Making and Unmaking Citizens: 
Law and the Shaping of Civic Capacity

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American democracy is more fragile today than in recent memory. The corrosion of norms essential to democracy—from civility to judicial independence to freedom of the press—appears to be accelerating. Public faith in democracy is eroding, with a rising number of Americans reporting that they no longer feel confident in the relative benefits of democratic institutions. Indeed, nonvoters frequently explain their decision to forego their democratic rights by citing a lack of faith in the efficacy of voting while a majority of Americans, across the partisan divide, express anxiety about the influence of money on politics.

Politicians, rather than seeking to restore faith in democratic institutions and the rule of law, too often seek to capitalize on this growing cynicism. In many cases, they have become increasingly brazen in their efforts to thwart democratic accountability. In Wisconsin, during the most recent round of redistricting, legislators flagrantly solicited experts for partisan electoral maps—some labeled “Assertive” and “Aggressive” to reflect the strength of their party bias—and then asked those experts to go back and assure them that the effect would last the entire decade. Meanwhile, the North Carolina legislature went so far as to strip the governor of key executive powers when voters elected a governor of a different party. Legislatures in Wisconsin and Michigan followed suit after partisan losses in statewide races in 2018.


While these examples are particularly egregious, the fact is that elected officials routinely seek to insulate themselves from accountability at the polls. When Pennsylvania’s highest court struck down the Commonwealth’s gerrymandered congressional districts, it resulted in an evenly divided congressional delegation for the first time in over a decade.

Combined with a host of other political developments, these maneuvers make American elected officials only weakly accountable to their constituents. Indeed, research shows elected officials in both parties are significantly more responsive to the interests of high-income Americans and largely unresponsive (sometimes stubbornly so) to the concerns of Main Street. Political scientists Martin Gilens and Benjamin I. Page have quantified these inequalities in congressional responsiveness, reporting that when support for a given proposal among affluent Americans reaches 75%, one can expect the policy will be adopted 46% of the time, whereas when 75% of middle-class Americans support a policy, it “is adopted only 24 percent of the time.”

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9 See, e.g., MARTIN GILENS, AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA 113–17, 102–03 fig. 4.2 & 4.3 (2012) (demonstrating that legislators are most responsive to high-income Americans and least responsive to the poor and, further, that this differential responsiveness holds across all policy domains although it is starkest for economic policy); LARRY M. BARTELS, UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GILDED AGE 173–75, 287–89 (2008) (concluding that as it currently functions, the American political system allows policymakers “considerable latitude” to pursue their own goals, even with respect to “issues on which public opinion seems to be especially firm and stable” and attributing this agency problem to the ideological and partisan commitments of elected officials).

10 See, e.g., MARTIN GILENS, AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA 113–17, 102–03 fig. 4.2 & 4.3 (2012) (demonstrating that legislators are most responsive to high-income Americans and least responsive to the poor and, further, that this differential responsiveness holds across all policy domains although it is starkest for economic policy); LARRY M. BARTELS, UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GILDED AGE 173–75, 287–89 (2008) (concluding that as it currently functions, the American political system allows policymakers “considerable latitude” to pursue their own goals, even with respect to “issues on which public opinion seems to be especially firm and stable” and attributing this agency problem to the ideological and partisan commitments of elected officials).

11 Martin Gilens & Benjamin I. Page, Critics Argued with Our Analysis of U.S. Political Inequality. Here Are 5 Ways They’re Wrong, WASH. POST (May 23, 2016), https://www.washingtonpost.com/news/monkey-cage/wp/2016/05/23/critics-challenge-our-portrait-of-americas-political-inequalityheres-5-ways-they-are-wrong/ (noting further that the opposition to a policy by 25% of affluent Americans results in a 4% chance of adoption, whereas a policy similarly opposed by the middle class has a 40% chance of adoption). None of the main critics of Martin Gilens and Benjamin Page’s study substantially undermine these main findings or their conclusion that the United States is a democracy of coincidence. See, e.g., Omar Bashir, Testing Inferences About American Politics: A Review of the “Oligarchy” Result, 2 RES. & POL. 1, 1–2 (2015) (criticizing Gilens and Page’s quantitative method); Peter K. Enns, Relative Policy Support and Coincidental Representation, 13 PERSP. ON POL. 1053, 1058–60 (2015) (arguing that coincidental representation insures responsiveness to middle-income voters most of the time and concluding that “[i]f ‘rich people rule,’” it does not appear to be “at the expense of those in the middle”). For the original study see Gilens & Page, supra note 14 (basing the study on a data set that measured 1779 policy
Certainly, no one expects legislative policymaking in the American system to simply follow the public’s orders (especially as measured by public opinion polls). Still, it is not unreasonable for the public to be dismayed by the evidence that responsiveness to the concerns and preferences of the general electorate, where it occurs, is often largely coincidental\textsuperscript{12} or to object to the persistent disregard of its priorities—from sensible gun control to providing permanent legal status to childhood immigrant arrivals to raising the minimum wage.\textsuperscript{13}

Beyond the public, mounting evidence of stubborn imbalances in political influence has become a source of concern among scholars in various disciplines, including in law. In legal circles, two camps have come to dominate academic discussions about how to restore accountability and responsiveness to our democratic institutions.\textsuperscript{14}

The first, like the public, identifies the flood of money into electoral politics as the primary source of our troubles. Scholars in this school criticize the Supreme Court’s decision in \textit{Citizens United v. FEC}, blaming it for the rise of Super PACs and similar independent expenditure groups and for the recent flood of money in elections.\textsuperscript{15} They offer a variety of proposals aimed at reducing the influence of money in politics.\textsuperscript{16}

\textsuperscript{12} Martin Gilens & Benjamin I. Page, \textit{Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens}, 12 PERSP. ON POL. 564, 573 (2014) (concluding a study of policy responsiveness from 1981 through 2002 by observing that the United States has become a “democracy by coincidence”). It is worth emphasizing that none of the main critics of Professors Martin Gilens and Benjamin Page’s study substantially undermine their conclusion that the United States is a “democracy by coincidence.” \textit{See, e.g.}, Peter K. Enns, \textit{Relative Policy Support and Coincidental Representation}, 13 PERSP. ON POL. 1053, 1058–61 (2015) (conceding that “[c]oincidental representation appears to be the norm,” but rejecting the conclusion that this comes “at the expense of those in the middle”).

\textsuperscript{13} A third camp of good governance reformers are focused on barriers to the vote as well as redistricting. In general, however, this school is not connecting those barriers to the lack of responsiveness, so I do not include it as a camp here.

The second school points to political parties as the root of the crisis. In its typical form, current legislative dysfunction is attributed to polarization and the weakened position of party leaders relative to other partisan actors. Policy prescriptions in this second school often focus on campaign finance reforms as well: Good governance will be restored only when various legal rules, particularly campaign finance laws, are rewritten to restore the power of party leaders (e.g., by encouraging funds to flow into the political parties and their leaders and away from Super PACs and similar groups).

More recently, a nascent third approach has emerged in the legal literature. Looking beyond the usual suspects—money in politics, the state of our political parties and the near extinction of competitive elections—its focus is on reforms that would permit everyday Americans to exercise political power through organizations capable of providing a counterweight to the political influence that derives from wealth. Thus while it shares the progressive impulses of the first school, it objects to that school’s myopic focus on electoral spending. Extending the second school’s focus on organizations, the third school looks beyond parties and elections to civil society itself as a potential locus for responsiveness.

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18 For an overview and critique of this approach, see Tabatha Abu El-Haj, Networking the Party: First Amendment Rights & the Pursuit of Responsive Party Government, 118 Colum. L. Rev. 1225 (2018) [hereinafter Networking the Party] (critiquing this approach and offering an alternative account of our party system and its contribution to the deficit in responsiveness).

19 This is because party leaders are assumed to have greater interest in governing through compromise and moderation. The problem has been that as more money flows toward individual candidates and the independent expenditure groups that fund them party leaders have lost ground. See Issacharoff, supra note 20; Pildes, supra note 20.

20 Tabatha Abu El-Haj, supra note 18, 1127, 1130, 1132-33 (2016) (arguing, further, that the First Amendment’s requirement that there be significant routes for political influence lies at the root of regulatory challenges that have hampered campaign finance reform from the beginning).

21 Id. at 1129–30; Kate Andrias, Separations of Wealth: Inequality and the Erosion of Checks and Balances, 18 U. Pa. J. Const. L. 419, 421 (2015) (arguing that the exclusive preoccupation with polarization as the source of democratic dysfunction, especially in the separation of powers literature, obscures the role of organized wealth in undermining the Madisonian schema of
The central claim of this third school is that reversing recent trends toward extreme political and economic inequality requires strategies focused on bolstering the organizational capacity of non-elite Americans to enable them to more effectively participate in the political arena. Thus, Kate Andrias has argued that scholars should pay more attention to “facilitating the countervailing power of ordinary citizens and their organizations in governance.” And in prior work, I have made the case for why “those concerned about the outsized political influence of moneyed elites . . . [should] stop wasting their limited resources chasing after campaign finance reforms aimed at taking money out of politics and doctrinal theories aimed at justifying those reforms” and turn “their attention to the ways that law can enhance the civic and political organizations of ordinary Americans”—thereby “undercut[ting] the influence money buys, rather than the flow of money per se.”

Scholarship in this vein, to date, has focuses on a range of “interventions aimed at addressing inequalities in organizational capacity.” These have included ideas for how to reduce legal barriers to collective action as well as suggestions for how to create legal structures and levers that facilitate civic engagement. For example, K. Sabeel Rahman, taking the latter approach, seeks to identify and expand upon the opportunities that citizens have to influence “the bureaucratic processes of governance and policy implementation” insofar as the latter have become the “‘front-line’ institutions of governance.”

checks and balances and, in turn, democratic accountability and responsiveness).

22 See, e.g., K. SABEEL RAHMAN, DEMOCRACY AGAINST DOMINATION 3, 142–44 (2017) (arguing that to the degree “our current economic pathologies are rooted in disparities of economic and political power,” the solution is not to find narrow technocratic solutions to financial regulation, but to “build[] a more equitable, inclusive, and responsive democratic system”—one which activates civic associations by providing visible targets and levers for collective political action).

23 Kate Andrias, Confronting Power in Public Law, 130 HARV. L. REV. F. 1, 2 (2016); see also Separations of Wealth, at 440-44.

24 Beyond Campaign Finance Reform, at 1132-33.

25 Benjamin I. Sachs, The Unbundled Union: Politics Without Collective Bargaining, 123 YALE L.J. 148, 166 (2013) (noting further that the latter “enable[] groups to build political power that, like the power derived from wealth, is portable across processes of participation”).


27 RAHMAN, at 15, 22–23, 160–63 (arguing for agencies have become the “‘front-line’ institutions of governance” and, as such, it is critical to revamp administrative processes in ways that “affirmatively enhance the countervailing power of ordinary citizens”).
Underlying this approach is the recognition that “organization, like wealth, is itself a source of political power.” The power of organized labor during its heyday is illustrative. In the middle of the twentieth century, unions routinely leveraged their ability to mobilize workers to gain access to elected officials and leaders of both parties, thereby “compensate[ing] for the financial power of the business lobby.”

