisions.[182] In addition, the number of undocumented immigrants increased dramatically, rising from 540,000 people in 1969 to 5 million by the mid-1990s and 8.4 million in 2000.[183] The last time the percentage of the immigrant population had reached a comparable level in the United States, it similarly became a highly salient

176. KAUFMANN, *supra* note 64, at 112 fig. 3.6.

177. *Immigration*, GALLUP, https://news.gallup.com/poll/1660/immigration.aspx (last visited Apr. 11, 2023).

178. *Id.*

179. Abby Budiman, *Key Findings About U.S. Immigrants*, PEW RSCH. CTR. (Aug. 20, 2020), https://www.pewresearch.org/fact-tank/2020/08/20/key-findings-about-u-s-immigrants.

180. Douglas S. Massey & Karen A. Pren, *Unintended Consequences of US Immigration Policy: Explaining the Post-1965 Surge from Latin America*, 38 POPULATION AND DEV. REV. 1, 1–2 (2012).

181. *Id.* at 18.

182. *Id.* at 18–19.

183. Robert Warren & Jeffrey S. Passel, *A Count of the Uncountable: Estimates of Undocumented Aliens Counted in the 1980 United States Census*, 24 DEMOGRAPHY 375, 382 (Aug. 1987); Jeffrey S. Passell & D'Vera Cohn, *Mexicans decline to less than half the U.S. unauthorized immigrant population for the first time*, PEW RSCH. (June 12, 2019), https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017.

political issue, culminating in Congress's passage of the notorious Immigration Act of 1924, with its discriminatory quota system.[184]

President Obama understood the politics of immigration and took controversial policy steps to limit his political vulnerability on the issue. His administration removed fifty percent more undocumented immigrants than had the prior Bush administration.[185] Indeed, this was more than the total number of people who had been deported under *all* prior administrations combined.[186] Critics from the left labelled him "the deporter in chief," a view echoed in some liberal national media outlets as well.[187] During the Democratic primaries in 2019, Biden came under fire from Latino groups and others demanding that he repudiate the Obama immigration policies.[188]

The role that immigration politics played in Trump's 2016 victory is widely recognized, but perhaps less so is how much that issue drove the critical Obama-to-Trump voters.[189] Clinton expressly repudiated the Obama administration's approach to immigration – one of the view areas in which she took issue with Obama administration policies.[190] When her campaign put out a chart comparing her views on immigration to Trump's, calling her "The Choice on Immigration," she did not say anything about

184. Julia G. Young, *Making America 1920 Again? Nativism and US Immigration, Past and Present*, 5 J. ON MIGRATION & HUM. SEC. 217, 218 (2017).

185. Muzaffar Chishti et al., *The Obama Record on Deportations: Deporter in Chief or Not?*, MIGRATION POL'Y INST. (Jan. 26, 2017), https://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not.

186. Serena Marshall, *Obama Has Deported More People Than Any Other President*, ABC NEWS (Aug. 29, 2016, 12:05 PM), https://abcnews.go.com/Politics/obamas-deportation-policy-numbers/story?id=41715661.

187. *See* Latino USA, *Obama Leaves Office As 'Deporter-In-Chief'*, NPR (Jan. 20, 2017, 3:04 PM), https://www.npr.org/2017/01/20/510799842/obama-leaves-office-as-deporter-in-chief.

188. Laura Barrón-López & Alex Thompson, *Biden Under Fire for Mass Deportations Under Obama*, POLITICO (July 12, 2019, 5:03 AM), https://www.politico.com/story/2019/07/12/biden-immigration-2020-1411691.

189. There are ongoing debates about the relative weight that economic versus cultural issues played in Trump's victory. For purposes of this article, it is unnecessary to attempt to untangle that. For one effort to do so, *see* JOHN SIDES ET. AL., IDENTITY CRISIS: THE 2016 PRESIDENTIAL CAMPAIGN AND THE BATTLE FOR THE MEANING OF AMERICA (2018).

190. Benjy Sarlin & Alex Seitz-Wald, *Donald Trump and Hillary Clinton Are Universes Apart on Immigration*, NBC NEWS (Sept. 2, 2016, 5:09 AM), https://www.nbcnews.com/politics/2016-election/donald-trump-hillary-clinton-are-universes-apart-immigration-n641686 ("'I do not have the same policy as the current administration does,' Clinton said during a Democratic [primary] debate in March. 'I think it's important that we move to our comprehensive immigration reform, but at the same time, stop the raids, stop the round-ups, stop the deporting of people who are living here doing their lives, doing their jobs, and that's my priority.'").

how she would enforce existing immigration laws. She was determined not to be seen as a potential "deporter in chief."[191]

Whatever the merits of this shift from Obama, the choice had significant political consequences. Of the increase in votes Trump received compared to Romney four years earlier, 80% came from those who had voted for Obama and switched to Trump (called the persuasion effect), while only twenty percent of that shift came from Trump increasing turnout among 2012 non-voters (the turnout effect).[192] The difference between Obama's and Clinton's stances on immigration apparently played a significant role; Obama won 60% of the vote among voters who favored universal health-care but opposed "amnesty" for undocumented immigrants, while Clinton won only 41% of those voters – an enormous 19 point shift.[193] Perhaps reflecting this fact, in 2016, the American National Election Survey showed that median voters viewed Trump as closer to them ideologically than Clinton (but viewed Biden as closer than Trump in 2020).[194]

Many terms have been offered to capture the reconfiguration of politics throughout the West today that is replacing the post-WWII coalitions and dimensions along which political conflict had been organized. Michael Lind calls this emerging structure a new type of "class war," between what he calls "the university-credentialed, educated overclass"—or the "managerial overclass"—and the working class.[195] The British journalist, David Goodhart, calls it the conflict between the educated, mobile "[a]nywheres," who he asserts value individual autonomy and fluidity, and the "[s]omewheres," who are more rooted and

191. Sean Sullivan & Cleve R. Wootson Jr., *With New Immigration Role, Harris Gets a Politically Perilous Assignment*, WASH. POST (Apr. 2, 2021), https://www.washingtonpost.com /politics/kamala-harris-border/2021/04/02/7651b488-9325-11eb-bb49-5cb2a95f4cec_story.html.

192. *See* David Shor (@davidshor), TWITTER (Aug. 27, 2021, 11:38 AM), https://twitter.com /davidshor/status/1431280037542694919 (noting it is substantially easier to persuade people already voting to change party preferences than to turn out new voters).

193. *See* David Shor (@davidshor), TWITTER (Oct. 3, 2021, 8:22 AM), https://twitter.com /davidshor/status/1444639030981939202 (Among these two issues, health care and immigration, no other pairing had nearly as much effect on changes in relative Obama and Clinton support. Among voters who supported universal health care and "amnesty," Clinton dropped 3 points from Obama; among those who opposed both, Clinton lost 5 points; and among those who opposed universal health care but supported "amnesty," Clinton gained 8 points. The changed perceptions of the two candidates on immigration was clear.)

194. Alan I. Abramowitz, *How Donald Trump Turned Off Swing Voters in 2020*, UVA CTR. FOR POL. (Aug. 25, 2021), https://centerforpolitics.org/crystalball/articles/how-donald-trump-turned-off-swing-voters-in-2020.

195. LIND, *supra* note 150, at 8–115.

prioritize group attachments and security.[196] Others cast this new configuration as conflicts organized between "nationalists" and "cosmopolitans." Ron Inglehart and Pippa Norris have invoked the rise of "Postmaterialist" politics in countries and among people who have achieved sufficient economic security, which competes with more traditionally "materialist" politics, a conflict with a strong inter-generational structure; this is one way of describing political conflicts now being organized along two dimensions at least, the economic and one based on these postmaterialist values.

These are the large economic and cultural factors driving a re-configuration of politics and parties throughout the West and the pervasive political fragmentation that results. Part III now turns to a different way of conceptualizing the contribution of the communications revolution to these political transformations and the challenge that revolution poses for the capacity of democracies to deliver effective governance.

III. TECHNOLOGICAL CAUSES OF FRAGMENTATION (THE COMMUNICATIONS REVOLUTION)

The communications revolution, in my view, is also a major force generating the disabling fragmentation of the political sphere. If so, fragmentation is likely to be a more enduring feature of democratic politics and government in the West. There is no path back to an earlier era of political communication.

The early days of assessing the political ramifications of the communications revolution celebrated its democratization of influence and information, particularly the way these transformations would purportedly undermine authoritarian regimes.[197] But it turns out the information revolution poses a continual challenge to all forms of political authority, including democratic ones. The challenge is deeper than generally recognized. It goes beyond the now familiar issues of disinformation, misinformation, the amplification of outrage, or hate speech (though these are serious problems). Even if the platforms themselves or governmental regulation could solve these problems, the challenge the communications revolution poses for democracy would

196. DAVID GOODHART, THE ROAD TO SOMEWHERE: THE POPULIST REVOLT AND THE FUTURE OF POLITICS 20 (2017).

197. *See, e.g.*, Shanthi Kalathil & Taylor C. Boas, *The Internet and State Control in Authoritarian Regimes: China, Cuba, and the Counterrevolution* (Carnegie Endowment for Int'l Peace, Working Paper No. 21, 2001) ("It is widely believed that the Internet poses an insurmountable threat to authoritarian rule.").

remain. The very nature of the new technology age might well inherently undermine the capacity for broadly accepted, legitimate political authority.[198]

The great cultural historians, Robert Darnton and Lynn Hunt, in an acclaimed series of works, have described how in the years leading up to the French Revolution, the print media was used to spread (illegal) pornographic images of the monarchy.[199] The circulation of these images, in their view, became a principal agent of the monarchy's delegitimation[200] and cleared the path to the Revolution. Those images had an appropriate aim. But today, the information revolution functions to delegitimate nearly *all* forms of constituted political authority.

As Nancy Rosenblum and Russell Muirhead put it in their recent book on communications platforms, "We are learning what delegitimation looks like. Authorities are cast as hostile elements–worms in the bowels of the nation. Officials are 'so-called' officials . . . ."[201]

France's philosophically inclined President recognizes exactly this. As Macron has observed, democracies are undergoing a "leveling that destroys the principle of authority," without which they cannot function effectively.[202] With so many sources of possible authority, marshalling concerted authority to support major governmental action becomes considerably more difficult. The title of a leading text from the early days of the digital age, *Here Comes Everybody,* reflects the new form of politics.[203] Political power now can be mobilized immediately and effectively enough through the instruments of the communications revolution that we should expect democratic governments of all political

198. David Zarefsky, *"Public Sentiment Is Everything": Lincoln's View of Political Persuasion*, 15 J. ABRAHAM LINCOLN ASS'N 23, 23 (1994) (As Lincoln famously said, in democracies, "public sentiment is everything. With [it], nothing can fail; without it, nothing can succeed.").

199. *See*, *e.g.*, ROBERT DARNTON, THE FORBIDDEN BEST-SELLERS OF PRE-REVOLUTIONARY FRANCE (1995); Lynn Hunt, *Pornography and the French Revolution, in* THE INVENTION OF PORNOGRAPHY, OBSCENITY AND THE ORIGINS OF MODERNITY, 1500–1800, at 301–40 (Lynn Hunt ed., 1993).

200. *See, e.g.*, DARNTON, *supra* note 199; Hunt, *supra* note 199 at 301–40 ("Politically motivated pornography [which peaked in 1790] helped to bring about the Revolution by undermining the legitimacy of the ancient regime as a social and political system.").

201. RUSSELL MUIRHEAD & NANCY L. ROSENBLUM, A LOT OF PEOPLE ARE SAYING: THE NEW CONSPIRACISM AND THE ASSAULT ON DEMOCRACY 35 (2019) (While Muirhead and Rosenblum are concerned with the spreading of rumors and conspiracies, my concern goes beyond that: even if that problem could somehow be contained, social media would still be a major source for undermining the ability to establish legitimate, sustained political authority.).