This Essay further develops this third approach by articulating its underappreciated theoretical contribution to current debates about democratic reform. What the third school embraces more fully than either of the others is that the measure of a democracy is the degree to which public policy, both legislative and administrative, fairly accounts for the preferences of civil society. It thus brings into relief the third piece of the democracy puzzle—civil society, emphasizing that our Constitution is predicated on a degree of responsiveness and accountability, even as it is designed to prevent kneejerk majoritarianism.

The source of our democratic dysfunctions, it follows, can stem from any of the three phases: political inputs (civil society), policy outputs (governance structures) or the electoral interface designed to underwrite that relationship.

To date, however, most scholarship in law has focused on identifying and redressing impairments in the electoral interface—redistricting, the state of political parties, ballot access provisions, allocation of representation or campaign finance rules. To a lesser degree, scholarship has attended to deficiencies in governance itself. But little attention has been paid to potential impairments in political inputs themselves.

This is a mistake. As far back as the nineteenth century, social theorists have understood that civil society—and civic associations in particular—play a critical role in underwriting the participation necessary for democratic responsiveness.

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29 Sachs, at 166-67.
30 JAKE ROSENFELD, WHAT UNIONS NO LONGER DO 157, 160-61, 181 (2014) (noting that “[g]iven labor’s strength, politicians from heavily industrialized locales with a strong union presence simply had no choice but to court labor’s vote, regardless of their own party allegiances”); see also JACOB S. HACKER & PAUL PIERSON, WINNER-TAKE-ALL POLITICS: HOW WASHINGTON MADE THE RICH RICHER—AND TURNED ITS BACK ON THE MIDDLE CLASS 140 (2010) (noting ways unions were able to effectively counter the efforts of business on a variety of fronts, including the minimum wage).
31 [Maggie McGinley, Hasen on Lobbying, internal structures of Congress].
32 See generally ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA. For similar claims about civil society in the modern era see ROBERT J. SAMPSON, GREAT AMERICAN CITY: CHICAGO AND THE ENDURING NEIGHBORHOOD EFFECT (2012) (reporting finding of study with Doug McAdam that shows civic participation is strongest in neighborhoods with the highest concentration of nonprofit organizations, other than Black churches); ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 344–47 (2000) [hereinafter BOWLING ALONE]
The inverse, unfortunately, is equally true: The absence or weakening of civil society can prejudice the democratic process.

The third school lays the foundation for reimagining the entire project of democracy reform. It permits us to see that the role of reformers need not be limited either to electoral reform or to devising site-specific interventions to improve participatory possibilities for individuals. The emphasis on civil society, to be clear, does not deny any of the other causes for the current state of democratic politics. Changes to the nature of elections and parties have all played a part in creating our current system. Instead, the point is that elections and political parties represent only one point of entry into American democracy; civil society, particularly civic associations, forms another.

Appreciating and developing that broader conception, however, requires some legwork. First, it requires a diagnosis. What are the weaknesses in civil society today that undermine its ability to foster a virtuous democratic circle from political participation to policy responsiveness. As we will see, the main problem today is not just the absence of individual and organized representation of many Main Street interests, but also the form of that representation. Changes in the form of civic associations since the 1970s compound the unrepresentativeness of individual and interest group participation. The organizations that do exist to represent Main Street have grown weaker, resulting in a dearth of civic groups capable of advancing democratic accountability and responsiveness through the power of broad political participation.

Second, it requires a reason to believe that something can be done about these weaknesses—including through law. Indeed, I would venture to speculate that the primary reason civil society has not been squarely in the forefront of legal efforts to reform our democracy is because that it is assumed that civil society exist in a space untouched by law.

This, then, is the central contribution of this Essay: Legislation does far more than distribute or deny benefits and rights to individuals. It shapes civil society by influencing individuals’ relationship to and participation in democracy, as well as the incentives that exist for building political organizations. The shape of


33 In other work, I have considered how these other causes might be addressed. See *Networking the Party*.
civil society is deeply entwined with law; civil society is neither independent of nor impervious to law.\textsuperscript{34}

The legal-institutional influence on civil society does not extend only as far as the First Amendment and the political culture of tolerance that is necessary to protect the freedom of speech, association and the press. Indeed, changes in the form of federal policymaking since the Reagan era has at once contributed to income inequality and to the inequalities in political mobilization and organization that impede the ability of low- and middle-income Americans to resist the political sway of elites and super-elites today.

Once we recognize that public policy as instantiated in legislation, regardless of its substantive area, will play some role in the trajectory of civil society and, hence, democracy, it is possible to more clearly envision a strategy for reversing the vicious democratic cycle and to move beyond the myopic focus on procedural reforms. It becomes apparent that any efforts to restore our democratic institutions must include the pursuit of policies that are likely to motivate individuals to participate in our democracy and to stimulate the reorganization of the interests of everyday Americans.

It is that task to which the Essay turns in Part III—a task that is particularly critical at this fluid moment in our politics. In 2019 (unlike in 2016 when I began this Essay), it is no longer possible to only emphasize the weakness of American democracy. Even as the weaknesses of American democracy remain abundant (and income inequality rises), the last two years have seen the emergence of important counter-narratives to our democratic story. The 2018 midterm elections witnessed the highest level of voter turnout in nearly a century. It also brought record numbers of women to office and presented a significant step forward in diversifying the membership of Congress. Most importantly, those outcomes, as we will see, were importantly a product of a civic revival.

Part III offers a model of what it would mean for lawyers (all lawyers including election lawyers) to begin to attend to law’s secondary effects on civil society, with ideas about the sorts of opportunities that are out there to be exploited. It argues that the burden of restoring American democracy can be shared, but law’s role must be expanded. Indeed, it acknowledges the limits of law but argues that these are less discouraging when we look to allies in politics, technology, and even philanthropy.

The critical stance toward reform, then, embodied in this Essay is that restoration of a robust civil society capable of organizing and mobilizing

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\textsuperscript{34} See generally \textit{Civil Society and Government} (Nancy L. Rosenblum & Robert C. Post eds., 2002).
ordinary Americans in ways that facilitate their ability to demand responsiveness and enforce accountability is by no means guaranteed. But it is also not foreclosed. This is a fluid moment in our democracy; a moment that presents an opportunity for law, politics, and technology—nudged perhaps by good governance philanthropists—to converge to make significant strides toward rebuilding, over the long haul, a participatory civil society capable of harnessing the political capacity of everyday Americans to demand the attention of elected officials.

Like the erosion of democratic institutions and norms, the restoration will necessarily be an incremental and complex process. The pertinent task is to identify opportunities while also identifying the corresponding constraints that will inevitably shape and limit those efforts.

Make no mistake. There are no silver bullet policy prescriptions in what follows. Instead, Part I identifies three critical weaknesses of contemporary civil society and the ways these weaknesses contribute to the stubborn imbalances in political influence in American politics. Part II explains the ways that legislation regulation has second-order effects on the political capacity of citizens in a democracy, and thus why legislation—regardless of subject matter—has a role to play in either reversing or reinforcing the current trend. Finally, Part III offers a template of what it might mean to expand the democratic reform agenda to reap the second-order effects on civil society of legislative policymaking. In doing so, Part III also acknowledges the constraints within which any reform efforts will operate and explains how that project could tie into other opportunities to revive muscular, participatory and heterogeneous civic associations.

**PART I: A CIVIC ACCOUNTING OF DEMOCRATIC VICES AND (LATENT) VIRTUES**

American civil society today is not well positioned to facilitate democratic accountability and responsiveness. For one, it suffers from unequal and unrepresentative citizen participation in all forums and stages of politics. For another, the differential organizational capacity of different constituencies creates a chorus of interest groups in Washington (but also in state capitols) in which some voices are better heard than others. Finally, a decline since the middle of the twentieth century of both private-sector unionism and class-integrated, mass-membership associations has compounded the effects of unequal and unrepresentative participation. Taken together, these three dynamics significantly undercut the representativeness of political inputs into
our democratic institutions, skewing policymaking in both legislatures and administrative agencies toward the interests of the wealthy.  

The failure of the George W. Bush administration to achieve the privatization of Social Security and Medicare—one of its signature campaign promises—nicely illustrates both current political vices and potential democratic virtues of American civil society. On the side of virtue, the untouchability of Social Security and Medicare highlight the power of everyday Americans, when organized in effective civic associations, to achieve political responsiveness, even in the face of opposition from moneyed interests. The snag for the Bush administration (as for others since) has proved to be the AARP, whose political muscle derives from its 38 million members, who vote regularly in large numbers.

At the same time, the sacred status of Social Security and Medicare illustrates the political vices of civil society and their contribution to the stubborn imbalances in political influence. The AARP’s wins frequently come at the expense of the needs of younger Americans. This is because civic associations like the AARP, with its ability to represent, mobilize and educate its members, are scarce in contemporary civil society. This scarcity enables the interests and perspectives of seniors to be overrepresented in American politics. Seniors turn out to vote and participate politically in various ways (and do so regardless of socioeconomic status), but their participation is not matched by other groups. As a consequence, the AARP reaps the rewards while the competing interests of younger Americans—e.g., affordable college or daycare—are routinely ignored. And therein lies a fundamentally vicious political cycle: American policymakers are much more generous to those who are well organized and participate (to seniors but more importantly to business and

35 See Kay Lehman Schlozman et al., The Unheavenly Chorus: Unequal Political Voice and the Broken Promise of American Democracy 118 (2012) (previewing finding that “neither active individuals nor active organizations represent all politically relevant segments of society equally”).


37 Cf. David Weigel, The Trailer: How Eight Years—and President Trump—Have Changed the GOP’s Tune on Medicare, WASH. POST (Oct. 9, 2018), https://www.washingtonpost.com/politics/paloma/the-trailer/how-eight-years-and-president-trump-have-changed-the-gop-s-tune-on-medicare/5bb9f691b326b7c8a8d18a8/?utm_term=.6495ca5c4f75.

38 Hacker et al., supra note 41, at 189.
socioeconomic elites) than to those that remain unorganized (young Americans, working families or the poor) and on the political sidelines.

The real lesson then is that our democratic institutions govern poorly when citizens are differentially and unequally organized in civil society. This Part systematically lays out the inequalities in political participation and that contribute to the stubborn imbalance in political influence as well as the historic transformations in the form of our civic associations that compound the effect.

**Unequal and Unrepresentative Political Participation**

American democracy has long suffered from a well-documented problem of unequal and unrepresentative political participation at all stages of political activity. But, unlike in the past, it is no longer tenable to dismiss the effect of unequal political participation on the grounds that those individuals who do participate are sufficiently representative to underwrite the legitimacy of the political inputs into the system.