202. Roger Cohen, *Macron Tells Biden That Cooperation with U.S. Cannot Be Dependence*, N.Y. TIMES (Oct. 28, 2021), https://www.nytimes.com/2021/01/29/world/europe/macron-biden.html.

203. CLAY SHIRKY, HERE COMES EVERYBODY: THE POWER OF ORGANIZING WITHOUT ORGANIZATIONS (2008).

ideologies to find it more difficult to sustain their authority to act effectively. That is part of why we are witnessing the fragmentation of democratic politics.

The tools of social media do not just lower the transaction costs of political participation for individuals and of coordination between individuals. In more recent iterations, these tools also make one's own participation more visible and provide feedback about the participation of others–knowledge that is called "social information." In 2009, Twitter rolled out the "retweet" button and Facebook the "like" button; these features or their equivalents were soon adopted across platforms.[204] This made social information, including immediate feedback information, more readily available. Now social information, and its influence on participation, is available in real-time and pervasive across the internet and social media. Social information, in turn, influences individual behavior. YouTube videos showing protestors disrupting local school-board meetings over mask policies undoubtedly spur further such protests in other areas. Empirical studies document the effect of social information; for example, studies of online political "petitions included in a 'trending' list receive disproportionately more signatures than those that are not, making popular petitions even more popular."[205]

The discussion that follows uncovers layer upon layer of the different forms of political action the communications revolution has made possible, all of which contribute to the fragmentation of politics and governments in our era. The digital age and some of the actions described below might be thought to make political participation and expression more widely available, and hence enhance political equality (at least for those fluent in these uses of technology). Some of these newly possible forms of political expression might be viewed as holding political figures more accountable, though whether these new forms of accountability are a plus or a minus for democracy is one of the questions. Some of these uses might be thought to reflect expressions of rage and opposition, without clear political direction. Different readers will endorse different substantive political uses of these new technologies. But whether some or all of the political uses opened up serve certain democratic values, there is little doubt they also fuel political fragmentation. That compounds the

204. JONATHAN RAUCH, THE CONSTITUTION OF KNOWLEDGE: A DEFENSE OF TRUTH 128 (2021); *see also* Jonathan Haidt, *Why the Past 10 Years of American Life Have Been Uniquely Stupid*, THE ATLANTIC (May 2022), https://www.theatlantic.com/magazine/archive/2022/05/social-media-democracy-trust-babel/629369.

205. HELEN MARGETTS ET AL., POLITICAL TURBULENCE: HOW SOCIAL MEDIA SHAPE COLLECTIVE ACTION 112 (2015).

difficulty democratic governments face in addressing these or other political ends.

A. Atomistic Individuals

Nothing more dramatically demonstrates the previously unimaginable political power even isolated individual actors potentially now have than the story of Germany's "Rezo," a twenty-six-year-old music producer on YouTube (his real name and what part of Germany he's in are unknown). One week before Germany's 2019 elections for the European Parliament, surrounded by his guitars and synthesizers, he produced a slick, 55-minute mash-up video that mixed analysis and expletive-laced polemics in a relentless attack on Angela Merkel's ruling Christian Democrats, as well as the Social Democrats, and other parties.[206] This was Rezo's first public political action; it took place outside any organized context. Laced with quick cuts, sound effects, charts of data—and interspersed with segments of parliamentary debates meant to make them look boring—Rezo's video proclaimed it was time to destroy the mainstream parties in Germany, mainly for inaction on climate change; he described the video as a "personal rant" meant to be a "destruction video."[207] He suggested the Green Party and the leftwing *Die Linke* might possibly deserve support, but they have a "long way to go."[208]

In just a few days, the video went viral and attracted 3.5 million views.[209] Before the election, estimates suggest the video was seen a staggering 9 million times; within three weeks, it had been seen nearly 15 million times (it became the most watched YouTube video in Germany in 2019).[210] The Christian Democrats initially tried to ignore it, but their candidates in the days before the election started being asked regularly

206. Peter Kuras, *German Politics Discovers YouTube*, FOREIGN POL'Y: ARGUMENT (June 4, 2019), https://foreignpolicy.com/2019/06/04/german-politics-discovers-youtube/; Christopher F. Schuetze, *Youth's Video Takes Aim at Merkel's Party in Run-Up to European Elections*, N.Y. TIMES (May 25, 2019), https://www.nytimes.com/2019/05/25/world/europe/rezo-cdu-youtube-germany.html; Rezo ja lol ey, *Die Zerstörung der CDU.*, YOUTUBE (May 18, 2019), https://youtu.be/4Y1lZQsyuSQ.

207. The video starts by saying: "In this video, I'll show how C.D.U. people lie, how they are lacking fundamental competencies for their jobs, how they make politics that runs counter to expert opinion, they apparently take part in various war crimes, how they use propaganda and lies against the younger generation, how because of their politics of the last decades the rich become richer and the poor and others increasingly lose. . . . And I'll show that according to many thousands of German scientists, the C.D.U. is currently destroying our very lives and our future." Schuetze, *supra* note 206.

208. *Id.*

209. Kuras*, supra* note 206.

210. Schuetze, *supra* note 206.

about the video's charges and claims.[211] Addressing it became a crisis.[212] The CDU considered the video to be filled with lies, distortions, and misleading information.[213] The party scrambled, unsuccessfully, to come up with an effective response.[214] It published an open letter—if you can imagine—addressing each line of Rezo's attack[215] Using its youngest member in parliament, it attempted to film its own video in response, then decided not to release it.[216]

Breaking news, new information, or charges—accurate or not—in the last week before an election can significantly affect voters, especially if not responded to effectively. (James Comey might have made Donald Trump president with his announcement just days before the election that the FBI was re-opening investigations into Clinton).[217] In the final week, when Rezo's video was released, the CDU plunged seven percent in polls. But the result of the election was a highly fragmented party structure for Germany's delegation to the European parliament. After the election, leading CDU figures argued that Germany needs to figure out rules for internet commentary during elections. German law holds journalists to certain standards of truthfulness that do not apply to internet "personalities." In newspapers, "opinion commentary" must be identified that way. The CDU characterized the Rezo video as "propaganda."[218]

The "Rezo" experience, which a German media studies scholar describes as "both fascinating and scary,"[219] also illustrates an important aspect of the changing nature of the communications revolution itself. In the early days of the internet, until around 2005, the principal beneficiaries of the new modes of political communication were collective-action organizations.[220] This ushered in a "new generation of political advocacy groups," such as the organization on the left in the United States, MoveOn—which had no office space, thirty-eight staff members, and yet

211. *Id.*

212. *Id.*

213. Kuras, *supra* note 206.

214. Schuetze, *supra* note 206.

215. *Id.*

216. The Friday before the vote, Rezo responded with ninety other YouTubers, many with significant followings, telling viewers to vote, but not for the major parties, the CDU or the Social Democrats. *Id.*

217. *See* Nate Silver, *The Comey Letter Probably Cost Clinton the Election*, FIVETHIRTYEIGHT (May 3, 2017), https://fivethirtyeight.com/features/the-comey-letter-probably-cost-clinton-the-election.

218. Kuras, *supra* note 206.

219. Schuetze, *supra* note 206.

220. MARGETTS ET AL., *supra* note 205, at 34.

quickly grew to five million members by 2010.[221] But in the next phase, with the rise of blogs and social media, individuals started being able to generate content and engage politically with others without being involved in any formal groups—"without belonging to anything."[222]

B. Spontaneous, Non-Organized Pop-Up Groups

The Canadian trucker anti-vaccine protest, the *Indignados* in Spain, the Yellow Vests in France, the Gezi Park protesters in Turkey, those in Tahir Square in Cairo, the Tea Party movement in the US,[223] and others illustrate the new power of lightly organized, nearly spontaneous groups that pop-up in rapid time. Not only does the digital age make this far more possible, but it also enables a "structure" for these movements that makes them difficult for democratic governments to engage on substantive issues. Whatever one thinks about particular movements among this array, their new role in contributing to fragmentation is undeniable.

The Spanish *Indignados* provides a good example. In May 2011, between 20,000 and 50,000 mostly young, middle-class Spaniards spontaneously decided to camp out and occupy the Puerta de Sol, in the heart of Madrid. Coordinated online, through Facebook and Twitter (often with the hashtag #spanishrevolution), the idea quickly spread further. Soon, *Indignados* were camping out in more than fifty cities and towns across Spain. The camp-outs and demonstrations lasted a month. Unsurprisingly, given the spontaneity of the movement, there was no advance notice in the media of the protests, which took the country and political leaders by surprise.[224]

Spain was more than two years into a severe economic crisis, in which unemployment was at 21% (and rising) and the unemployment rate for young people was 40%. A year earlier, the Socialist Prime Minister José Luis Rodríguez Zapatero had implemented severe austerity measures the

221. *Id.* at 37.

222. *Id.* at 34.

223. The Tea Party movement began with a spontaneous polemic to a small audience on one cable channel, which was then picked up by online bloggers and quickly went viral through YouTube videos. RACHEL M. BLUM, HOW THE TEA PARTY CAPTURED THE GOP 7 (2020).

224. *See* Guy Hedgecoe, *Spain's Happy Indignants*, POLITICO (May 13, 2016, 5:32 AM), https://www.politico.eu/article/spain-happy-indignants-indignados-15m-elections-podemos-pablo-iglesias-ciuddadanos-albert-rivera-manuela-carmena-ada-colau/; *Ten Years After Spain's Indignados Protests*, ECONOMIST (May 6, 2021), https://www.economist.com/europe/2021/05/06/ten-years-after-spains-indignados-protests; Eoghan Gilmartin, *The Indignados Movement Changed Spanish Politics Forever: An Interview with Juan Carlos Monedero*, JACOBIN MAG. (May 15, 2021), https://www.jacobinmag.com/2021/05/indignados-podemos-15m-pablo-iglesias.

European Union "recommended" in order to avoid a Greek-style bailout. The *Indignados* movement was, at a minimum, an expression of outrage about the situation and the country's political leaders; it was an anti-party movement of negation. As a sociologist who took part put it, it "was a great outburst of dismissal. The consensus was on what we didn't want. We didn't want more cuts, we didn't want corruption and we didn't want that way of doing politics behind the backs of citizens."[225] With respect to the two major political parties long dominant since Spain had become democratic, the PP and PSOE, one of the movement's most well-known slogans was "PP and PSOE, the same shit."[226]

The movement also reflected the ideology of many emerging digital democracy movements, which also revealed their limits. It lacked connection to any of the political parties or the country's labor unions. Believing that politics should entail no hierarchies at all, it refused to acknowledge leaders, even spokespersons. People gathered in what were called general assemblies, where no moderators were allowed, and anyone could speak on any subject. With a vision of democracy as romantic as that of Rousseau, it considered majority votes to resolve issues as "an abomination of democracy."[227] As one of its founders put it, it was "a movement born with a lack of historical memory, structure, program, or leadership."[228]

In addition to demanding change, what did the movement want? The "key message" of the protesters, wrote a participant and later student of the movement, "was a rejection of the entire political and economic institutions that determine people's lives."[229] Faced with a movement without leaders, who does government engage with, both to understand the movement's demands and potentially address them?[230] Among the few positive proposals in the manifesto the movement eventually generated was: "An Ethical Revolution is Needed."[231] As one observer put it, "the

225. ECONOMIST, *supra* note 224.

226. Gilmartin, *supra* note 224.

227. *Id.*

228. *Id.*

229. *Id.*

230. *See* Andy Blatchford, *How does Canada end the truckers' mess?*, POLITICO (Feb. 10, 2022) (on the leaderless nature of the Canadian trucker protests, which made negotiating any resolution difficult).

231. Andy Durgan & Joel Sans, *"No One Represents Us": The 15 May Movement in the Spanish State*, INTERNATIONAL SOCIALISM (Oct. 11, 2011), http://isj.org.uk/no-one-represents-us-the-15-may-movement-in-the-spanish-state/; *see also* MARTIN GURRI, THE REVOLT OF THE PUBLIC AND THE CRISIS OF AUTHORITY IN THE NEW MILLENNIUM 121 (2018).

youngsters who had come from nowhere wanted social life to start again from nothing."[232]

The movement succeeded in at least one sense: it spawned the fragmentation and paralysis of Spanish politics described above. Spain had strong economic growth from 2014 to 2019 yet trust in Spanish institutions and politicians is among the lowest in Europe. Fragmented governments can do little to address voters' demands, producing even more distrust and alienation. On one view, "the *indignados* broke more than they managed to build."[233]

The Yellow Vest insurgency that dramatically disrupted Macron's government so soon after its election, equally a product of the social media age, differed in significant ways from Spain's insurgency. Set off initially by Macron's proposal to raise taxes on diesel fuel, which he had presented as a means to combat climate change, the Yellow Vests staged fifty-two weekly protests in the streets in a row and manned roundabouts throughout the country night and day. They roiled French politics for nearly a year (some violent confrontations resulted in deaths).[234]

Like the *Indignados*, the movement was connected through dozens of Facebook pages, but lacked any organizational structure. Also leaderless, it did not appear to be ideologically defined all that clearly.[235] Similarly, the Yellow Vests described themselves as "apolitical," meaning that they rejected partisan politics, along with the traditional left-right divide.[236] They organized debates in small-group assemblies that sought consensus.[237] They also pushed for more participatory measures, such as citizen power to trigger referendums.

But its social base and politics differed. Studies indicate the protesters came from the ranks of small business owners and their employees; truck and school-bus drivers, nurses, out-of-work electricians, warehouse handlers, part-time civil servants.[238] Few were unemployed—but many

232. GURRI, *supra* note 231, at 122.

233. ECONOMIST, *supra* note 224.

234. Benjamin Dodman, *A Year of Insurgency: How Yellow Vests Left 'Indelible' Mark on French Politics*, FRANCE 24 (Nov. 16, 2019, 3:45 PM), https://www.france24.com/en/20191116-a-year-of-insurgency-how-yellow-vests-left-indelible-mark-on-french-politics.

235. *Id.*

236. Michel Rose & Luke Baker, *No Leader, Lots of Anger: Can France's 'Yellow Vests' Become a Political Force?*, REUTERS (Dec. 6, 2018, 10:25 AM), https://www.reuters.com/article/uk-france-protests-future/no-leader-lots-of-anger-can-frances-yellow-vests-become-a-political-force-idUKKBN1O51OA.

237. Dodman, *supra* note 234.

238. *Id.*

nonetheless concerned about their financial security.[239] Geographically, the movement began in disconnected rural areas.[240] As one journalist covering the movement put it, "I've watched the incremental retreat of the state from rural France: maternity clinics, district courts, army barracks, post offices and shops disappearing from the centres of small towns. The people affected by this retreat realized, thanks to the internet, that they were on the fringe."[241]

Unlike in Spain, academics and students are not significant elements. Also, unlike the *Indignado*s, they do not reject the market economy or capitalism; interviews suggested they wanted to live more middle-class lives, with their ideal being the independent worker living off their own work and rejecting state benefits.[242] They distrust trade unions, which they see as a form of special interests.[243]

Once the movement shifted to Paris, after a month, violent clashes with police leading to several deaths occurred. They called for Macron's resignation, despite his recent overwhelming election win. His ratings fell to twenty-seven percent in polls.[244] After a year, when the movement had diminished, people took to the streets again in protest of proposed pension reforms, this time led by the unions.[245] Then in the summer of 2021, in response to the government's Covid measures, more than 100,000 people took to the streets again, many of under the Yellow Vest banner.[246] As one of those put it, "if there's one thing that can unite people today, it's anger."[247]

239. Tristan Guerra et al., *Populist Attitudes Among the French Yellow Vests*, 2 POPULISM 1, 8-9 (2020).

240. Alissa J. Rubin, France's *Yellow Vest Protests: The Movement That Has Put Paris on Edge*, N.Y. TIMES (Dec. 3, 2018), https://www.nytimes.com/2018/12/03/world/europe/france-yellow-vest-protests.html.

241. Clement Le Goff, *Yellow Vests, Rising Violence – What's Happening in France?*, WORLD ECON. F. (Feb. 27, 2020), https://www.weforum.org/agenda/2020/02/france-protests-yellow-vests-today.

242. Dodman, *supra* note 234.

243. *Id.*

244. Eleanor Beardsley, *How France's Yellow Vest Protests Damaged an Already Weakened President Macron*, NPR (Jan. 24, 2019, 5:39 PM), https://www.npr.org/2019/01/24/687366333/how-frances-yellow-vest-protests-damaged-an-already-weakened-president-macron.

245. Aurelian Breeden, *France Pension Protests: Why Unions Are Up in Arms Against Macron*, N.Y. TIMES (Dec. 18, 2019), https://www.nytimes.com/2019/12/17/world/europe/france-pension-protests.html.

246. Caroline Pailliez & Clotaire Achi, *Anger Over COVID Rules Gives New Impetus to France's Yellow Vests*, REUTERS (July 23, 2021, 12:41 AM), https://www.reuters.com/world/europe/anger-over-covid-rules-gives-new-impetus-frances-yellow-vests-2021-07-22.

247. *Id.*

Macron tried to make concessions, but without anyone to negotiate with, it was unclear what concessions would suffice.[248] Eventually he found a way to defuse the initial Yellow Vest movement, including by abandoning the diesel tax, promising tax cuts, higher pensions, and reform of the civil service, and making referendums easier to hold.[249]

The pattern of spontaneous, largely unorganized protest, set off by one spark, is a recurring one. In 2013 in Brazil, spontaneous mass protests—coordinated only through social media—broke out in over a hundred cities. Triggered by increased bus fares, the protests became ones against a range of issues—inequality, corruption, and poor public services.[250] The headline in the leading Brazilian paper expressed the spirit of the protests this way: "Everyone out against everything."[251] As is becoming common, the demonstrators disdained the political parties, chanting, "The people united don't need parties."[252] When President Dilma Rousseff sought to meet with the protestors' leaders, she was told 'there are no leaders.'[253]

C. The Pop-Up, Digital Political Party

The next iteration of the way the communications revolution is transforming democratic polities and further accelerating fragmentation is the rise of "the digital party." The most significant digital parties to date differ in ways explored below, but certain general features are common.

These pop-up digital parties use technology to promise a new vision of grassroots democracy. They profess to use the digital revolution to offer a form of organizing politics, and political parties, that is more participatory—"more democratic, more open to ordinary people, more immediate and direct, more authentic and transparent."[254] They offer the use of online decision-making tools to enable direct decision-making—

248. Rachel Donadio, *France's Yellow Vests Are Rebels Without a Cause*, ATLANTIC (Mar. 18, 2019), https://www.theatlantic.com/international/archive/2019/03/france-yellow-vest-protesters-want/585160.

249. *France's Macron Responds to Yellow Vests with Promise of Reforms*, BBC NEWS (Apr. 25, 2019), https://www.bbc.com/news/world-europe-48059063.

250. Jonathan Watts, *Brazil Erupts in Protests: More Than a Million on the Streets*, GUARDIAN (June 21, 2013, 5:35 AM), https://www.theguardian.com/world/2013/jun/21/brazil-police-crowds-rio-protest.

251. MARGETTS ET AL., *supra* note 205, at 1.

252. *Id.*

253. *Id.*

254. PAOLO GERBAUDO, THE DIGITAL PARTY: POLITICAL ORGANISATION AND ONLINE DEMOCRACY 4 (2019).

though how much they actually deliver on this vision, or manipulate it for their own purposes, varies among these parties.

They also make digital technology the core of how they function and are organized. As "platform" parties, they adopt some of the techniques of Facebook and similar platforms. Joining the new party's platform is usually free, and the parties collect data on their supporters to enable continual engagement with them. The leading scholar of these parties describes them as "the translation of the business model and organisational innovation of digital corporations to the political arena and their application to the idealistic project of the construction of a new democracy in digital times."[255]

They emerge from and express a generalized distrust of traditional parties and their structure. In essence, they purport to reject the value of representation, including within political parties, in favor of direct, unmediated, participation. In a sense, they are "anti-party" political parties. They reflect the naïve longing for a democratic politics that does not involve political parties, which are viewed as inherently corrupting of true democracy. Theirs is a party that seeks to "transcend" parties. Their emergence and success in some western democracies makes studying them important in understanding additional forces driving fragmentation.

1. The pirate parties: Sweden, Germany, Iceland, and the Czech Republic

In the Czech Republic, a pop-up, digital political "party"—the Pirate Party—that did not exist until 2009 became part of the governing coalition after the most recent election in October 2021.[256]

The Pirate movement arose in a number of countries in the mid-2000s as a direct response to proposed legislation that would criminalize online file sharing (while critics called those who engaged in such sharing intellectual property pirates, the "Pirate parties" appropriated and inverted the term's valence).[257] These Pirate parties were the first significant, new digital parties.

In both substantive policy focus and means they use to build support these parties are technology-based ones. Their emphasis tends to be on

255. *Id.* at 6.

256. Aneta Zachová, *Czechia Becomes First EU Country with Pirates in Government*, EURACTIV (Dec. 22, 2021), https://www.euractiv.com/section/politics/short_news/czechia-becomes-first-eu-country-with-pirates-in-government.

257. Jemima Kiss, *The Pirate Bay Trial: Guilty Verdict*, GUARDIAN (Apr. 17, 2009), https://www.theguardian.com/technology/2009/apr/17/the-pirate-bay-trial-guilty-verdict.

highly "democratic" internal party structures, more direct citizen participation in government, and internet freedom.[258] Their support is primarily driven by political distrust of established parties; as with many of the spontaneous movements, they view themselves as "anti-party" parties.[259] They are protest parties, in significant part, a perfect expression of the internet age.

The first Pirate Party emerged in Sweden in 2006, urging decriminalization of file sharing, reduced copyright protections, individual privacy of data, and—as in most of these new digital parties—far greater state transparency.[260] In PR systems, a pop-up party can rapidly win seats in government, given the ease with which the communications revolution can spread the word to technologically adept potential supporters. Within a few months, the Swedish party captured 7.13% of the vote in elections to the European Parliament (initially, this meant one seat).[261] By May 2009, it became the third largest party in Sweden.

International diffusion and imitation, in the internet age, enabled rapid spread of the Swedish Pirate Party model. Similar parties quickly popped up in fifty countries.[262] These parties tend to be youth-driven; most of the Swedish party's members were between eighteen and nineteen years old.[263] They appeal to highly educated, tech-savvy people, mostly in urban areas.[264] Indeed, in contrast to traditional parties, the Swedish party permits members to belong to other political parties.[265]

Between 2011 and 2012, the German Pirate Party elected members to four state parliaments.[266] Then, in 2011, it won nine percent of the vote in

258. Simon Otjes, *All on the Same Boat? Voting for Pirate Parties in Comparative Perspective*, 40 POLITICS 38, 40–42 (2019).

259. *Id.* at 39.

260. *Id.* at 39–42.

261. Ján Michalčák, The Czech Pirate Party: Is Intra-Party Democracy Decreasing Following the Party's Recent Electoral Success? (June 11, 2018) (M.Sc. thesis, Leiden University) (on file with the Leiden University Student Repository).

262. Otjes, *supra* note 258.

263. PATRICK BURKART, PIRATE POLITICS: THE NEW INFORMATION POLICY CONTESTS 18 (2014).

264. Marie Demker, *Sailing Along New Cleavages: Understanding the Electoral Success of the Swedish Pirate Party in the European Parliament Election 2009*, 49 GOV'T & OPPOSITION 188, 199–203 (2014).