**As Citizens**

Unequal and unrepresentative individual participation at all stages of political activity is well documented. Apart from seniors, the general rule is that individuals at the top of the socioeconomic ladder are much more likely to turn out on Election Day than those at the bottom. Since the early 1950s, approximately 90% of those in the highest quintile of socioeconomic status (SES) have participated in every election; by contrast, participation in the lowest SES quintile has only broken the 60% mark a handful of times.

Even when candidates and parties invest in mobilizing lower-income and minority voters, the class bias in the electorate remains: In 2008, for example, Americans with household incomes below the median made up only 38% of the electorate, despite representing 55% of the population; by contrast, individuals with incomes over $100,000 constituted 26% of the electorate, despite the fact

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39 SCHLOZMAN ET AL., supra note 23, at 147–262, 174 (noting that “[t]he ups and downs of participatory inequality do not seem to be related to other obvious factors—in particular, to growing economic inequality”).

40 Hacker et al., supra note 41, at 156, 189 (finding seniors to be “the one group for which a marked participatory bias favoring the affluent and educated does not exist”).

41 SCHLOZMAN ET AL., supra note 23, at 153 & Fig. 6.1.
that only 16% of the population has an household income above $100,000.\footnote{See Joe Soss & Lawrence R. Jacobs, \textit{The Place of Inequality: Non-participation in the American Polity}, 124 Pol. Sci. Q. 95, 97 (2009).} Further, this class bias is significantly worse for midterms and state and local elections.\footnote{See SCHLOZMAN ET AL., supra note 23, at 133; Adam Bonica et al., \textit{Why Hasn’t Democracy Slowed Rising Inequality?}, 27 J. ECON. PERP. 103, 111 (2013); see also Asma Khalid, \textit{On the Sidelines of Democracy: Exploring Why So Many Americans Don’t Vote}, MORNING EDITION (Sept. 10, 2018), https://www.npr.org/2018/09/10/645223716/on-the-sidelines-of-democracy-exploring-why-so-many-americans-dont-vote (noting both that voter turnout is extremely and consistently low in midterm elections as well as the fact that those who do not turn out are significantly more likely to be lower income and less educated). It is worth acknowledging, however, that while the affluent are more likely to turnout in every state, the magnitude of participation gap varies significantly by state. \textit{See, e.g.,} Patrick Flavin, \textit{Does Higher Voter Turnout Among the Poor Lead to More Equal Representation?}, 49 SOC. SCI. J. 405, 406, 410 (2012) (finding that “even as citizens at the bottom of the income distribution vote at rates approaching those at the top of the income distribution, their Senators are no more likely to reflect their opinions in their roll call voting decisions”); \textit{see also} Kim Quaile Hill & Jan. E. Leighley, \textit{The Policy Consequences of Class Bias in State Electorates}, 36 Am. J. Pol. Sci. 351, 355 (1992).}

Class is obviously not the only relevant characteristic when considering the representativeness of the electorate. Voters are also unrepresentative of the general electorate with respect to race, gender and age.\footnote{See SCHLOZMAN ET AL., supra note 23, at 216 & Fig. 8.4 (age) [fill in race, gender, and education]. \textit{But see} Lisa García Bedolla & Kerry L. Haynie, \textit{The Obama Coalition and the Future of American Politics}, 1 Pol., Groups, & Identities 128, 128 (2003) (noting that the overrepresentation of whites in the electorate is declining).} A recent review of validated voters in the 2016 election found that “compared with validated voters, nonvoters were more likely to be younger, less educated, less affluent and nonwhite.”\footnote{An Examination of the 2016 Electorate, Based on Validated Voters, PEW RES. CTR. (Aug. 9, 2018), http://www.people-press.org/2018/08/09/an-examination-of-the-2016-electorate-based-on-validated-voters/ (providing a visual graphic comparing demographics of voters and nonvoters).} They were also much more likely to affiliate themselves with the Democratic Party.\footnote{Id.} This same study found that “[j]ust 13% of validated voters in 2016 were younger than 30” as compared to 33% of nonvoters.\footnote{Id.} The 2018 midterms marked a significant improvement in this regard with CIRCLE estimating that approximated 31% of youth (ages 18-29) turned out to vote in the 2018 midterms.\footnote{Young People Dramatically Increase Their Turnout to 31%, Shape 2018 Midterm Elections, CIRCLE (Nov. 7, 2018), https://civicyouth.org/young-people-dramatically-increase-their-turnout-31-percent-shape-2018-midterm-elections/. In 2016, youth turnout was [ ]. This is distinct from youth share data that included adults ages 18-24.”} Age differentials are particularly significant, because they...
are partly attributable to the natural life-cycle.\textsuperscript{49} As such, there is a bona fide risk that American political institutions will invariably favor the interests of older citizens.\textsuperscript{50} By contrast, inequalities in rates of political participation with respect to both race and gender are largely, possibly even fully, explained by disparities in education and income.\textsuperscript{51}

This unrepresentativeness of political participation is even more pronounced when it comes to who volunteers and who donates to political campaigns.\textsuperscript{52} A 2016 study of campaign donors documents that the bulk of money coming into campaign coffers is coming from individuals who are disproportionately wealthy, white, male and old.\textsuperscript{53} These statistics are particularly troubling for at least two related reasons. First, both candidates and political parties are already under pressure to cater to the interests of their donor and activist bases, over and above their constituencies.\textsuperscript{54} Second, the prevalence of uncompetitive elections creates significant pressure on elected officials to be particularly solicitous to the views of campaign activists (including donors).\textsuperscript{55}

Inequality is not, moreover, limited to the electoral sphere: It shapes all aspects of political participation. From contacting members of Congress to

\textsuperscript{49} Schlozman et al., supra note 23, at 209.
\textsuperscript{50} Id. at 209, 231 (“Life-cycle differences seem to persist even after controlling for a large number of factors. In fact, the unexplained portion of the disparity between the most and least active age groups is actually twice as large as the initial gap in activity between African Americans and Anglo whites or between women and men—before anything else is taken into account.”).
\textsuperscript{51} Id. at 231 (noting that “a model focusing on the role of resources, motivation, and recruitment is able to account for participatory differences among demographic groups. . . . The disparity in participation between African Americans and Anglo whites disappears when racial differences in education and income are taken into account. The gap in activity between women and men can be fully explained by gender differences in education, income, civic skills, and political engagement.”).
\textsuperscript{52} Id. at 157–62.
\textsuperscript{54} Schlozman et al., supra note 23, at 251 (noting that incentives elected officials have to keep “the activists who provide the volunteer labor and dollars that make campaigns possible” happy and they ways that “[t]he need to pay attention to high-SES opinionated campaign activists has the potential both to tilt public policy away from the needs of the median voter”).
\textsuperscript{55} See id. at 251 (explaining that “[b]ecause the chances of losing an election are appreciable, parties and candidates have an incentive to provide ideological and social rewards to volunteers, who tend to be advantaged with respect to SES and to have opinions that are less centrist than those of the median voter” and, further, that this “need to pay attention to high-SES opinionated campaign activists has the potential both to tilt public policy away from the needs of the median voter”)}.
participating in political marches, lower-income Americans are significantly less likely to engage in American politics as compared to wealthier citizens.\textsuperscript{56} Protest participation offers one measure: Those who have engaged in protest marches in the first two years of the Trump presidency turn out to be better educated and more affluent than their fellow Americans, on average.\textsuperscript{57}

It is no longer tenable to dismiss the effect of unequal political participation on the grounds that those who did participate (especially on Election Day) are sufficiently representative to underwrite the legitimacy of the political inputs into the system.\textsuperscript{58} Those who do participate in our democracy tend to have different needs and views than those who do not. In their seminal 2012 study, Kay Lehman Schlozman, Sidney Verba and Henry E. Brady found, for example, that as compared to active voters, inactive voters are not only much more likely to report struggling to pay bills, to obtain healthcare and to find decent housing but also to have utilized public benefit programs. Even when the focus turns to political activists, differences persist.\textsuperscript{59}

The overrepresentation of socioeconomic elites among those individuals who participate politically creates an electorate with views much closer to those of

\textsuperscript{56} See Soss & Jacobs, supra note 50, at 97 (noting further that “[c]ompared to wealthier citizens, lower income Americans tend to vote at lower rates and to participate less in a variety of other political behaviors, including writing letters to members of Congress and protesting”).

\textsuperscript{57} Mary Jordan & Scott Clement, In Reaction to Trump, Millions of Americans Are Joining Protests and Getting Political, WASH. POST (Apr. 6, 2018), https://www.washingtonpost.com/news/national/wp/2018/04/06/feature/in-reaction-to-trump-millions-of-americans-are-joining-protests-and-getting-political/?utm_term=.8a283d45f4d5 (reporting that 44% of participants were at least 50 years old, 36% earned more than $100,000 and a large portion live in the suburbs); Sarah Kaplan, A Scientist Who Studies Protest Says ‘The Resistance’ Isn’t Slowing Down, WASH. POST (May 3, 2017), https://www.washingtonpost.com/news/speaking-of-science/wp/2017/05/03/a-scientist-who-studies-protest-says-the-resistance-isn-t-slowing-down/?utm_term=.ae1c47a9f838 (reporting that “[m]ore than three-quarters of participants at [Women’s March, the March for Science and the People’s Climate March] had at least a bachelor’s degree” and “53 percent [of those at the Women’s March] had a graduate or professional degree”). Nationally, only about one in three Americans hold a bachelor’s degree.

\textsuperscript{58} See John D. Griffin & Brian Newman, Are Voters Better Represented?, 67 J. POL. 1206, 1213–14, 1221, 1223 (2005) (concluding that “[w]hether or not a conservatively biased electorate can help elect a Republican, it seems to move Senators’ roll-call votes in a conservative direction”).\textsuperscript{59} But see Emily Badger, What if Everyone Voted? Or at Least Voted at Equal Rates., N.Y. TIMES (Oct. 29, 2018), https://www.nytimes.com/2018/10/29/upshot/what-if-everyone-voted.html (reporting on new data showing that even who is elected would likely change if the electorate were more representative).

\textsuperscript{59} SCHLOZMAN ET AL., supra note 23, at 132 (noting that activists from lower SES backgrounds had very different things to say about issues than their higher SES counterparts).
moneyed interests than those of the eligible electorate.\textsuperscript{60} The fact is that even as Americans do not like to discuss class, Americans from different socioeconomic backgrounds exhibit different preferences when it comes to economic policies (from welfare spending to taxes) and cultural sensibilities.\textsuperscript{61} As Schlozman and her colleagues note, the main problem is that “public officials are likely to “hear[] less about . . . matters” of significance to the socioeconomically disadvantaged because they are broadly inactive in politics.\textsuperscript{62}

In sum, who participates in politics—and more importantly who does not—matters a great deal for policymaking.\textsuperscript{63} Age offers the least contestable and most intractable illustration of this point. Young Americans today generally support gay marriage, hold a broad understanding of sexual harassment, recognize the persistence of racial discrimination, and have generally have more liberal outlooks as compared to their elders.\textsuperscript{64} The policy interests of Americans

\textsuperscript{60} Cf. Jeffrey A. Winters & Benjamin I. Page, Oligarchy in the United States?, 7 PERSP. ON POL. 731, 738 (2009) (explaining that “the likely sympathy or (at worst) indifference of most of the rest of the top 10 percent” to the intense interests of the super-wealthy, defined as the top tenth of 1% of U.S. households, likely explains their political successes); see also Benjamin I. Page & Cari Lynn Hennessy, What Affluent Americans Want From Politics 8–11 (Sept. 2–5, 2010) (APSA 2010 Annual Meeting Paper) (finding more differences between the political preferences of the top 4% of income earners and those of lower-income Americans, than between the top 33% of income earners and those of lower-income Americans, especially with respect to economic policy).