265. Nicole Bolleyer et al., *Implementing Democratic Equality in Political Parties: Organisational Consequences in the Swedish and the German Pirate Parties*, 38 SCANDINAVIAN POL. STUD. 158, 164 (2015).

266. Eric Westervelt, *A Party on the Rise, Germany's Pirates Come Ashore*, NPR (June 6, 2012, 2:55 AM), https://www.npr.org/2012/06/06/154388897/a-party-on-the-rise-germanys-pirates-come-ashore.

national elections.[267] It described its vision of democracy as "liquid democracy;" participatory democracy for the digital age, in which members continuously interact with party leaders in twenty-four-hour cyber-debates meant to forge the party's agenda.[268] To join requires forty-eight euros annually.[269] Since participation in the party's discussions is mainly online, some refer to this as "armchair participation."[270] They also tend to blur the lines between full-fledged party members, party supporters, and non-members.[271]

But in Sweden and most other countries where these parties arose, they have faded in significance due to the predictable difficulty of organizing a sustained party based on values that are essentially anti-organizational.[272] The German party operated as a federation of independent pirate parties in the relevant Lander; absent any centralized decision-making, this led to constant infighting between the different pirate parties. As one commentator put it, discussing the collapse of the German Pirate Party: "The wide range of political views and the lack of a strong hierarchical structure meant that the party did not have a distinct identity."[273] The Party dismissed the idea of having a distinct political orientation as "power playing."[274] One activist who left viewed the party as doomed by its commitment to participatory inclusiveness: "[M]ost of them were apolitical. They weren't interested in politics . . . . I couldn't take it anymore. Every political opinion was tolerated. I'd go to a Party convention and there would be, like, Holocaust deniers there."[275]

Before the rise of the Czech Pirate party, the most successful Pirate Party had been in Iceland. Iceland's party was formed in 2012, in response

267. Josephine Huetlin, *The Rise and Fall of the Pirate Party*, THE NEW REPUBLIC (Sept. 29, 2016), https://newrepublic.com/article/137305/rise-fall-pirate-party.

268. *Id.* The German party used a software package they called Liquid Feedback, which purportedly enabled a continuous, real-time political forum in which every member had equal input on party decisions. Sven Becker, *Web Platform Makes Professor Most Powerful Pirate*, SPIEGEL INT'L (Mar. 2, 2012), https://www.spiegel.de/international/germany/liquid-democracy-web-platform-makes-professor-most-powerful-pirate-a-818683.html.

269. Bolleyer et al., *supra* note 265, at 164.

270. Elin H. Allern & Karina Pedersen, *The Impact of Party Organisational Changes on Democracy*, 30 W. EUR. POL. 68, 83 (2007).

271. Michalčák, *supra* note 261.

272. Siegfried Mortkowitz, *Czech Pirates, Ahoy!*, POLITICO (Jan. 25, 2019, 4:02 AM), https://www.politico.eu/article/czech-pirate-party-anti-establishment-ivan-bartos-ahoy; s*ee also* Lili Bayer, *Whatever Happened to the Pirates of Politics?*, POLITICO (Aug. 11, 2021, 4:04 AM), https://www.politico.eu/article/pirates.

273. Huetlin, *supra* note 267.

274. *Id.*

275. *Id.*

to the 2008 collapse of the country's banking system and the country's near bankruptcy.[276] Signaling its role as a protest party, the Pirate Party's support in polls skyrocketed immediately to forty-three percent in the wake of revelations, in the Panama Papers, that a former prime minister held investments in offshore accounts.[277] Forty percent of its members are under the age of thirty;[278] its "leader" for much of its existence was an anarchist. In the most recent general election in 2016, just four years after it had been formed, the Icelandic Pirate Party–having campaigned on its participatory ethic of more direct democracy and more transparency in government[279]—became the third largest party in government. At one point, it was given the mandate to form the government, but it could not function effectively enough to gain support from the most obvious potential coalitional partners. But the party did contribute to the political fragmentation of Iceland: by the time of the 2016 election, twelve parties were competing for the country's 260,000 adults. It took two months to form a fragile government, ruled by three parties, which possessed a thin majority in parliament.[280]

The Czech Pirate Party is currently the most successful. Because it sits in government now and might be the country's dominant party, observing the way this digital party adapts to holding actual political power is intriguing.

After its 2009 birth, the Party rapidly built support in local and regional elections, winning three elections in 2010 and then sixty eight in 2014 (seventeen on its own, fifty one in coalition with other groups).[281] In 2012, the Party captured its first seat in the national parliament, from the

276. Tara John, *Everything You Need to Know About Iceland's Pirate Party*, TIME (Oct. 28, 2016, 12:51 PM), https://time.com/4549089/iceland-pirate-party-general-election-populist.

277. *Id.*

278. Kimiko de Freytas-Tamura, *Iceland's Prime Minister Resigns, After Pirate Party Makes Strong Gains*, N.Y. TIMES (Oct. 30, 2016), https://www.nytimes.com/2016/10/31/world/europe/icelands-prime-minister-resigns-after-pirate-party-makes-strong-gains.html.

279. *Iceland's Pirate Party Invited to Form Government*, GUARDIAN (Dec. 2, 2016), https://www.theguardian.com/world/2016/dec/02/iceland-pirate-party-invited-form-government-coalition.

280. Kimiko de Freytas-Tamura, *Iceland Forms Coalition Government After Months of Talks*, N.Y. TIMES (Jan. 11, 2017), https://www.nytimes.com/2017/01/11/world/europe/iceland-new-government-independence-party.html. Iceland held parliamentary elections in Sept. 2021, after which the three parties in the ruling coalition agreed to remain in coalition, with the Prime Minister coming from the smallest of those three parties. *See 2021 Icelalndic parliamentary election*, WIKIPEDIA, https://en.wikipedia.org/wiki/2021_Icelandic_parliamentary_election (last edited Feb. 26, 2023, 7:11 PM).

281. Pavel Maškarinec, *The Czech Pirate Party in the 2010 and 2013 Parliamentary Elections and the 2014 European Parliament Elections: Spatial Analysis of Voter Support*, 17 SLOVAK J. POL. SCI. 5, 7 (2017).

country's most important city, Prague.[282] By 2017, it had become a substantial national force, when it won eleven percent of the vote and seats in the Czech parliament.[283] But it became a truly significant force in 2019 as a means of protesting the sitting Prime Minister, Andrej Babis. Babis was rumored to have had connections to the Czech secret police during the Communist era and many view him as having conflicts of interest stemming from his ownership of some of the country's most influential newspapers. After this provoked massive demonstrations in Prague, the Pirate Party became the face of opposition to Babis.[284] Despite having only 680 party members as of 2018,[285] the party placed third in the last election and became a member of the governing coalition.[286]

Its internal structure began by adopting similar "inter-party democracy" techniques to earlier Pirate Parties.[287] These commitments appear genuine, unlike certain other digital parties (discussed below). But most have not proven sustainable. The party's internet "discussion board," for example, was presented as a means for participatory party democracy. Members can start a discussion thread on any topic, making it in theory a virtual public assembly; the board also enables voting on proposals, making it a virtual ballot box too.[288] But as the major scholarly study of the party explains, based on interviews with party figures, the discussion board largely collapsed.[289] It devolved into members fighting each other—which party leaders believed led many Czech citizens to believe infighting was the party's main activity.[290] Only twenty percent of members contributed feedback party leaders considered useful; as a result, the internet board "effectively only further strengthens the relationship among the party elite."[291] No longer a tool for meaningful communication or deliberation, the discussion board devolved into a place for posting formal documents or conducting votes.[292] This conception of participatory party democracy was unsustainable.

282. *Id.*

283. William Nattrass, *The Remarkable Rise of the Czech Pirate Party*, SPECTATOR (Feb. 23, 2021, 5:50 AM), https://www.spectator.co.uk/article/the-remarkable-rise-of-the-czech-pirate-party; Mortkowitz, *supra* note 272.

284. Nattrass, *supra* note 283.

285. Michalčák, *supra* note 261, at 27.

286. Zachová, *supra* note 256.

287. *Id.* at 2, 13.

288. *Id.* at 14.

289. *Id.* at 20–21.

290. *Id.* at 20.

291. *Id.*

292. *Id.* at 21.

In addition, party leaders are chosen through primaries that include all members. But the Chairman and Deputy Chairman prepare the party's platform (its manifesto) and submit proposals for potential electoral coalitions. They can appoint leaders of working groups of party members to discuss the platform; these leadership-chosen leaders are people determined to be "competent in the given areas."[293] Another high-level executive committee then approves these strategic decisions. But despite the opportunity for widespread input, "the leadership ultimately has the upper hand."[294] They create the initial draft manifesto, appoint the leaders of working groups, and ultimately make the final decisions.

As the party began electing members to parliament, it also had to confront conflicts between its vision of participatory decision-making and certain fundamental principles of governance. As a member of the party, a Pirate deputy is supposed to remain subordinate to the party's highest executive body (the National Forum). But in taking his seat, the constitution requires that deputy to swear a constitutional oath "not to be bound by anyone's instructions."[295] The party fudged this issue—a major source of controversy in the country, with the party being accused of unconstitutional tendencies—by revising its policies to state elected members must abide by the National Forum's decisions "whenever possible."[296] Deputies admit to scholars that in fact they act independently of the members while in office, but the party is able to maintain the fiction that members control their vote. The restoration of a hierarchy of party leaders who control the party's direction in government became a concomitant of the party's electoral success.

The success of the Czech Pirate Party has come from its greater willingness than other Pirate parties to marry more of the hierarchical organizational structure of traditional parties with the ideology of these new, digital parties. The party's platform has expanded beyond its relatively niche initial tenets of privacy rights, copyright reform, and marijuana legalization into a broader set of issues, including pension reform, government transparency, and tax reductions.[297] It became willing

293. *Id.* at 16.

294. *Id.*

295. *Id.* at 22.

296. *Id.* at 23.

297. Nattrass, *supra* note 283. The Party has also been instrumental in other policy matters, such as aligning Czechia with the rest of Europe on child welfare issues. Tom McEnchroe, *MPs Vote to Abolish Infant Care Homes, Bring Czech Law into Line with EU Practice*, CZECH RADIO (Aug. 9, 2021), https://english.radio.cz/mps-vote-abolish-infant-care-homes-bring-czech-law-line-eu-practice-8725290.

to participate in more traditional legislative negotiation, with elected officials more likely to "act like" politicians and work pragmatically to form coalitions, pass legislation, and otherwise engage in the normal operations of a standard political entity.[298] The Czech party is intentionally difficult to pigeonhole on a standard left-right spectrum; its chairman has stated willingness to work with communists or right-wing populists in the national parliament.[299] The party also appears to draw significant support from areas of the country that show strong support for parties of the right, along with urban areas.[300] To the extent the party has an ideological core, it is eliminating what the party calls the "democracy deficit" inside national democracies in Europe.[301]

The Czech Pirate party story reveals several aspects of democracy in the age of social media. It shows the rise of "anti-parties," based on an ideology that politics can be post-parties.[302] It shows how quickly these (and other) parties can now arise and become consequential, without the need for traditional party-building activities. In particular, it shows how easy it has become to create protest parties based largely on distrust of those in power and traditional political parties. When pop-up, largely digital parties achieve the success of the Czech party, they might no longer be considered disruptive forces. But in their weaker and stronger forms, these digital parties are further contributors to political fragmentation.

2. The Five-Star Movement

The most successful of these digital parties thus far is Italy's Five-Star Movement (M5S). In light of its success, it has received extensive coverage, and less need be said about it here.[303] Launched officially in 2009, in the aftermath of the financial crisis, its leaders believed that representative, parliamentary democracy had run its course and that "[w]e live in an era of disintermediation, where we are bypassing the old

298. Nattrass, *supra* note 283.

299. Mortkowitz, *supra* note 272.

300. Maškarinec, *supra* note 281.

301. Nattrass, *supra* note 283.

302. For a discussion of the rise of "anti-parties" in the Czech context, *see* Vlastimil Havlík, *Economy and Political Distrust: Explaining Public Anti-Partyism in the Czech Republic*, 30 HUMAN AFFAIRS 72, 74 (2019).