\textsuperscript{61} See, e.g., PEW RESEARCH CTR., MOST SEE INEQUALITY GROWING, BUT PARISANS DIFFER OVER SOLUTIONS 8 (2014), http://www.people-press.org/2014/01/23/most-see-inequality-growing-but-parisans-differ-over-solutions/2/ (finding significant differences between the views of those with family incomes of less than $30,000 and those with family incomes of at least $75,000, especially with respect to redistributive policies).

\textsuperscript{62} SCHLOZMAN ET AL., supra note 23, at 132.

\textsuperscript{63} SCHLOZMAN ET AL., supra note 23, at 118 (previewing finding that “activity by both citizens and organized interests makes a difference for public policy, and, if anything, public officials are disproportionately responsive to the affluent and well-educated members of their constituencies”); see also id. at 141–44 (reviewing recent review of literature on relationship of public input to policy responsiveness). But see Stuart N. Soroka & Christopher Wlezien, On the Limits to Inequality in Representation, 41 PS: POL. SCI. & POL. 319, 321, 323–24 (2008) (arguing that the policy consequences of unequal representation are insignificant because only rarely—such as in relation to tax and welfare policy—do low and high-income Americans differ in their policy preferences).

with respect to government spending priorities also vary by age. Older Americans, not surprisingly, prioritize maintaining Social Security and Medicare over government spending on either K-12 or higher education.\textsuperscript{65} Differences in policy preferences bleed into partisanship, with young Americans overwhelmingly identifying with the Democratic Party, while older Americans are more evenly divided in their party allegiances.\textsuperscript{66}

A threshold level of representative political participation at the individual level is, therefore, necessary not only to legitimate the system but to ensure a measure of accountability and responsiveness.

_of Organizations_

The effect of unequal and unrepresentative participation on political inputs extends beyond individuals. Despite the plethora of public interest organizations, the interests of Americans are not equally organized. Such differences in organizational presence matter because individual political participation, even if representative, cannot create an effective counterweight to elite interests in the absence of organizations. Influencing legislative priorities and executive policymaking as well as mobilizing likeminded citizens each require the capacity to coordinate and share information. Everyday citizens must be organized to demand responsiveness.

Business and other economic interests are much better organized than those of citizens.\textsuperscript{67} Even when it comes to everyday Americans, some interests are better organized than others: The interests of part-time workers, parents of young children, and the beneficiaries of means-tested federal programs essentially lack a presence in Washington.\textsuperscript{68} These associational inequalities significantly hamper the current capacity of American civil society to demand accountability and responsiveness for everyday Americans. As leading researchers have concluded, it is beyond dispute that “the voices of advocates for

\textsuperscript{65} SCHLOZMAN ET AL., supra note 23, at 205–09.


\textsuperscript{67} SCHLOZMAN ET AL., supra note 23, at __.

\textsuperscript{68} See id. at 344.
broad publics and the less privileged are . . . muted” in the chorus of American interest group politics.\textsuperscript{69}

The most salient axis of organizational inequality in the New Gilded Age is economic. While the public (and the legal academy) has been preoccupied with \textit{Citizens United v. FEC} and the flood of money it has unleashed into electoral politics, political scientists were alerting to the increasing solicitude of government officials to affluent citizens and donors well before \textit{Citizens United}—attributing it to their increasing organizational advantage as compared to the middle class.\textsuperscript{70}

In 2012, Schlozman, Verba and Brady published a longitudinal study of federal interest groups documenting the various inequalities that shape the so-called “unheavenly chorus” of interest group politics. First and foremost, their work confirms what has been long recognized: The bulk of civic groups engaging with Congress represent American business interests.\textsuperscript{71} Altogether, “more than half, 53 percent, [of all organizations active in Washington] represent business in one way or another.”\textsuperscript{72} Indeed, most of the groups engaged in politics in Washington represent institutional interests, not people.\textsuperscript{73} Associations with individual (as opposed to organizational) members constitute only about an eighth of the groups engaged in Washington politics.\textsuperscript{74}

\begin{footnotes}
\footnote{69} \textit{Id.} at 443.
\footnote{70} \textit{Am. Political Sci. Ass’n Task Force, American Democracy in an Age of Rising Inequality, 2 Persp. on Pol.} 651, 657 (2004).
\footnote{71} \textit{Apsa Task Force,} at 657; Kay Lehman Schlozman et al., \textit{Inequality of Political Voice, in Inequality and American Democracy: What We Know And What We Need to Learn} 19, 53 (Lawrence R. Jacobs & Theda Skocpol eds., 2005) (reviewing literature and concluding that “[t]he set of organized political interests continues to be organized principally around economic matters . . . and to be dominated by business and the professions”); \textit{see also} Alexander Hertel-Fernandez & Theda Skocpol, \textit{Asymmetric Interest Group Mobilization and Party Coalitions in U.S. Tax Politics, Studies in Am. Pol. Dev.} 1 (2015) (demonstrating influence of pressure from interest groups representing small businesses on Democratic Party as well as how the emergence of such groups can be connected to feedback effects of prior changes in tax policy).
\footnote{72} \textit{Schlozman et al., supra} note 23, at 322. The quantitative study is based on an analysis of organizations listed in the 1981, 1991, 2001, and 2006 \textit{Washington Representatives} directory and was undertaken in recognition that “much has changed in Washington politics” since E.E. Schattschneider and Mancur Olson wrote about interest group formation. \textit{Id.} at 317. The data set does not include organization that only have a presence in state and local politics.
\footnote{73} \textit{Id.} at 265 (noting that while “many individual participatory acts . . . are undertaken in the context of organizations” not all organizations represent individuals or foster their political participation). Overall, less than a third had members of “any kind” i.e., individuals, business or trade groups or businesses. \textit{Id.} at 319.
\footnote{74} In 2001, for example, “only 12 percent of the organizations listed in the \textit{Washington Representatives} directory were associations of individuals.” \textit{Id.} at 319–20 & Tab. 11.2 (reporting
\end{footnotes}
Second, their study shows that Americans from lower socio-economic statuses (SES) are significantly less likely to belong to an organization that takes a stand on public issues, as compared to their high SES counterparts. They find that “unless they are members of unions, those whose work is unskilled have no occupational associations at all to represent their interests in Washington.”

Concretely, this means that the bulk of America’s low-skill workers—“bellhops, telemarketers, hotel desk clerks, laundry workers, bus drivers, bartenders, custodians, bank tellers, or tool and die makers”—have no means of influencing Washington politics, unless they happen to be unionized. During the period of the study, “more than 90 million American workers [were employed] in nonprofessional and nonmanagerial occupations.” Of course, many individuals engaged in low-skill occupations are represented by unions. The problem is that the proportion of the American workforce that is unionized had declined to a mere 10.5%, with private sector unionism falling to closer to 6.4%.

Second, they found that organizations that advocate on behalf of the poor are relatively scarce and “there is not a single organization that brings together recipients of means-tested government benefits such as Medicaid acting on their own behalf.” The over 70 million Americans who are dependent on Medicaid and CHIP are forced to rely on professional organizations to advocate on their behalf—organizations that, by their own report, are woefully inept at incorporating beneficiaries.

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75 HACKER & PIERSON, supra note 27, at 140 (reporting that difference at one-third as likely).
76 SCHLOZMAN ET AL., supra note 23, at 346, 328.
77 Id. at 328, 346 (noting that “other than unions, there are no occupational associations at all to organize those who labor at low-skill jobs”).
78 SCHLOZMAN ET AL., supra note 23, at 328. In 2014, “about 10 percent of the active workforce . . . were self-employed” (approximately 14.6 million people) and an additional 29.4 million worked for self-employed individuals. Drew DeSilver, 10 Facts About American Workers, PEW RES. CTR. (Sept. 1, 2016), http://www.pewresearch.org/fact-tank/2016/09/01/8-facts-about-american-workers/.
79 Bureau of Labor Statistics, News Release: Union Members—2018 (Jan. 19, 2019) (noting that that percentage represents about 14.7 million Americans and constitutes a decline in nearly 10 percent and 3 million union workers since 1983, the closest year for which there are comparable figures).
80 SCHLOZMAN ET AL., supra note 23, at 321 & Tab. 11.3, 346.
81 JAMILA MICHEENER, FRAGMENTED DEMOCRACY 1152–56 (2018) (reporting that “the role of actual beneficiaries in shaping the advocacy of professional organizations . . . was woefully limited”); see also id. at 11 (noting that “[a]s of 2017, more than 70 million Americans had health coverage through Medicaid); October 2018 Medicaid & CHIP Enrollment Data Highlights,
The pattern is different for higher SES Americans. Those whose work requires higher educational attainment are much more likely to belong to a membership organization representing their profession. College-educated professionals, in particular, are comparatively well organized: Half of the groups representing individuals on basis of occupation in Washington are associations for professionals. Individuals with higher levels of educational attainment are also “much more likely than those lower down to be affiliated with a political organization” and to report having taking an active leadership role within those political organizations. All these facts “reinforce the upper-class accent of the heavenly chorus.”

Finally, differential organization continues well beyond socioeconomic disparities. In all, the number of Americans involved in groups associated with


82 SCHLOZMAN ET AL., supra note 23, at 325–26 (reporting that “those who do work that requires high levels of education—and, to a lesser extent, confers high levels of income—are very likely to be represented by an organization in Washington. In contrast, with the exception of unions, those who do unskilled work have no occupationally based membership groups at all to represent them”).

83 Id. at 327 (including “criminal defense lawyers, plant physiologists, landscape architects, historians” and reporting further that even among groups organized around identity politics, a good number represent the interests of professionals from that group).

84 Id. at 377; see also id. at 378 & Fig. 13.2 & 13.2 (emphasis added) (further summarizing that “[w]hen we restrict our purview to members of political organizations, we find that, compared to those in the lowest SES quintile, those in the highest quintile are nearly twice as likely to have attended a meeting, nearly three times as likely to have been active, and more than three times as likely to have served on the board or as an officer”).