303. *See generally* BEPPE GRILLO'S FIVE STAR MOVEMENT: ORGANISATION, COMMUNICATION AND IDEOLOGY (Filippo Tronconi ed., 1st ed. 2015).

middlemen."[304] Through the communications revolution, parliaments and political parties would fade away. M5S rejects being labelled a political party at all, based on its (disingenuous) claims that it is a movement to empower citizens to govern themselves directly.

Officially, the role of the movement's leadership was to be limited to ratifying lists of candidates who sought to run under its label and ensure they respected the movement's principles. Calling itself a "movement of citizens," decision-making was to take place through an online platform, which, in keeping with the movement's anti-party views, was appropriately enough called Rousseau. Through it, supporters would be able to propose laws, debate them, and refine them online; members would also be able to offer themselves as candidates and decide who would in the end run.

But as is widely known by now, this image of bottom-up, organic, participatory democracy is at best an illusion, at worst, a cynical manipulation by the movement's leaders. Beppe Grillo exclusively owns the movement's brand. This enables him to exercise complete control from the top over the party's strategic decisions. Many elected members left the party because Grillo insisted they act as party delegates, rather than representatives exercising independent judgment; Grillo threatens to withdraw their right to use the movement's brand if they don't follow his view of the movement.[305] M5S's leaders use the inevitable need to manage the process or deliberation on Rousseau to exercise effective control over how votes come out. Votes end up being overwhelmingly on the side of the issues that management prefers—typically, with 80% of the vote.[306] Leaders decide when to consult members and on what issues; to filter user proposals deemed not in line with the party's pre-established positions; to choose how to frame proposals; and to decide on the timing of a vote.

These deliberative processes also tend to attract limited participation compared to the number of votes cast when matters are put to a vote. The reality is that referenda turn out to be mainly ratifications of decisions the leadership has taken already. As the leading scholar of digital parties, Paolo Gerbaudo, concludes: "E-ballots have often been used more as a means of propaganda, to demonstrate the cohesion of party members,

304. Paolo Gerbaudo, *One Person, One Click: Is This the Way to Save Democracy*, GUARDIAN (Feb. 13, 2019, 1:00 AM), https://www.theguardian.com/world/2019/feb/13/digital-political-parties-democratic-m5s.

305. James Newell, *What is Italy's Five Star Movement?*, CONVERSATION (Dec. 1, 2016, 5:57 AM), https://theconversation.com/what-is-italys-five-star-movement-69596.

306. Gerbaudo, *supra* note 304.

rather than as an opportunity for a genuine and pluralist internal debate."[307] As another scholar puts it, this "new model of democracy" crumbles upon inspection.[308]

Initially, the movement was primarily a means of expressing disdain and opposition to all the country's traditional parties and leaders—left, right, and center. In the very first national elections it contested, in 2013, M5S won a stunning 25% of the vote—the second highest vote total for a single party. No party had come out of nowhere so quickly and won such a significant vote share in modern Italian history. The movement had received little mainstream media attention and had not raised much money. Around 160 of its candidates with no experience in politics became members of Parliament.[309]

After the 2014 European elections, the movement's leaders decided they wanted the party to align with the United Kingdom Independence Party in the European parliament.[310] Many members and supporters had assumed M5S, with its emphasis on digital democracy, was a progressive party; they were strongly opposed to aligning with UKIP which many considered racist and xenophobic. But in a demonstration of the effective control leadership exercises, the party's architect behind the scenes used Grillo's blog for a series of posts pushing the UKIP alliance (the fact that UKIP wanted a referendum on Brexit was said to reflect a shared commitment to direct democracy). When it came time for the party's online vote, critics asserted the post that introduced the question left little doubt how the leaders wanted members to vote. In the end, eighty percent voted in favor of the UKIP alliance.[311]

Then, in the 2018 general elections, M5S received the largest vote of any party. That success raised the issue whether these largely digital parties can become more than just a vehicle for expressing opposition to the parties and leaders that govern. Indeed, once in government, it floundered. First it formed a government in coalition with Matteo Salvini's Lega party, a northern Italy based anti-immigrant party. Ninety-four percent of M5S voters approved the alliance. But that alliance soon collapsed, and it switched direction to join forces with center-left parties. This shifting back and forth between radically different alliances reflected

307. *Id.*

308. BEPPE GRILLO'S FIVE STAR MOVEMENT: ORGANISATION, COMMUNICATION AND IDEOLOGY, *supra* note 303, at 219.

309. Darren Loucaides, *What Happens When Techno-Utopians Actually Run a Country*, WIRED (Feb. 14, 2019), https://www.wired.com/story/italy-five-star-movement-techno-utopians.

310. KAUFMANN, *supra* note 64, at 174–76.

311. *Id.*

the party's lack of an ideological core, along with inability to govern effectively in its limited time in office and led to its support hemorrhaging.

Currently, it has fallen to the fourth most popular party, with polls indicating fourteen percent support. It is now part of a national unity government led by Mario Draghi, a former European Central Bank president.[312] The current debate is over whether the party—and by implication, parties of this type—can only exist effectively as an opposition, anti-system party outside of government.[313] If M5S collapses altogether, analysts suggest it would spawn one or two new parties, further fragmenting the Italian party structure.[314] But little doubt exists that the digital M5S shows how digital parties, existing largely online and emerging rapidly out of nowhere, are able to disrupt and fragment parties and governments in this new era.

3. Nigel Farage and the Brexit Party

After the Brexit referendum in 2016 and the collapse of the UK Independence Party (UKIP), Nigel Farage decided to model a new UK party directly on the Five Star model. Announced in March 2019, the Brexit Party quickly became the fastest growing party in British political history.[315]

Ironically, although Brexit opponents cast a leave vote as reflecting a backwards looking vision, the Brexit Party became the most technologically advanced party in the UK. Largely through the internet, it gained over 115,000 supporters, who paid £25 a year.[316] In its first ten

312. Michele Barbero, *Has Italy's Five Star Movement Given Up on Populism?*, FOREIGN POL'Y (Mar. 17, 2021, 2:20 PM), https://foreignpolicy.com/2021/03/17/italy-five-star-movement-populism-europe.

313. Maria Giovanna Sessa & Giacomo Riccio*, From Rising Star to Shooting Star: Where Next for Italy's Five Star Movement?*, LSE BLOG (Nov. 17, 2020), https://blogs.lse.ac.uk/europpblog/2020/11/17/from-rising-star-to-shooting-star-where-next-for-italys-five-star-movement/ ("[T]he party must decide whether to embrace its position as a mainstream political actor or to reclaim its anti-system credentials.").

314. Valentina Saini, *Italy's Five Star Movement on Brink of Collapse*, EU OBSERVER (July 6, 2021, 7:03), https://euobserver.com/democracy/152347.

315. Rob Merrick, *Brexit Party is "Fastest Growing Political Force in the Land" with 85,000 New Members and £2m in Donations, Farage Claims*, INDEPENDENT (May 5, 2019, 15:15), https://www.independent.co.uk/news/uk/politics/brexit-party-nigel-farage-members-theresa-may-deal-corbyn-conservatives-a8900356.html.

316. Hugo Gye, *Nigel Farage Sacks Brexit Party Staff After General Election Disaster*, INEWS (Dec. 26, 2019, 8:42 PM), https://inews.co.uk/news/politics/nigel-farage-sacks-brexit-party-staff-after-general-election-disaster-taking-millions-from-donors-379027; Bethan Staton, *Brexit Party Needs to Review All Payments, Says Watchdog*, FIN. TIMES (June 18, 2019), https://www.ft.com/content/ce3b67f0-91cb-11e9-aea1-2b1d33ac3271 (noting annual fee of £25).

days, it "raised over £750,000 in donations online, all in small sums of less than £500."[317]

Three months after its formation, the Brexit Party promptly overwhelmed all other parties in the 2019 UK elections to the European Parliament. Unlike the Conservative and Labor parties, which spent almost nothing for online advertising, the Brexit party spent heavily.[318] The Party received a stunning 31.6% of the vote, far more than the combined vote of the two traditionally dominant parties, the Conservatives and Labor (8.8% and 13.6%, respectively). Slicing support away from all three of the major UK parties, particularly the Conservatives,[319] the Brexit Party generated a highly fragmented UK delegation to the European Parliament. Indeed, the 2019 elections left the European Parliament in general in a highly fragmented party configuration.

The Brexit Party was, in its own words, "the virtual carbon copy of the Five Star Movement."[320] Indeed, Farage and his senior advisor had gone to Italy back in 2015 to meet with the creators of Five Star; when he left, Farage told the political scientists Matthew Goodwin and Caitlin Milazzo that, "[i]f I was starting UKIP today . . . would I spend twenty years speaking to people in village halls, or would I base it on the Grillo model?"[321] Once UKIP collapsed, that's what he did in 2019.

Much like M5S, the Brexit party presents itself as a platform-based party that enables direct voice for party supporters, who are purportedly able to deliberate online and vote on referenda to determine the party's policies. Supporters can apply via the online portal to become candidates. In public speeches, Farage asserts that the party represents a new form of popular politics, in which registered supporters will shape policy,

317. Seth Jacobson, *Nigel Farage Says Brexit Party Won't Take Money from Arron Banks*, GUARDIAN (April 12, 2019, 4:18 PM), https://www.theguardian.com/politics/2019/apr/12/former-ukip-leader-nigel-farage-says-his-brexit-party-wont-take-money-from-arron-banks.

318. Emilio Casalicchio, *Long Read: Inside the Meteoric Rise of the Brexit Party*, POL. HOME (May 14, 2019), https://www.politicshome.com/news/article/long-read-inside-the-meteoric-rise-of-the-brexit-party.

319. Paul Whiteley, *Nigel Farage Triumphs: Survey Reveals What Drove Voters to the Brexit Party in the European Elections*, CONVERSATION (May 27, 2019, 11:36 AM), https://theconversation.com/nigel-farage-triumphs-survey-reveals-what-drove-voters-to-the-brexit-party-in-the-european-elections-117865 (showing that surveys suggest 64% of support for the Brexit party came from Conservatives, 22% from Labor, and 11% from the Liberal Democrats).

320. Darren Loucaides, *Building the Brexit Party: How Nigel Farage Copied Italy's Digital Populists*, GUARDIAN (May 21, 2019, 1:00), https://www.theguardian.com/politics/2019/may/21/brexit-party-nigel-farage-italy-digital-populists-five-star-movement [hereinafter Loucaides, *Building the Brexit Party*].

321. MATTHEW GOODWIN & CAITLIN MILAZZO, UKIP: INSIDE THE CAMPAIGN TO REDRAW THE MAP OF BRITISH POLITICS 116 (2015).

determine the party's direction, and directly interact continuously with the party's leaders. "This is going to be the most open political party you've ever seen in Britain," Farage proclaims.[322] But as with M5S, the reality is virtually the opposite.

The party is organized as a corporation. It has only around eight shareholders, with Farage holding a majority of the shares. Essentially, he is the CEO, chairman, and owner of the party.[323] The party lacks voting members, executive committees, or any of the traditional structures of a political party. Farage and his allies view it as a tech-like start-up business, designed to make decisions quickly. Like other websites, the party harvests vast data about its supporters for future use. Farage himself says: "We're running a company, not a political party . . . ."[324] As an ally put it: "What the Five Star did, and what the Brexit party is doing, is having a tightly controlled central structure, almost a dictatorship at the centre . . . ."[325]

Like other digital parties, it purports to be "beyond" party politics and transcend the traditional identification of parties as being of the left or right. Its candidates for the European Parliament election ranged from former members of the Conservative Party to the Revolutionary Communist Party. And although European Parliament elections are ordinarily not of great significance in the UK, the Brexit party's instant success "sent a shock wave" through British politics.[326] That success prompted Boris Johnson to absorb the Brexit Party by restructuring the Conservatives around a hard-Brexit agenda, which then produced a decisive Conservative victory in 2019.