85 Id. at 380 (“Not only are the well-educated and affluent more likely to be affiliated with political organizations, but, even among members, they are also more likely to be active in those organizations and to serve on the board or as officers.”); see also id. at 377–78 & Fig. 13.2 (further summarizing that “[w]hen we restrict our purview to members of political organizations, we find that, compared to those in the lowest SES quintile, those in the highest quintile are nearly twice as likely to have attended a meeting, nearly three times as likely to have been active, and more than three times as likely to have served on the board or as an officer”).

86 Id. at 346, 380 (concluding that “the economically disadvantaged are underrepresented in pressure politics”).
public goods from clean water to safer streets “is far smaller than the proportion who would benefit from those conditions.” While it is not surprising that the interests groups that exist underrepresent both broad, diffuse interests in public goods and those with fewer means, this too has significant implications for policymaking.

In all, the result is that the chorus of interest groups in American politics is not representative of the full spectrum of interests. This is significant because civic associations, even those that are not politically oriented per se, have long been recognized as engines of informed mobilization capable of mitigating the struggles even politically-engaged voters have staying informed about politicians or policymaking. Indeed, the presence of powerful civic associations frequently results in the adoption of social welfare policy preferred by lower and middle-class Americans, even over the objection of economic elites.

From Elks to Policy Wonks: The Changing Character of Civic Associations

To be sure, the problem that not all interests in the United States are equally organized is not new. Nevertheless, its significance is compounded by the fact that, for the most part, those civic groups that do exist to represent the interests of ordinary Americans are no longer capable of sustaining civic engagement in ways that produce responsiveness and enforce accountability. As we will see, the current structural weakness of contemporary civil society as an engine for the broad interests of the electorate goes well beyond the absence of representation. It also lies in the form of that representation.

Civic Associations: Past

87 Id. at 54.
88 It is well-established that classic collective action dilemmas, most particularly those associated with transaction costs and free-ridership, pose significant barriers to the formation of representing diffuse interests. Moreover, once one moves from theory into the real world, the fact is that certain groups lack resources (from money to civic skills) to overcome transaction costs. Id. at 278, 316, 345 (noting that the “formal presentation of the free rider problem often miss the differences among constituencies in their ability to bear those costs” and thus the ways that “resource constraints have a powerful impact on which voices are heard through the medium of collective advocacy”).
90 Gilens, supra note 13, at 272–74 (noting presence of powerful civic associations accounts for when adoption of social programs for the middle class even when opposed by moneyed interests).
Understanding this claim requires a clear picture of what American civil society looked like before the great social movements of the twentieth century. Until the early 1970s, American civil society was populated by federated organizations with dues-paying membership from the working and middle class dominated civil society.\textsuperscript{91} While formed for nonpolitical ends, associations from the American Legion and Knights of Labor to the National Congress of Mothers (the predecessor to the Parent Teacher Association) fostered democratic participation and responsiveness in myriad ways, both direct and indirect. Although many of these organizations partook of racial exclusion and sex-segregation based in stereotyped gender norms, comprehending their political virtues are critical to any effort to rebuild the political muscle of ordinary Americans.

First, the great unions and civic associations that dominated American civil society from the Civil War to the middle of the twentieth century were structured around regular in-person meetings. The face-to-face and personal quality of civic engagement fueled their political power. This is because, contrary to popular belief, relationships and social networks, far more than ideology and belief, drive political recruitment and mobilization.\textsuperscript{92} While money, education, civic skills and political interest all play a significant role (thereby increasing the socioeconomic bias in the electorate),\textsuperscript{93} the empirical research consistently finds individuals much more likely to respond to calls for political action if they have a

\textsuperscript{91} Theoda Skocpol, Diminished Democracy: From Membership to Management in American Civil Life 153–57, Tbl. 4.3 (2003) (documenting the decline in membership in classic mid-twentieth century federated civic associations both sex-segregated ones such as the American Legion, the American Bowling Congress and the General Federation of Women’s Clubs, and those that were gender integrated, such as the PTO and the Scouts); see also id. at 163–71 (arguing that while the evidence is mixed it is unlikely that membership has simply transferred to more locally oriented groups); accord Bowling Alone, supra note 29, at 30–35 (arguing finding a drop off in small face-to-face civic organizations after the 1960s as fewer individuals opted to join such groups).

\textsuperscript{92} See Henry H. Brady et al., Beyond SES: A Resource Model of Political Participation, 89 AM. POL. SCI. REV. 271, 285 (1995) (concluding that “motivations such as interest in politics are not enough to explain political participation”).

\textsuperscript{93} See, e.g., Florence Passy, Social Networks Matter. But How?, in Social Movements and Networks: Relational Approaches to Collective Action 21, 24, 34 (Mario Diani & Doug McAdam eds., 2003) (reviewing literature showing that a primary path by which individuals disposed to take political action are connected to opportunities to do so is through social ties). For an overview of both other individual factors and different approaches to explaining political participation, see Brady et al., supra note 99, at 271, and Michener, supra note 89, at 26–27, Fig. 2.1.
social connection—even a distant one—to the person making the ask. Indeed, some researchers attribute the higher rates of political participation among those with higher levels of educational attainment to the fact that they are more likely “to be located in the social networks through which requests for political activity are mediated.”

A second significant source of political strength of the civic groups formed after the Civil War was that “virtually all [local] chapters included men or women of different occupational and class backgrounds.” One measure is the civic groups that veterans of World War II joined on returning home: Even among veterans with graduate education, only half of their civic memberships were in elite professional groups. The other half were civic groups that included members of various socioeconomic classes.

The resulting socioeconomically integrated, if not racially integrated, social networks provided breadth to potential social and political movements. Socioeconomic integration also served a second important function: It grounded political elites in the experiences of their fellow Americans. Where politicians had to build a broad social network, bound by personal ties, starting with their home community, “leaders and would-be leaders, no matter how privileged in the larger society” were forced “to interact with a wide range of their fellow citizens.” The irony, in other words, is that the sex-segregated and racially exclusionary associations of the past “encouraged a two-way linkage between members and leaders” through their participatory structures.

Finally, many civic groups at the time were democratically governed federated associations. Democratic governance served multiple civic capacity building functions. Most importantly, it facilitated the development of civic

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94 See generally SIDNEY VERBA ET AL., VOICE AND EQUALITY: CIVIC VOLUNTARISM IN AMERICAN POLITICS 3–4 (1995) (finding that “[t]hose who have both the motivation and the capacity to become active are more likely to do so if they are asked” and further that motivation and capacity themselves arise out of social experiences, institutions, and associations).
95 SCHLOZMAN ET AL., supra note 23, at 150.
96 SKOCPOL, supra note 98, at 108; see also id. at 110 (noting further that biographies of prominent businessmen, politicians and professionals and their wives often involved long accounts of their membership in the same civic associations that record numbers of ordinary Americans joined as well).
97 METTLER at 129 (reporting further that “[o]nly about 20 percent of veterans with college or graduate education were active only in organizations with other elites, while fully 80 percent or more counted cross-class organizations among their memberships).
98 Id. at 108; see also id. at 113 (noting that, in the absence of the mass media, men aspiring to political power “necessarily participated in and . . . buil[t] extensive interpersonal networks not confined to particular occupational or social circles”).
99 Id. at 108.
skills. Weekly and monthly meetings of the local chapter, even when largely social, had to be organized. Individuals were asked to run for offices within the group, to vote, and to participate in the federated structure if elected. This required civic skills. Moreover, given that membership was typically socioeconomically integrated, these civic skills accrued to individuals without high levels of educational attainment.\textsuperscript{100} Beyond skills, the fact that internal governance structures were modeled on the U.S. Constitution meant everyday Americans were socialized into the representative, deliberative and organizational practices of democracy as well as into its republican values.\textsuperscript{101} Finally, federated structures furthered political responsiveness by enabling political coordination at scale (state-wide) and across geographic regions (national).

Unions, though neither socioeconomically integrated nor formally federated, accomplished similar goals by linking local units into a national operation. Moreover, the organization of unions around worksites capitalized on social ties. Unions regularly leverage their social networks to mobilize workers and to gain access to elected officials and party leaders.\textsuperscript{102} Meanwhile, internal governance structures fostered civic and political skills among non-college educated and lower middle-class members. As Jake Rosenfeld notes, “[unions] boosted the political participation of non-elites, giving voice to the policy preferences of the working and middle class.”\textsuperscript{103}

In all, the unions and federated, membership-based, voluntary associations that existed through the mid-twentieth century, despite their many vices, had one invaluable democratic virtue: They fostered a virtuous circle of civic mindedness, political engagement and policy responsiveness.\textsuperscript{104}

The result was the passage of the most generous redistributive federal programs in American policymaking, from Social Security and Medicare to the Civil Rights Act and the Voting Rights Act.\textsuperscript{105} The G.I. Bill, the single greatest economic equalizer for white men, but also a critical catalyst for leadership in the Civil Rights movement, was the brainchild of the American Legion, which was involved in its drafting after World War II.\textsuperscript{106} Unions, meanwhile, were able

\textsuperscript{100} Id; see also SCHLOZMAN ET AL., supra note 23, at 48.
\textsuperscript{101} SKOCPOL, supra note 98, at 98–115.
\textsuperscript{102} ROSENFELD, supra note 26, at 157.
\textsuperscript{103} Id. at 181.
\textsuperscript{104} SKOCPOL, supra note 98, at 117–24.
\textsuperscript{105} Hacker et al., supra note 41, at 183–85 (reviewing the literature).
\textsuperscript{106} SUZANNE METTLER, SOLDIERS TO CITIZENS: THE G.I. BILL AND THE MAKING OF THE GREATEST GENERATION 18–22 (2005) (describing the critical force the American Legion was in both
to effectively counter the efforts of business on a variety of fronts, including the minimum wage.\textsuperscript{107}

\textit{Civic Associations: Present}

American civil society looks quite different today. Economic and social changes since the 1970s radically shifted the structure and texture of American civic associations. National networks of membership-based associations that fostered an active form of civic and political engagement have largely been replaced by policy-shops located in major metropolitan areas, staffed by professionals, and focused on national politics. Meanwhile, economic and political changes have significantly reduced the scale and power of unions, especially in the private sector.

Although the precise dynamics are contested,\textsuperscript{108} membership levels in both federated organizations dropped precipitously since the 1970s.\textsuperscript{109} Theda Skocpol, for instance, finds that membership in the federated, socioeconomically integrated associations that had long been at the center of American civil society has dropped by 60\% as compared to a 28\% drop for professional societies.\textsuperscript{110} Even veterans’ groups were not immune.\textsuperscript{111}

At the same time that traditional groups were losing local members, the political-economy of civil society changed in ways that undermined the incentivizes for new organizations to invest in building membership or cultivating leadership. In particular, the enactment of federal legislation directly responsive to the interests of the recent social movements along with the introduction of private and federal grants to subsidize their work spurred the professionalization of civil society groups.

drafting the G.I. Bill and generating widespread support for it by utilizing its grassroots network in order to overcome modest ambitious of Roosevelt administration).\textsuperscript{107} HACKER & PIERN, \textit{supra} note 27, at 140; Hacker et al., \textit{supra} note 41, at 115; see also Sachs, supra note 25, at 169–71 (reviewing literature on historic political power of unions).

\textsuperscript{108} The most prominent debate has been between Robert Putnam and Theda Skocpol. Putnam attributes the lion’s share of the change to generational replacement. \textit{See BOWLING ALONE, supra} note 29, at 266–73. Skocpol, however, is skeptical that generational change can account for the abruptness of the shift. In her view, change was due, at least in part, to the fact that the racist and sex-segregated traditions of these groups became increasingly off-putting to young adults in the 1970s. \textit{See SKOCPOL, supra} note 98, at 175, 178–82.

\textsuperscript{109} \textit{Id.} at 212–19, Fig. 5.9 & Fig. 5.10.

\textsuperscript{110} \textit{Id.}

\textsuperscript{111} Skocpol argues that the nature of the conflict in Vietnam and the ambivalence about the war at home undercut the appeal of veterans’ associations to those returning from Southeast Asia. \textit{Id.} at 175, 178–82.
Pulled toward lobbying in Washington and litigating in the courts, the civic groups of the 1970s and 1980s drew away from both local community engagement and electoral politics. Groups abandoned the practice of shared governance with regular meetings, volunteers, and locally cultivated leaders and have lost the socioeconomic integration of the membership base that does remain. Indeed, a recent study of 12,000 civic associations found that only 11.9% were truly membership-based, defined as relying on volunteers and governing through elected members.

Professionally managed and foundation funded, contemporary civic associations, as a result, are typically “staff-heavy . . . [and] managed from the top.” The membership-drives that remain are increasingly a matter of direct mail (now email) with the goal of recruiting “paper memberships” and small donations. To be sure, some membership-based groups, including the National Lawyers Guild and the League of Women Voters, have persisted, while new membership based groups, particularly at the local level—such as the Kensington Welfare Rights Union—have been founded since the 1970s. For the most part, however, these groups have lost their numbers. Meanwhile, hybrid civic groups like the AARP are, unfortunately, few and far between, even among those groups that do seek to represent the interests of ordinary Americans. And groups like the ACLU, which technically have members, including in local chapters, can reasonably be characterized, as Robert Putnam observes, as “mailing list organizations” insofar as “membership . . . means moving a pen, not making a meeting.”

At the same time, changes in the American economy as well as legal policies took their toll on unions, including their capacity to empower their members politically. A variety of changes in the American economy have meant that union membership is increasingly concentrated in the public sector, where its political effects are significantly less redistributive. Public-sector union members are on

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112 Id. at 200–02, 206–10.
113 HAHRIE HAN, HOW ORGANIZATIONS DEVELOP ACTIVISTS: CIVIC ASSOCIATIONS & LEADERSHIP IN THE 21ST CENTURY 4–5 (2014) (noting further that study was limited to organizations that made claims in the public sphere).
114 SKOCPOL, supra note 98, at 224.
115 Id. at 206–10.
116 Founded in 1991, the Kensington Welfare Rights Union is a social justice group of, by, and for the poor and homeless operating out of Philadelphia. [cite to SSN Podcast]. The National Lawyers Guild, a democratically structured, membership driven, federated organization was founded in 1937; the League of Women Voters in 1920. History, LWV https://www.lwv.org/about-us/history (last visited Feb. 1, 2019).
117 BOWLING ALONE, supra note 29, at 51.
average better educated and thus less susceptible to the union-effect on political capacity. The fact that “[among high school drop outs in the private sector, union members’ probability of voting is 11 percentage points higher than for otherwise similar non-members” is only as remarkable as the number of high school drop outs that remain union members.

Unions obviously remain a political bulwark for low- and middle-income Americans, despite significant declines in membership. For one, they remain remarkably effective at boosting voter turnout, especially among the least educated and least well represented in the electorate. For another, union members also tend to join more civic associations and frequently encourage nonunion family members to vote. Indeed, states with higher concentrations of unions in the electorate tend to have higher turnout rates.

Still, their ability to provide a political counterweight to the interests of economic elites is significantly undermined by the losses in membership among workers without college degrees in the private sector. As such, the collapse of private-sector unions has fed both the economic and political inequality of the

118 Id. at 64–67, 164–70 & Fig. 7.1 (showing that in 1973, less than twenty percent of union members worked in the public sector whereas by 2009 they comprise the majority while arguing that “[a]s unions concentrate in the public sector, their historical role representing those with comparatively low education and income levels is reduced”).

119 Id. at 173 (noting that “[f]urther up the educational spectrum, the gap in turnout differentials shrinks” although, interestingly, “the union vote premium among private-sector college graduates is nearly twice the public-sector premium”).

120 Sean McElwee, How Unions Boost Democratic Participation, AM. PROSPECT (Sept. 16, 2105), https://prospect.org/article/how-unions-boost-democratic-participation (noting that 52% of union workers voted in the 2014 midterm, compared to 39% of non-union workers); Richard B. Freeman, What, Me Vote?, in SOCIAL INEQUALITY 703, 714 (Kathryn M. Neckerman ed., 2004) (noting that “[u]nion members have about a four-percentage-point higher probability of voting than non-members”); ROSENFELD, supra note 26, at 173 (reporting that “[u]nion vote effects are largest for the least educated” and offering as an example that “[a]mong high school drop outs in the private sector, union members’ probability of voting is 11 percentage points higher than for otherwise similar non-members”); see also id. at 163 (noting that, other than churches, unions are the only organizations capable of drawing out non-elite voters (defined as those who do not otherwise have the SES to predict turnout) on a large scale).

121 McElwee, supra note 129, at 3 (reporting that “individuals living in a union household are 2.5 points more likely to vote and register” after controlling for other factors).

122 Benjamin Radcliff & Patricia Davis, Labor Organizations and Electoral Participation in Industrial Democracies, 44 AM. J. POL. SCI. 132, 135, 137 (2000) (finding approximately 6.5% increase in turnout as levels of unionization become significant, which is about the same as effect due to a higher educated electorate and also comparable to trends in cross-national study, which in turn were slightly larger than increases associated with either mandatory voting or proportional representation).
New Gilded Age “by reducing the political voice of those lacking in a college education.”  

The political consequences of the demise of both private-sector unionism and the class-integrated, mass-membership associations has been profound. For one, there is a dearth of civic groups capable of advancing democratic accountability and responsiveness through the power of broad political participation. Mid-twentieth-century civic associations drew political strength from both their social networks and their governance structures. Face-to-face participation created strong social ties, capable of generating time consuming and substantial political action while associational breadth derived from both their socioeconomic integrated membership enhanced their capacity for effective political mobilization. Meanwhile, their governance structures solved a host of problems relating to scale and sustainability that grassroots community organizations today often face.

The demise of both private-sector unionism and the class-integrated, mass-membership associations has led those civic associations that remain to represent Main Street interest to step back from fostering active forms of civic and political participation.

The absence of members renders most groups that seek to represent the larger public interest incapable of promoting democratic responsiveness to the electorate writ large. Once again, the AARP illustrates the problem well. The AARP’s political muscle ultimately derives from the fact that it has nearly 38 million members, who contribute over $295 million in membership dues each year, and who politicians know vote regularly. While many of its members simply write checks to the organization in order to receive newsletters and discounts, the organization also comprises 1,300 local chapters. These advertise themselves as providing an opportunity for newly relocated or widowed members to make new friends but also pursue civic-minded projects. In this way, these face-to-face settings provide a human backbone to the organization, notwithstanding that they lack formal organizational rights. The AARP has

123 Id. at 183 (noting that demise of private-sector unions has “reconfigured the electorate by reducing the political voice of those lacking in a college education”).
124 See SCHLOZMAN ET AL., supra note 23, at 118 (previewing finding that “neither active individuals nor active organizations represent all politically relevant segments of society equally”).
proven to be a stalwart advocate for the interests of seniors even when that has required breaking with its liberal allies.126

In particular, there is good reason to believe that the absence of fraternity in the vast majority of contemporary civic associations that seek to vindicate the public interest undermines their ability to generate the kind of political activity that is necessary to hold elected officials accountable. Relationships and social networks, far more than ideology and belief, drive political recruitment and mobilization. Research comparing activists and non-activists with similar beliefs consistently finds that ideological predisposition and levels of interest prove much less important in explaining who takes political action as compared to organizational ties and social connections. Doug McAdam’s seminal study of the Freedom Rides was probably the first to draw attention to this point: In comparing accepted applicants to the Freedom Rides, he found that prior personal connections, not ideological commitment, distinguished those who participated in the Freedom Rides from those who applied but failed to turn up.127 More recently, in The Making of Pro-Life Activist, a study of the path to pro-life activism, Ziad W. Munson shows how pro-life activism, including picketing of clinics, cannot be explained by either demographics or ideological beliefs, but is instead the result of “[t]he organizations and relationships they have in their lives—and especially at times when their lives are dramatically changing.” 128

126 [update these figures] AARP, Consolidated Financial Statements Together with Report of Independent Certified Public Accountants (December 31, 2015 and 2014) (representing just under 20 percent of its annual operating revenue), available at http://www.aarp.org/content/dam/aarp/about_aarp/annual_reports/2016/2015-financial-statements-AARP.pdf (last visited Mar. 14, 2017). In the early 2000s, for example, the AARP supported the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, on the grounds that it could not oppose the most significant enlargement of benefits to seniors in decades. This move was not uncontroversial and some 60,000 of its members resigned or failed to renew their membership. See generally Thomas R. Oliver et al., A Political History of Medicare and Prescription Drug Coverage, 83 MILBANK Q. 283 (2004).

127 See, e.g., Doug McAdam, Recruitment to High Risk Activism: The Case of the Freedom Summer, 92 AM. J. SOC. 64 (1986) (finding that notwithstanding similar levels of time and motivation participants in the 1964 Freedom Summer had deeper personal and organizational connections to the Civil Rights movement); see also Doug McAdam & Ronnelle Paulsen, Specifying the Relationship Between Social Ties and Activism, 99 AM. J. SOC. 640, 656–60 (1993) (reanalyzing the data and concluding that political commitments had to be reinforced by social ties formed in organizations before it yielded high-risk activism and further that continued contact with activist friends from the Civil Rights movement sustained activism and political engagement over the long term).

128 ZIAD W. MUNSON, THE MAKING OF PRO-LIFE ACTIVISTS: HOW SOCIAL MOVEMENT MOBILIZATION WORKS 44, 20 (2008) (demonstrating that “mobilization occurs when people are drawn into activism through organizational and relational ties, not when they form strong beliefs about
Summarizing his research for a popular audience, Munson explains: “pro-life activism begins not because of any epiphany . . . about the evils of abortion—but because [individuals] bump[] into someone already in the pro-life movement . . . a friend, neighbor, or work colleague in the course of an ordinary day” and accept their invitation to go to an anti-abortion meeting or activity.129 Indeed, almost a quarter of the activists he interviewed considered themselves to be pro-choice at the time of their initial foray into the movement while many more were ambivalent or unclear about their pro-life commitments.130 These finds are particularly relevant when one recognizes that individuals are most likely to be recruited into politics through connections formed in civic associations.131

Professionalized civic associations may speak loudly, but they have lost the political power that comes from the capacity to mobilize voters and thus provide only a weak counterweight to the political power money buys.132 Organizations of professional policy wonks “tend to gravitate toward upper-middle-class constituencies” and to prioritize lobbying and litigation over citizen engagement
and mobilization.133 Both tendencies are fed by the dependence on foundations.134 Moreover, their decision to eschew political mobilization undermines their political clout on election day and, in turn, as lobbyists.