The Brexit party, having changed British history, is now trying to recast itself as a broader populist movement, presenting itself as against "establishment" politics and advocating for various "democratic" reforms, such as creating direct democracy through citizen initiatives and other voting reforms. It has relabeled itself the Reform-UK party (and Farage has stepped down as its leader).

Ironically, for all the decentralizing tendencies of the digital age, and these parties' ideology of organic, egalitarian, participatory democracy,

322. Loucaides, *Building the Brexit Party*, *supra* note 320320.

323. Tom McTague, *Nigel Farage's Startup Politics*, POLITICO (May 18, 2019, 11:50 AM), https://www.politico.eu/article/nigel-farage-brexit-party-start-up-politics-eu-election.

324. Loucaides, *Building the Brexit Party*, *supra* note 320320.

325. *Id.*

326. Karine Tournier-Sol, *From UKIP to the Brexit Party: The Politicization of European Integration and Disruptive Impact on National and European Arenas*, 29 J. CONTEMP. EUR. STUD. 380, 386 (2020).

several of the most significant digital parties have introduced a new form of leadership that Gerbaudo calls "hyper-leadership."[327] In his view, through this digitized leadership, this figure spreads his image and words instantaneously through a vast array of communication networks and now widespread personal communication devices, such as smartphones, tablets, laptops, computers. Without any need for traditional party structures, and the ability to bypass them in any event, the creators of at least some of these parties recognized that controlling the new media system was key to gaining political recognition and power. "The hyper-leader navigates the nooks and crannies of a hybrid media system in which TV videos are shared and wildly commented on in social media, and in turn social media posts often become the object of TV coverage."[328] Traditional parties and candidates try to do something similar, though they are often behind these pop-up parties that are born in the digital age, but what's remarkable is how effectively and quickly these pop-up parties have managed to make this strategy succeed.

* * *

These emerging digital parties exist in a space between traditional political parties and the more loosely organized spontaneous movements discussed above. Some of them are meant to be enduring organizations, as with traditional parties. Some come into being largely for one issue, such as the Brexit party, and having succeeded on that issue, it remains unclear whether they can survive beyond it. Some are mainly vehicles for expressing anger and disaffection with the status quo, including traditional parties, but have difficulty making the transition to governance when they get the opportunity. Most are organized to represent a vision, unlike traditional parties, of a non-hierarchical, highly participatory party decision-making structure. In some cases, that claim is deceptive. In others, it has undermined the ability of these parties to function. In yet other cases, the commitment appears sincere, but has been modified significantly as they reach the point of becoming more viable political forces. A few are becoming significant parts of government. Unlike traditional parties, they can emerge quickly to become, at least, meaningful disruptive political forces. That we will see more such digital parties pop-up is likely. They are a new political form that further contributes to the fragmentation of politics and governance.

327. GERBAUDO, THE DIGITAL PARTY, *supra* note 254, at 142–61.

328. *Id.* at 150.

In a recent empirical investigation on the effects of the internet and social media on democracy, aptly titled *Political Turbulence,* the authors conclude: "The kind of politics we have observed and analyzed is characterized by rapidly shifting flows of attention and activity . . . . This is a turbulent politics, which is unstable, unpredictable, and often unsustainable."[329] This study suggests that the new media enable a thinner form of participation, which contributes to this more turbulent politics. Before the digital age, the authors assert, the decision to belong to a political party or interest group was more significant and created stronger bonds—partly because participation was more time consuming, but also because it was shaped by stronger sociological forces, such as unions and churches, as well as norms and pressures from peers and family. But precisely because participation today is easier and less costly, as well as less susceptible to the influence of the political parties, institutions, and other organizations that once attracted stronger allegiance, citizens today are more vulnerable to small shifts in political information.[330] The ease with which people can engage in new forms of political participation draws more people in—which can enable rapid large mobilizations—but also makes them weakly-anchored and strongly susceptible to the rapidly changing influences of social media.

D. Free-Agent Politicians: The United States

In the United States, the communications revolution has spawned political fragmentation by enabling individual legislators to function as, in effect, political free agents. Individual members of Congress in the United States have long been more electorally vulnerable than in other democracies. They must raise large amounts of campaign money, given that spending on elections cannot be constitutionally capped. The United States lacks a system of public financing, unlike most European democracies, so that the candidates must raise this money themselves or be financially bankrolled by some other source, such as their party. In addition, candidates must run in primary elections, including incumbents, who particularly in recent decades, often face and fear significant primary challengers—unlike in most democracies, in which primary elections do not exist, the party picks candidates to run, and in which incumbents therefore are rarely vulnerable to challenges from within their own party.

329. MARGETTS ET AL., *supra* note 205, at 62.

330. *Id.*

This very vulnerability traditionally meant that, until the cable and digital age, individual members of Congress had to function largely within the party structure and hierarchy to advance their careers and ability to influence policy and politics. Their success and stature depended on building support over time within the party. Being assigned to desirable committees was key to a member's success, both in terms of making policy contributions and for fund-raising and visibility. Before they could become nationally known and carry substantial political weight, they had to work their way up inside the party. Party leaders, through their ability to decide on which committees' members served, had significant leverage over their rank-and-file members. In the television age, for example, the main way for individual members or Senators to get a national television audience was to chair a high-profile hearing—which meant party leaders effectively had control over national exposure (even before television, Harry Truman catapulted into the vice-presidency as a result of chairing high-profile hearings into profiteering during World War II).[331] The party was an important resource for running successful campaigns. The hold party leaders had over members' political and electoral fates gave party leaders significant leverage to contain and manage the tensions that always existed within the parties.

The communications revolution has largely destroyed that leverage. Precisely because politicians in the United States are already more on their own than in other systems, the effects of this revolution might be greatest in the U.S. Individual legislators, even in their first years in office, no longer are as dependent on party leaders or their political party. Instead, it has become possible—and happens regularly—that legislators in their very first years in the United States House or Senate can thrive as independent political entrepreneurs. An early sign of how the new media technology enabled circumventing the traditional party structure was the way insurgent forces within the Republican party, led by Newt Gingrich, figured out in the 1980s how to exploit the new possibilities created when cable television began to televise proceedings on the House floor. Gingrich was first elected in 1978; the post-Watergate Congress had decided to make itself more transparent by permitting television cameras to film daily proceedings. In 1979, C-SPAN was created. Gingrich called himself the "first leader of the C-SPAN generation."[332] He realized that members

331. SAMUEL L. POPKIN, CRACKUP: THE REPUBLICAN IMPLOSION AND THE FUTURE OF PRESIDENTIAL POLITICS (2021).

332. JULIAN E. ZELIZER, BURNING DOWN THE HOUSE: NEWT GINGRICH, THE FALL OF A SPEAKER, AND THE RISE OF THE NEW REPUBLICAN MAJORITY 57–63 (2020).

could now bypass the traditional media and speak unfiltered to the audiences they wanted to reach, through the live C-SPAN feed that covered proceedings at the start and end of the day—when members could take the floor for individual speeches on any issues. Gingrich also figured out that, in his words, "C-SPAN's audience would swell if confrontation rather than capitulation characterized the GOP stance in all House debate."[333] He understood the more traditional national media would pick up confrontational statements displayed on C-SPAN. At this stage, Gingrich was taking on his own party's leadership in the House as much as the Democrats; he had formed a "caucus of insurgents" to bypass his party's leadership, which disdained his tactics and believed in working with Democrats to legislate. By 1994, of course, Republicans had gained control of the House for the first time in forty years, and Gingrich was the Speaker.[334]

Advances in the communications revolution since then have had two general effects that have catalyzed even greater fragmentation of the political parties. First, through social media and cable television, individual members of Congress are now able to find and construct their own national constituencies. Second, the internet has enabled them to be highly effective at fundraising, particularly through small donations, to an extent never possible before. The first effect also feeds the second: the greater a candidate's visibility, the easier it is to attract money through internet-based donations. Extremism is not a liability; it is the way to get attention and turn on the spigot of internet-based donations (this was also true in the era of direct-mail solicitations, but the amount that could be raised that way pales in comparison to what the internet makes possible).[335] For these reasons and others (discussed below), being on particular committees is less crucial than before. As a result, individual members, including even recently elected ones, can essentially bypass the party hierarchy and structure. With political "leadership" atrophying without effective tools to control members, differences within the parties become more difficult to contain. Particularly given America's system of bicameralism and separation of powers, the existence of many independent free agents in Congress makes putting together legislative majorities all the more difficult.

As one recent example, dozens of companies announced after the Jan. 6th riots at the Capitol that they were halting donations to Republicans who

333. *Id.*

334. *Id.*

335. *See* Richard H. Pildes, *Participation and Polarization*, 22 U. PA. J. CONST. L. 341 (2020).

had voted to reject electoral votes from the states. Yet the internet can now effectively replace these large contributions, from business and elsewhere. Republican Sen. Josh Hawley, for example, the first to announce he would object, and whom the Republican leadership in the Senate discouraged from doing so, received $969,000 in donations in January 2021—*eight* times more in one month than he had raised in the entire first quarter of the prior year.[336] Similarly, when new Republican representative Marjorie Taylor Greene was removed from all House committees, because of her extremist views, she quickly "raised over $3.2 million in the first" quarter of 2021.[337] The money "came from over 100,000 individual donors, [with an] average donation of $32."[338] That is a historic and stunning haul, particularly for someone just taking office and nearly two years out from her next general election.[339] Indeed, in just the two days before the House removed her from all committees, she raised $335,000.[340] Party leaders have little leverage over members of Congress who can now generate this kind of national attention and money on their own—as Hawley and Greene have made clear.

Individual attention-grabbing moments now trigger a flood of small donations. Take South Carolina Congressman Joe Wilson, who during President Obama's first State of the Union address, in 2009, before the entire Congress shouted out: "You lie!" This stunning breach of decorum shocked both sides of the aisle.[341] Yet in his next campaign, Wilson raised $5 million, five times more than he had averaged in his four previous races.[342] As one former Republican congressman put it: "The outrage machine is powerful at inducing political contributions."[343] A former Democratic congressman provided more concrete detail:

336. Matt Stieb, *Small-Donor Donations to the GOP Increased After the Capital Riot: Report*, INTELLIGENCER (Mar. 9, 2021), https://nymag.com/intelligencer/2021/03/capitol-riot-increased-small-dollar-donations-to-gop-report.html.

337. Olivia Beavers & Melanie Zanona, *MTG's Eye-Popping Fundraising Haul*, POLITICO (April 7, 2021, 8:00 AM), https://www.politico.com/newsletters/huddle/2021/04/07/mtgs-eye-popping-fundraising-haul-492390.

338. *Id.*

339. *Id.*

340. Stieb, *supra* note 336.

341. Paul Kane, *'You lie' moment interrupting a presidential speech reflects the slide to disunity*, WASH. POST (Feb. 4, 2019, 6:39 PM), https://www.washingtonpost.com/powerpost/you-lie-moment-interrupting-a-presidential-speech-reflects-the-slide-to-disunity/2019/02/04/5732cdca-28bb-11e9-984d-9b8fba003e81_story.html.

342. POPKIN, *supra* note 331, at 44.

343. Luke Broadwater et al., *Fund-Raising Surged for Republicans Who Sought to Overturn the Election*, N.Y. TIMES (May 10, 2021), https://www.nytimes.com/2021/04/17/us/politics/republicans-fund-raising-capitol-riot.html.