Tellingly, the heavyweights among contemporary civic associations have largely held onto the features that made mid-twentieth century associations so politically powerful for everyday Americans: membership, opportunities for face-to-face association, federated governance structures and socioeconomic integration of membership. The AARP’s membership, for instance, includes many non-elite seniors, enabling it to operate as “a mass membership organization . . . through which the influence of less well-off Americans flows.”135 Seniors, meanwhile, not only vote in higher percentages than the rest of the public, but do so regardless of SES.136 The National Rifle Association (NRA), similarly integrates a D.C.-based, lobbying focused headquarters (heavily funded by gun manufacturers) with a membership of approximately 3 million and a national network of local gun clubs (present in every state).137 Among other things the NRA produces voter guides for its members,138 and NRA members are demonstrably more politically active than gun owners who do not belong to the NRA.139 These organizations, however, are the exception rather than the norm.

133 SKOCPOL, supra note 98, at 224.
134 Beyond priority setting, it is easier to meet the demand for measurable outcomes with litigation and lobbying than organizing. It is also the case that the tax-exempt status depends on eschewing funding and undertaking overtly political activities.
135 GILENS, supra note 13, at 272–74.
136 Hacker et al., supra note 41, at 189.
137 See, e.g., Alex Yablon, New NRA Tax Filing Shows Membership Revenues Dropped by $47 Million Following Sandy Hook Surge, TRACE (Jan. 23, 2016), https://www.thetrace.org/2016/01/nra-membership-drop/ (explaining controversy about exact membership roll but also noting organization receives about $175 million in membership dues annually).
139 According to a 2017 Pew study, approximately 46% of gun owners in the NRA report having contacted a public official to express their opinion on gun policy; 24% said they had done so in the past 12 months. By contrast, only 15% of gun owners who do not belong to the NRA report they have ever done reached out to a public figure regarding gun policy, and just 5% report having done so in the past 12 months. Kim Parker, Among Gun Owners, NRA Members Have a
In sum, the weakness of contemporary civil society as an engine for the broad interests of the electorate goes well beyond the absence of representation. It also lies in the form of that representation. The organizations that do exist to represent Main Street have grown weaker on a number of axes: most importantly socioeconomic integrated membership (social breadth), interpersonal depth, and participatory federated governance structures. And still, research consistently finds that civic associations, even when they lack overtly political ends, promote political participation among their members. They move participation from a possibility to a probability.

* * *

Taken together, these three trends promote a vicious political cycle of disorganization, demobilization and disengagement, creating a system in which everyday citizens struggle to be heard. Not only has the collapse of private-sector unions fed both the economic and political inequality of the New Gilded Age, but the atrophy of active membership, in all forms, has itself contributed to democratic disengagement—all forms, has itself contributed to democratic disengagement—affecting both the sorts of policies that are adopted and, perhaps more importantly, who has a place at the table when those policies are conceived and prioritized. As Skocpol explains,

140 SCHLOZMAN ET AL., supra note 23, at 48 (reporting that those who participate in membership organizations, regardless of whether they are affirmatively political, are more likely to take part in politics); accord VERBA ET AL., supra note 101, at 157 (noting further explanation for the politicizing quality of nonpolitical associations is that they “make explicit attempts to recruit political participation”); Dietlind Stolle & Thomas R. Rochon, Are All Associations Alike? Member Diversity, Associational Type, and the Creation of Social Capital, in BEYOND TOCQUEVILLE: CIVIL SOCIETY AND THE SOCIAL CAPITAL DEBATE IN COMPARATIVE PERSPECTIVE 143, 144, 151 (reporting finding that membership in leisure groups resulted in political participation 60% of the time but raising questions about whether groups organized around exclusion would do the same); see also Nancy L. Rosenblum, Feminist Perspectives on Civil Society and Government, in CIVIL SOCIETY AND GOVERNMENT 151, 169 (Nancy L. Rosenblum & Robert C. Post eds., 2002) (noting that “[m]ost often, members of groups formed for nonpolitical purposes engage in political expression as a result of the unanticipated internal dynamics of group life”).

141 ROSENFIELD, supra note 26, at 183 (noting that demise of private-sector unions has “reconfigured the electorate by reducing the political voice of those lacking in a college education”).
If contemporary America’s top-heavy civic world encourages doing-for rather than doing-with, it limits popular mobilization and promotes trivial polarizations in politics, and it also skews national politics and public policy making toward the values and interests of the privileged.142

Similarly, Putnam observes that as more “people skip the meeting[s]” where local policy decisions are made, these policies grow less and less reflective of median interests.143

The political consequences have been particularly acute for the many working- and middle-class Americans who have concrete needs—from workers without a college degree, to working parents, to the communities that have suffered intensely from mass incarceration or depend on Medicaid and CHIP.144 In the absence of effective organization, these individuals and their interests are unable to penetrate the “upper-class accent” of the heavenly chorus of Washington interest groups due to lack of organization.145

PART II: LAW AND THE SHAPING OF CIVIC AND POLITICAL CAPACITY

And still, the political tides appear to be changing. Writing in the early 2000s, Putnam lamented that a growing deficit in social capital had resulted in significant declines in all forms of political participation—from voter turnout to attendance at political rallies and public meetings to running for office.146 Scholzman, Verba and Brady found, similarly, “an uninterrupted downward trend in overall activity” during the period 1972-2002, including “attending a public meeting on town or school affairs, . . . signing a petition, . . . working for a political party” and “holding or running for a political office”147

142 SKOCPOL, supra note 98, at 236.
143 BOWLING ALONE, supra note 29, at 342–49 (“When most people skip the meeting[s]” where local policy decisions are made, “those who are left tend to be more extreme, because they care most about the outcome.”).
144 SCHLOZMAN ET AL., supra note 23, at 344, 346 (noting absence of groups for “parents of children in Head Start programs, women at home, office receptionists, Wal-Mart associates, criminal defendants awaiting trial, recipients of Temporary Assistance for Needy Families benefits or food stamps, parking lot attendants”).
145 Id. at 344, 346.
146 BOWLING ALONE, supra note 29, at 35, 344–49 (arguing that “[d]eclining electoral participation is merely the most visible symptom of a broader disengagement from community life”).
147 SCHLOZMAN ET AL., supra note 23, at 162–63.
But the trend has changed. In the last decade, Americans have become increasingly engaged in politics. Voter turnout has been on the rise since 2008. In fact, turnout during presidential elections is rapidly approaching that of mid-twentieth century. The trajectory of voter participations in midterm elections is harder to judge: The 2014 midterm election saw the lowest level of turnout since 1940, with an estimated 36.6% of eligible voters showing up to vote. Turnout in the 2018 midterm, however, was the highest in nearly a century.

The fresh political energy extends beyond voting. The election of Donald Trump has triggered an unexpected and unprecedented level of political engagement and political organization. A staggering and unexpected 3.2 million Americans joined in the Women's March to resist President Trump's messages of xenophobia, sexism, racism, scientific skepticism and official corruption on the day of his inauguration—at least half a million in Washington, D.C. itself. More importantly, the Women's March was just the beginning. According to a 2018 Washington Post Kaiser Family Foundation poll, one in five Americans report participating in a street protest or political rally in the past two years. That engagement followed on a decade of grassroots mobilization around an array of issues ranging from police shootings as symbols of endemic racial bias to immigration and to both mass shootings and more mundane gun violence.

Nor has recent political engagement been limited to demonstrations or to resistance to Donald Trump. Remarkably, over 5,000 grassroots political groups have been formed to oppose President Trump’s policies, many organized by middle-class women. We have also seen a wave of teachers’ strikes and protests

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151 See Mark Blumenthal, *Poll Finds Surge of Political Activism on the Left*, HUFFINGTON POST (Mar. 28, 2017), https://www.huffingtonpost.com/entry/poll-finds-surge-of-political-activism-on-the-left_us_58daad61e4b0ae6184c0706 (reporting on poll seeking to quantify the flurry of political activities in early months of Trump administration).
153 Mary Jordan & Scott Clement, *supra* note 65.

Finally, a number of policies that would address the concerns of many working and middle class families have been placed back on the policy agenda. These include raising the minimum wage, Medicare for All, universal pre-K, and free college tuition.

The central question, then, is how to harness this newfound political energy into rebuilding a civil society capable of providing an effective counterweight to the political power derived from economic capital? And what might that look like?

Starting with the latter question, there is no going back. Economic, social and cultural transformations along with advances in technology preclude the possibility (and desirability) of returning to the past. The appeal of sex- and race-segregated membership-based civic associations has significantly waned (thankfully). The route to political power no longer runs through ethnic, religious and veterans’ groups.

Moreover, the steep decline of union membership in the private sector significantly undercuts the ability of unions to support—both economically and politically—non-college educated Americans. Unions are no longer capable of “providing [non-college educated workers] with resources and training to engage in politics and translating their political activity into support for policies that benefited average workers.”\footnote{155 ROSENFELD, supra note 26, at 7.} Public-sector unionism—even if it manages to survive the current Supreme Court’s interpretation of the First Amendment and the concerted attacks it is facing from conservatives—cannot fulfill these same functions because most public sector union workers are significantly more privileged than the union members of the past.\footnote{156 Largely in recognition of the effectiveness of unions in politics, conservatives have been on a mission to undermine the ability of workers, particularly public-sector workers, to unionize. Funded by the Koch network and facilitated by the American Legislative Exchange Council (“ALEC”), a host of state legislatures, even in states where public support for public-sector unions was high, have significantly curtailed the power of public-sector unions in recent years. See generally Theda Skocpol & Alexander Hertel-Fernandez, The Koch Network and Republican Party Extremism, 14 PERSPECTIVES ON POL. 681, 693–94 (2016); Alexander Hertel-Fernandez, Basic Facts: New Conservative Strategies to Weaken America’s Public Sector Unions, SSN (Oct. 18, 2015), https://scholars.org/brief/new-conservative-strategies-weaken-americas-public-sector-unions.} The political effects of public
sector unions largely accrue to college-educated Americans—teachers, firefighters and police. To be sure, these middle and upper-middle class, college-educated workers also need organizational help in our current political environment.

Still, the fact that there is no way back does not mean that there is no way forward. The critical first step in seeing the possibilities for positive change is to begin to understand the complex interface between law and civil society.