> If you need to raise a dollar online, you don't talk about bipartisan solutions. . . . You talk about extreme partisan positions. . . . If I were to post something about getting rid of the Electoral College, it would do really well on social media among Democratic activists. If I were to post something about expanding early childhood education, and talking about a bipartisan way to make that happen, it would go over like a thud on social media. No one cares. So the feedback loop really encourages people to run on things that are more extreme.[344]

These anecdotes illustrate the general phenomenon. In 2018, the most extreme Democrats received 86% of their funding from small donors, while moderates received only 10%.[345] On the Republican side, more extreme candidates received 58% of their funds from small donors while moderates received 17% of their funding from small donors.[346] A list of the members elected to the House who received 50% or more of their contributions from small donors includes on the Republican side, in order, Matt Gaetz, Jim Jordan, Devin Nunes, and Dan Crenshaw.[347] On the Democratic side, it includes Alexandria Ocasio-Cortez, Adam Schiff (high profile from the first Trump impeachment), Ilhan Omar, Speaker Pelosi, and Katie Porter.[348] Does anyone think moderate politicians will attract the same flood of small donations from around the country that more extreme politicians do?[349] The new system of funding the internet makes possible fuels the wings of each party, which enhances the forces of fragmentation.[350]

But we are just beginning to experience the centripetal politics that internet-based fundraising makes possible and encourages. Small donors first became significant in presidential elections with Howard Dean's primary campaign in 2004. In congressional elections, they only became a force in 2018. In 2016, small donors provided only about 6% of the funds candidates raised.[351] By 2018, small donors contributed 27% of the money raised by Democratic Senate candidates and 16% for the party's House

344. Richard H. Pildes, *Small-Donor-Based Campaign-Finance Reform and Political Polarization*, 129 YALE L.J.F. 149, 158–59 (2019) [hereinafter Pildes, *Small-Donor-Based Campaign-Finance Reform*].

345. See *id*.

346. See *id*.

347. See *id*.

348. See *id*.

349. Zachary Albert & Raymond La Raja, *Small Dollar Donors and the Evolving Democratic Party*, APSA PREPRINTS (2020), https://preprints.apsanet.org/engage/apsa/article-details/5e1f540bcd361a001afed264.

350. Pildes, *Small-Donor-Based Campaign-Finance Reform*, *supra* note 344344.

351. *Id.* at 152.

candidates.[352] Democrats were ahead of the game for a while, since digital figures from outside the party had created a single portal or intermediary organization, Act Blue, through which one could make donations to all Democratic candidates. But by 2020, Republicans had started catching up with their own organization for amassing small donations, WinRed. In 2020, House Republicans received 22.1% of their contributions from small donors, a leap up from 5.7% in 2016. The same was true with Senate Republicans, who "receive[d] 30.3[%] of their donations from small donors compared to 9.2[%] in 2016."[353] Nearly half of the money Donald Trump raised for his 2020 campaign came from small donors.

The new communicative channels are further reason members of Congress, even in their first year in office, can wield a level of power unimaginable before. A few years back, the most prominent examples were Senators Ted Cruz, on the right, and Elizabeth Warren on the left, both of whom in their first year or two in the Senate were able to exercise levels of power that would have been unheard of at such early stages of a Senate career in the past.[354] A more recent striking example is Rep. Alexandria Ocasio-Cortez. She won the primary that launched her political career with just under 16,000 votes (and then easily won general elections in her overwhelmingly safe Democratic district).[355] But when she entered Congress, as a master of social media, she had nearly nine million followers across the main social media platforms (Twitter, Facebook, Instagram). Compare that to other Democratic members of Congress, including those in leadership positions or major legislative roles. Speaker Nancy Pelosi had 3.6 million followers. The next most for a House Democrat was the Majority Leader, Steny Hoyer, with an anemic 220,000 followers. Just a few months into her first term in the House, AOC was one of the most nationally known Democrats. She had more "retweets" and "likes" than any political figure other than Donald Trump, and more than the combined totals of the Washington Post, New York Times, CNN, NBC, MSNBC, and ABC.[356] Party leaders have little leverage over such

352. *Id.*

353. Krystal Hur, *Small Donors Ruled 2020; Will That Change Post-Trump?*, OPEN SECRETS (Feb. 3, 2021, 8:54 AM), https://www.opensecrets.org/news/2021/02/small-donors-dominated-2020-will-that-change-in-midterms.

354. See Richard H. Pildes, *Romanticizing Democracy, Political Fragmentation, and the Decline of American Government*, 124 YALE L. J. 804, 808 (2014) [hereinafter Pildes, *Romanticizing Democracy*].

355. *New York Primary Election Results*, NY TIMES (Jun. 28, 2018, 11:14 AM), https://www.nytimes.com/interactive/2018/06/26/us/elections/results-new-york-primary-elections.html.

356. POPKIN, *supra* note 331, at 214.

figures: their seats are safe, their fundraising secure, their ability to influence public discourse and legislation is just as large as if they waited twenty-five years to become the chair of an important committee.

As Speaker of the House, Republican John Boehner describes the moment he knew effective power had shifted away from his office to the fragmenting power of the communications revolution. When he refused to give a young Michelle Bachman a powerful committee seat she demanded (he notes that in earlier decades, no one so new to Congress would even have thought to have made the request to previous Speakers), she threatened to go around him by taking to the numerous media platforms she could access, such as Fox News. The House Speaker describes his realization: "I wasn't the one with power, she was saying. I just thought I was. She had the power now. She was right, of course."[357]

Boehner's memoir teems with passages describing how party leaders, including the President, has lost control to outside forces. He calls the highly fractured Republican party caucus he "ran" in the House "Crazytown." He observes resignedly: "I may have been the Speaker, but I didn't hold all the power. By 2013 the chaos caucus in the House[358] had built up their own power base, thanks to fawning right-wing media and out-rage driven fundraising cash." He suggests that Speaker Pelosi's relationship with those from the left of her party reminds him of what he confronted, yet "these people command a large social media and press following, so Pelosi has to argue with them about tactics and policy."[359] As one historian comments, the Republican Freedom Caucus (the "chaos caucus" in Boehner's words) was an "unprecedented development in the history of the party."[360] No bloc within the party had ever been more concerned with defeating moderate Republicans and refusing bipartisan compromise than with enacting legislation that would further the party's efforts to capture the Presidency. But party leaders lacked the capacity to punish that bloc and force them to accept the party's positions.

This splintering of political authority affects the political ability to forge complex political compromises on numerous specific issues. This is partly why Congress in recent years has become so unproductive, particularly on major issues. Take immigration, among the most important and difficult policy problems in the United States for many years now. In 2013, a seemingly powerful, bipartisan group of eight Senators negotiated

357. BOEHNER, *supra* note 76, at 21.

358. He is referring to his own party.

359. *Id.* at 167.

360. POPKIN, *supra* note 331, at 94.

a comprehensive immigration bill, which the Senate passed sixty-eight to thirty-two. Republican leaders in Congress supported it, indeed, they believed addressing the issue was critical to the party's electoral future. But grassroots conservative opposition was so effectively mobilized through cable television, radio, and the internet that it caused that bipartisan deal to collapse.[361] Since then, the United States has not come close to major immigration legislation.[362]

In his recent book *Crackup: The Republican Implosion and the Future of Presidential Politics,* the eminent political scientist, Samuel Popkin describes Senator Ted Cruz as the new model of politician the communications revolution enabled.[363] Cruz figured out, in his first year in office, that he could thrive in the new media age as a disruptive figure who regularly defied his own party. As Popkin puts it, Cruz's goal was to win the party's presidential nomination by becoming, "literally, a party of one."[364] That is a nice distillation of how the new communications era is making possible forms of politics not possible in the past, including in ways that drive fragmentation.

Many of Cruz's early actions ran against what party leaders viewed as the best interests of the party, but in the new communications age, they raised his profile and personal support. He persuaded House Republicans to shut down the government, purportedly to force President Obama to repeal Obamacare, which party leaders knew was doomed to fail and would damage the party. Party leaders reviled Cruz–yet his actions brought Cruz massive coverage on cable news and social media, along with an outpouring of small donations. As Paul Ryan noted, Cruz proved that in today's media environment, "you can . . . shortcut your way toward the top of the political pile because you're a better entertainer."[365] Once people saw a freshman Senator could do that while bypassing the party hierarchy, many others decided to follow suit. Rep. Matt Gaetz, for example, sees politics as more about performance than legislating. As he

361. Molly Ball, *The Little Group Behind the Big Fight to Stop Immigration Reform,* ATLANTIC (Aug. 1, 2013), https://www.theatlantic.com/politics/archive/2013/08/the-little-group-behind-the-big-fight-to-stop-immigration-reform/278252.

362. Across the pond, the communications revolution has had similar crucial effects. Nigel Farage has said that the existence of the website, Breitbart News, gave euroskeptic voices a power they would not otherwise have had, given that the major media and much of the political establishment strongly opposed Brexit. *Watch Deleted Video of Nigel Farage Thanking Steve Bannon and Breitbart for Brexit*, NEW EURO. (Apr. 6, 2018), https://www.theneweuropean.co.uk/brexit-news-breitbart-video-nigel-farage-25806.

363. POPKIN, *supra* note 331, at 71.

364. *Id.* at 72.

365. *Id.* at 230.

says: "Why raise money to advertise on the news channels when I can make the news? And if you aren't making news, you aren't governing."[366] The digital age rewards politics as performance and enables political free agency.

As Popkin concisely puts the realities of the fragmentation that characterizes U.S. politics: "Both parties are vulnerable to legislative factions big enough to block compromise but too small in numbers or extreme in their demands to develop realistic policies."[367] And he concludes "there can be no return to effective modern government until party leaders in the House and Senate once again have the resources to build consensus and enforce legislative norms."[368]

To be sure, other changes have contributed to this paralyzing fragmentation in the U.S. The McCain-Feingold campaign-finance "reforms," which drove money away from the parties to outside groups, and which *Citizens United* then further accelerated, plays a major role.[369] So too are participatory "reforms" made to the presidential nominations process in the 1970s. Those changes ended the convention-based system, in which party figures from around the country played a major role in choosing the parties' nominees, to the system of primary elections (and caucuses), in which voters choose the nominees. It is this change that make figures like Ted Cruz believe, rightly, that they can capture their party's nomination without needing the support of their party's figures in government that once was necessary.[370] Cruz failed, but Donald Trump proved him right.

This change to the nominations process has made it easier for factional candidates within the parties to capture nomination, which the rise of

366. Abigail Tracy, *"If You Aren't Making News, You Aren't Governing": Matt Gaetz on Media Mastery, Influence Peddling, and Dating in Trump's Swamp*, VANITY FAIR (Sept. 14, 2020), https://www.vanityfair.com/news/2020/09/matt-gaetz-donald-trump-firebrand.

367. POPKIN, *supra* note 331, at 230.

368. *Id.*

369. *See* Richard H. Pildes & Mike Norton, *How Outside Money Makes Governing More Difficult,* 19 ELECTION L.J. 486 (2020). For example, in 2016 Former NRCC chair Tom Reynolds said, "*Citizens United* and other changes—McCain-Feingold—those guys that campaigned and wanted very badly to create McCain-Feingold have actually created a party that has less money, less resources, and have enabled outside groups to have enormous presence in campaigns." *Id.* at 498. Former Democratic Congressional Campaign Committee (DCCC) Chair Martin Frost similarly expressed the view that McCain-Feingold was "worthless." Frost stated that campaign finance advocates at the time did not understand or seem to care that shifting soft money away from parties, where it had to be disclosed, would "force it out to the wings, out to the extremes, some of whom don't have to report." *Id.* at 497.

370. *See generally* Stephen Gardbaum & Richard H. Pildes, *Populism and Institutional Design: Methods of Selecting Candidates for Chief Executive*, 93 N.Y.U. L. REV. 647 (2018).

social media has only exacerbated. In the last two presidential cycles, seventeen (Republicans, 2016), then twenty-nine (Democrats, 2020) candidates competed for their party's nomination. The most consequential example of why candidates believe there are more routes to success than in the past, partly due to the communications revolution, is of course Donald Trump's takeover of the Republican Party in 2015–2016. As an insurgent outsider with virtually no prior ties to the party, he effectively used cable television, Twitter, and internet fundraising to bypass entirely the party's leadership, its major donors, the mainstream media—and yet capture the nomination.

IV. COUNTERMEASURES TO FRAGMENTATION

The design of democratic institutions and processes frequently involves an unappreciated tradeoff between the values of political accountability and effective governance. Governments must be politically accountable, but excessive, immediate accountability can undermine the ability of democratic governments to function effectively. As an example, when the Constitution was drafted, significant pressure existed to have annual elections for members of the House, to ensure they would remain highly accountable to the people. Little imagination is required to envision how much more turbulent and dysfunctional U.S. government would be were members elected every year. Indeed, some argue the two-year term is still too short and undermines the capacity for effective governance today in the United States.[371]

The digital age creates, in effect, immediate, continual accountability to the forces that dominate the new communication tools. Little doubt exists that this dynamic has contributed to political fragmentation. When democratic governments of all political ideologies are simply unable to marshal the concerted, sustained power necessary to deliver effective policies, democracies are more likely to become paralyzed and unable to deliver.

Will political institutions, organizations, and actors develop ways to overcome the fragmenting effects of modern communications?

Drawing again on the system I know best, the U.S. Congress, certain institutional transformations in the way Congress now functions can be viewed as countermeasures against the fragmenting forces of the internet age. The main change is the abandonment of the traditional structure for

371. Richard H. Pildes, *In Nearly All Other Democracies, This Is Not Normal*, N.Y. TIMES (July 21, 2021), https://www.nytimes.com/2021/07/21/opinion/house-elections-constitution.html.

lawmaking, particularly for major legislation. That traditional structure, memorialized in the familiar "how a bill becomes law" narrative, entailed bills originating in committees that had specialized knowledge and jurisdiction over the relevant issues. The committees would hold hearings, work out changes to the bills in mark-up sessions, and vote them out to the floor of Congress with an accompanying report that explained the bill's provisions in detail—where they would be debated, amendments to be voted on, and bills passed or defeated.[372] This made the chairs of key committees' powerful figures, along with seats on committees members cared most about plumb assignments.

Instead, a more centralized, leadership-controlled, top-down structure has now replaced the process of decentralized, committee-based development of legislation. Major legislation is now largely built in the offices of the party's leadership and then pressed upon the party's members from the top. Many commentators decry these developments. The committee process, they argue, made for a more deliberative Congress. Centralized control over legislation limits regular members from opportunities to debate and amend legislation. It limits the incentives for committee chairs and members to develop specialized knowledge and expertise, or to be entrepreneurial in developing legislation. Members of Congress themselves, and newspaper editorial boards, frequently urge Congress to return to "regular order"—meaning the former, decentralized lawmaking process that enabled more collective input.

These criticisms might be valid, but they fail to recognize the forces that have led Congress to turn to centralized lawmaking, under both Republican and Democratic leadership. Congressional leaders have not gotten more power hungry all of a sudden. As the congressional scholars James Curry and Frances Lee have noted,[373] today's centralized lawmaking evolved to insulate Congress from the internet age. This more secretive process of developing legislation came to be viewed as necessary, in today's communication environment, to enable the flexibility and compromise required in the U.S. system to enact most major legislation.

Curry and Lee interviewed senior congressional staff who explained—anonymously, of course — that centralized lawmaking is a

372. James M. Curry & Frances E. Lee, *Congress at Work: Legislative Capacity and Entrepreneurship in the Contemporary Congress*, CAN AMERICA GOVERN ITSELF? 181 (Frances E. Lee & Nolan McCarty eds., 2019).

373. JAMES M. CURRY & FRANCES E. LEE, THE LIMITS OF PARTY: CONGRESS AND LAWMAKING IN A POLARIZED ERA (2020).

response to the way social media empowers each party's most zealous bases. As one staffer put it concisely, "the politics of each party's base has made [regular order] impossible."[374] Successful negotiations involve exploring options and tradeoffs; they require compromising on one item to win on another. But in the social media age, as one staffer observed:

> If a piece of the negotiation gets reported, it'll be seen in isolation from everything else we're trying to do, all the other moving parts . . . . Social media will start churning information – all about one little piece. It spreads like wildfire. And all this even before you can have a discussion with the skeptics. By the time you can reach them, they've already made up their minds. They're not listening to you.[375]

Internal party fragmentation combines with the external fragmenting effects of social media to create the pressures toward centralized process. Specific proposals that make up even a small piece of an overall deal will be weaponized to sink proposals; there are "hyper-partisans on both sides will everything into a wedge."[376] As other staffers reported: "Regular order is too messy and it's covered instantly in the media . . . there's so much divisiveness inside the party's caucuses that you render yourself pretty vulnerable if you're putting out your gives that publicly."[377]

To be sure, additional factors have also driven the move to more secretive, centralized processes. That process, for example, helps diminish the pressure from lobbyists – which social media has further enhanced, creating increased ability to monitor and mobilize opposition. To forge compromises and get them through Congress, one staffer observed, "you need the back-room discussions outside the view of the lobbyists, even if that's sacrilege to the open-government people."[378] As staffers observe, "[o]n lower profile issues . . . the committee process still functions." But on major issues, in today's Congress, "it's in the backroom where the deal is made."[379]

In the post-Watergate 1970s, the view was that more transparency would make government function better and more accountably. "Sunshine laws" and internal policy changes in Congress opened up many previously closed congressional processes. This reflected a shift from accountability of outcomes, in which proposed policies had to be defended and justified,

374. *Id.* at 141.
375. *Id.* at 142.
376. *Id.* at 141.
377. *Id.*
378. *Id.*
379. *Id.* at 143.

to the view that accountability of process was also required. Through cable television first, then social media, the communications revolution rushed in. As Democratic congressman George Miller, elected in 1974 as a post-Watergate reformer, reflected in the mid-1990s: "We were a conquering army. We came here to take the Bastille. We destroyed [Congress] by turning the lights on."[380] The digital age accelerated that all the more. As another recent congressional staffer commented for the Lee/Curry study: "Transparency is a good thing in principle but it makes Congress more dysfunctional."[381] Members of Congress readily admit hearings are more informative and productive when conducted in private.

Centralizing lawmaking in the office of party leaders might have many costs. But in the toxic mix of fragmentation, social media, and transparency, it might be one of the only ways to enact major legislation.

That the communications revolution is driving Congress to less visible processes is ironic. Seeking to escape certain forms of public deliberation and accountability might not be consistent with the values of abstract democratic theory. But doing so might be necessary for government to function effectively in the modern communications world. Put another way: democratic theory might need to be rethought for the age of social media.

Instead of government groping for effective responses, perhaps some means of re-creating appropriate and effective mediating structures will come from within the communications sphere itself. This would have to go well beyond effective content-moderation even for misinformation, itself an immensely difficult technological task even were there will to do it. Jonathan Rauch points out that the mass circulating newspapers of the late nineteenth century were full of rumor, sensationalism, and misinformation to the point that willfully concocted stories were common.[382] But norms of journalistic professionalism then emerged, along with institutional structures, that emphasized accuracy, responsible processes for reporting, the separation of factual coverage from opinion pieces, and the like. I cannot envision an analogue for the hyper-decentralized world of the digital age that would meaningfully and appropriately reduce the fragmenting pressures it generates on democratic politics and governments.

380. JOHN JACOBS, A RAGE FOR JUSTICE: THE PASSION AND POLITICS OF PHILLIP BURTON (1997).

381. CURRY & LEE, *supra* note 373, at 140.

382. *See* RAUCH, *supra* note 204.

CONCLUSION

The communications and political theorist Martin Gurri has put a sharp point on the communications revolution's effects on political authority: "the rise of [the information age] places governments on a razor's edge, where any mistake, any untoward event, can draw a networked public into the streets, calling for blood. This is the situation today for authoritarian governments and liberal democracies alike . . . . The mass extinction of stories of legitimacy leaves no margin for error, no residual store of public good will. Any spark can blow up any political system at anytime, anywhere."[383]

The legitimacy of political authority is inherently under continuous attack in the new information age, with political fragmentation a defining feature of, and major challenge to, democracies today. This fragmentation reflects the perceived inability of democratic governments to deliver effective governance on the issues their members care most about. But it also perversely makes it all the harder for democratic governments to do so. The general fact of this fragmentation across different democratic systems might not be readily apparent, for it takes different forms in differently structured systems. In PR systems, one form it takes is the fracturing of the long dominant major parties into numerous smaller parties, making formation of effective, sustainable governing coalitions considerably more difficult. In the United States, fragmentation manifests in political parties more internally splintered, with many politicians now independent free agents unconstrained by the need to embrace party leaders and party positions. In all democracies, individual members, spontaneous, non-organized groups, organized groups, and insurgent political parties—including those that mostly exist in virtual space—are now empowered with effective means to destabilize political authority whenever these actors disagree with how they perceive government to be acting.

Whether this fragmentation is a temporary feature of democratic culture or a more enduring one remains to be seen. Anxieties about democracy have risen during other difficult eras,[384] of course, and democracies have shown resilience not just in surmounting previous challenges, but in their ability to be flexible enough to change course when

383. GURRI, *supra* note 231, at 92.

384. *See, e.g.*, IRA KATZNELSON, FEAR ITSELF: THE NEW DEAL AND THE ORIGINS OF OUR TIME 96–131 (2013) (describing democratic anxieties in the 1920s and 1930s).

things have gone wrong.[385] Circumstances might change in ways that make certain issues currently driving this dynamic less salient. Greater societal consensus might emerge on central issues. The process of major party realignments might reach a relatively stable new equilibrium, which would enable decisive and effective governmental action if that realignment enables less fractured governments.

Perhaps, though, our era will be one in which new technologies will enable more widespread individual and collective participation that will also mean challenges to government action or the failure to act will be easy to mobilize and perhaps continual. With political culture so turbulent, governments might be even less able to deliver effective action on issues citizens consider most urgent. Each new government will confront the same forces of disruption and protest that paralyzed and brought down its predecessor.

The importance of effective government is given too little attention in political and legal theory.[386] But if democratic governments in our era of political fragmentation cannot deliver effective government, distrust, frustration, alienation, and anger could give way to worse.[387]

385. *See, e.g.*, DAVID RUNCIMAN, THE CONFIDENCE TRAP: A HISTORY OF DEMOCRACY IN CRISIS FROM WORLD WAR I TO THE PRESENT (rev. ed., 2017).

386. *See* Richard H. Pildes, *Political Fragmentation and the Decline of Effective Government,* in CONSTITUTIONALISM AND A RIGHT TO EFFECTIVE GOVERNANCE (Y. Dawood & V. Jackson eds.) (2022); *see also* Richard H. Pildes, The Neglected Value of Effective Government, U. Chi. L. Forum (forthcoming 2023); Richard H. Pildes, *The Age of Political Fragmentation,* 32 J. of Democracy 146 (2021).

387. Katznelson describes the general fragmentation of democracy across most of Europe in the early 1930s, a phenomenon not limited to Weimar Germany: "Caught between mass parties of the Left, some inspired by the Bolshevik experiment, and nationalist, Catholic, conservative, and frankly Fascist parties on the Right, enthusiasm for liberal democracy hollowed out. Mass support frequently was lacking. Political and technical elites often grew impatient with the give-and-take of parliamentary government." KATZNELSON, *supra* note 384 at 105. As one historian put it, "By the 1930s, parliaments seemed to be going the way of kings." *Id.* After WWI, there were twenty-eight democracies in Europe (broadly defined). By 1938, there were only ten. MARK MAZOWER, DARK CONTINENT: EUROPE'S TWENTIETH CENTURY (2000).