The robust associational life of the mid-twentieth century was not happenstance: It was the product of New Deal policymaking. Indeed, the political energy of seniors today, including those of average socioeconomic status, is not simply fortuitous. The political engagement of seniors and the power of the AARP are a direct result of the fact that Social Security and Medicare—both of which are visible, generous, universal for those eligible and well-managed—have not been scaled back, unlike many other New Deal programs. By the same token, the inequalities in mobilization and organization that presently impede the ability of low- and middle-income Americans to resist the political sway of elites and super-elites are a byproduct of the form that both regulation and deregulation has taken since the 1980s. In political science jargon, this phenomenon is known as a policy feedback. The basic insight (empirically verified in study after study) is that policymaking has second-order effects on citizens’ attitudes about and relations to democracy—effects that can either instill civic and political engagement or breed endemic apathy. The specific direction of the policy feedback depends not only on the quality (e.g., generous v. stingy, universal v. means-tested, equitable v. preferential) but also on the form (visible v. invisible, rational v. arbitrary, well-managed v. dysfunctional) of the policies implemented.

Not satisfied with these legislative wins, conservatives are working to constitutionalize their gains. Janus v. AFSCME, Council. 31, 586 U.S. ___ (2018).

See id. at 163-67; see also id. at 43-45, 67-68 (arguing that there are structural limits to how much growth is possible in public-sector jobs and how these limits also explain why public-sector unions also cannot provide the same economic returns to workers such that the union-wage premium for public-sector members is 18%, significantly lower than in the private sector).

[cite Campbell] Soss & Jacobs, supra note 50, at 112–15 (noting ways the repeal of social programs benefitting citizens of average to below average means “have worked to reverse their civic and political engagement”).

See infra notes __ and accompanying text.

See Hacker et al., supra note 41, at 183–97 (reviewing studies of a range of New Deal programs with an emphasis on their policy feedbacks and identifying the War on Poverty as the least effective long-term in empowering its beneficiaries).
The recognition of policy feedbacks, which has dominated certain sectors of political science, has important but, as of yet, underappreciated implications for good governance reformers. Foremost, it suggests that public policy choices as instantiated in legislation will inevitably play a role in either reversing or reinforcing the current trajectory of civil society and, hence, democracy. The task for good governance reformers is to tip the scale toward political empowerment and away from unequal disempowerment.

The virtuous democratic circle from civic participation to political participation to policy responsiveness to the white middle class in the mid-twentieth century was itself a byproduct of the form of New Deal policymaking. At the time—frequently at the behest of the very civic associations that fostered political engagement and participation—Washington chose to provide ample benefits to large swaths of American society in highly visible ways. The Social Security Act, like the G.I. Bill, doled out generous benefits to many ordinary Americans in highly visible ways with significant democratic returns.

Many over the years have praised the civic generation, comprising of individuals who entered adulthood during World War II, for their longstanding civic and political engagement. Veterans of World War II, in particular, have been touted for their high-levels of participation, including joining significantly more civic and political organizations and clubs over the course of their lives. And yet, this enhanced democratic engagement cannot be attributed simply to

161 See id. at 196–97.
162 See id. at 183–97 (reviewing studies of a range of New Deal programs with an emphasis on their policy feedbacks and identifying the War on Poverty as the least effective long-term in empowering its beneficiaries).
163 See ANDREA CAMPBELL, HOW POLICIES MAKE CITIZENS: SENIOR POLITICAL ACTIVISM AND THE AMERICAN WELFARE STATE (2003); Suzanne Mettler, Bringing the State Back in to Civic Engagement: Policy Feedback Effects of the G.I. Bill for World War II Veterans, 96 AM. POL. SCI. REV. 351, 359, 361 (2002) [hereinafter Bringing the State Back] (demonstrating that elevated levels of civic and political engagement among beneficiaries of the G.I. Bill could not be attributed simply to raised educational or socioeconomic status and in fact had “a pronounced impact on civic engagement among veterans from less advantaged socioeconomic backgrounds”) (emphasis added).
164 SOLDIERS TO CITIZENS, supra note 113, at 107, 123 (finding veterans who had used the G.I. Bill reported 50% more memberships in civic and political organizations and noting further that while “[m]ost of the veterans’ civic energies were applied to . . . groups whose primary purpose was not first and foremost political . . . involvement in such groups did help to politicize citizens and draw them closer to the political process”); Bringing the State Back, supra note 171, at 357–58 (finding that “use of the G.I. Bill for education” independent of attained educational level, “proved to be a significant positive determinant of . . . membership in political organizations and activities”).
military service, as veterans of subsequent wars have not proved more active in civic affairs than their nonveteran counterparts.\textsuperscript{165}

What then explains the unique civic engagement of World War II veterans? The answer to this puzzle lies in the G.I. Bill itself. Suzanne Mettler, in her seminal work on the Servicemen’s Readjustment Act of 1943 (aka the G.I. Bill), finds that G.I. Bill’s education and training provisions had an overwhelmingly positive effect on male veterans’ civic involvement even after controlling for all sorts of individual attributes (including parental civic and political engagement, advanced education).\textsuperscript{166} Finding that the effect was also not reducible to either the increased education or the enhanced socioeconomic status of beneficiaries resulting from their education,\textsuperscript{167} she concludes that recipients were “more likely to participate in the activities of self-governance and community life because the benefits were virtually universal for men, generous, readily accessible and smoothly administered thus communicating civic respect.”\textsuperscript{168} The effects were particularly strong for beneficiaries from lower socioeconomic backgrounds\textsuperscript{169} and for those who participated not in four-year degrees, but took advantage of access to sub-college programs.\textsuperscript{170} Meanwhile, for African-American recipients, the G.I. Bill stood in stark contrast to the rest of their experience of government, including military service, and created a positive experience, with

\textsuperscript{165} SOLDIERS TO CITIZENS, supra note 113, at 5 (noting that “[s]tudies of civic involvement in the latter part of the twentieth century find that, all else equal, veterans generally have not been more active in civic affairs than nonveterans of the same age group”).

\textsuperscript{166} Id. at 107 (finding that “veterans who used the G.I. Bill’s education and training programs became especially active citizens in the postwar era” where political activity is defined to include membership in political organizations from clubs to party committees as well as contacting officials, campaigns, running, local office, contributing money, and protesting).

\textsuperscript{167} Id. at 108 (finding that “the G.I. Bill’s effect on civic involvement was not reducible simply to the formal education or improved socioeconomic status that it promoted” because, among other things, “even among veterans who had the same level of education, those who had used the G.I. Bill became members of more such organizations.”

\textsuperscript{168} Id. at 10, 59, 106. On universality, it is important to note that among men, after World War II, 80% were military veterans and because of draft they were representative of U.S. population. Id. at 7. As such, nearly 50% of young men took advantage of the program. See also id. at 6–7 (describing generosity of program, which included among other things stipends for adjusted for marriage status).

\textsuperscript{169} Id. at 112 (noting that G.I. Bill usage significantly boosted “the rate of joining civic organizations among those from low-medium and medium standards of living in childhood”).

\textsuperscript{170} Id. at 114 (noting that “remarkably our analysis reveals that use of the G.I. Bill for subcollege programs functioned as an especially powerful and significant determinant of both veterans’ civic memberships and their political involvement in the postwar era, even more so than use of the higher education benefits”).
many becoming early leaders within the civil rights movement. Mettler concludes:

Through the program’s inclusive design, its fair manner of implementation, and its transformative socioeconomic effects, it communicated to beneficiaries that government was for and about people like them, and thus it incorporated them more fully as citizens. Beneficiaries responded by embracing the duties and obligations of active citizenship. Such effects were most pronounced . . . among particular groups whose inclusion signified the expansion of social opportunity.

In sum, visible and generous government programs communicated a sense that beneficiaries mattered as citizens while stimulating interest in government. In doing so, they encourage both individual participation, including voting, and civic engagement more broadly while having the potential to “elevate the collective political capacities of low- and middle-income Americans,” in particular. Even the means-tested Aid to Families with Dependent Children program, through its generosity, proved capable of building civic and political engagement and participation among its beneficiaries.

Equally importantly, the New Deal programs created incentives to organize. These incentives are both bottom up and top down. With respect to the latter, existing political elites are likely find it in their interest to organize and mobilize these potential voters in their efforts to win office. At the same time, the existence of benefits creates an incentive to form groups at the local and state level. It has long been recognized that programs from Social Security to

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171 Id. at 11, 119 (“Through the bestowal of social rights, citizens may become more fully incorporated as members of the political community. The extension of social provision may not only ensure them some modicum of well-being but also convey to them a sense of dignity and value as citizens.”).

172 Id. at 106.

173 Soss & Jacobs, supra note 50, at 111–12.

174 Campbell 2007, supra note, at 206–08 (analysis comparing voter turnout rates, while controlling for income and similar explanatory factors, for recipients of more and less visible government benefits, over three election cycles). For example, farmers, as the beneficiaries of New Deal agricultural subsidies, have an unusually high turnout rate in elections. Bringing the State Back, supra note 171, at 352.

175 Soss & Jacobs, supra note 50, at 111–12; see also Hacker et al., supra note 41, at 157–58.

176 [identify the source for this either soss & jacbos or hacker et all below]

177 Soss & Jacobs, supra note 50, at 111–12 (summarizing evidence that “[t]he . . . welfare state . . . stimulated the growth of organizations that recruited people into politics” while “present[ing] citizens with visible evidence of their collective stake in government outputs and political processes”).

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agricultural subsidies incentivize the formation of groups from the AARP to the American Farm Bureau Federation and the National Farmers Union. More interestingly, there is good reason to believe that the federated structure of civic associations in the nineteenth century was a product of the changed expanse of federal policymaking, particularly for veterans, in the wake of the Civil War.

By the same token, the vicious democratic circle in which disorganization breeds unequal political and even less policy responsiveness can be attributed to the particular policy feedbacks of lawmakers since the 1980s. Despite the rhetorical antipathy to government “handouts,” the American state of the post-Reagan era has not taken government out of the business of doling out government largesse. It is just that the largesse is now largely directed toward corporations, wealthy individuals, and home-owning professionals employed by large companies and is undertaken through tax policy rather than direct support.

The new preference for distributing monetary benefits through tax incentives has been dubbed the “submerged” or “hidden” welfare state. Hidden in the complexity of the tax code, this form of policymaking renders its regressive qualities invisible to the public and its beneficiaries invisible to themselves.

While legislators, public policy experts, and tax lawyers understand that the home-mortgage interest deduction and the Earned Income Tax credit constitute benefits with redistributive effects not unlike Social Security or Medicaid, most Americans are confounded by the tax code. As such, even the beneficiaries of the hidden welfare state (at least those who are not businesses) are unaware that government has done anything for them. The story for businesses, discussed below, is entirely different but in its own way also contributes to the vicious circle.

The overall effect of using the tax code to make policy is to obscure both that redistribution is occurring as well as to whom the benefits are accruing. The results of the Social and Governmental Issues and Participation Study of 2008

178 Campbell, supra note 171; [find source on farmworkers, possibly James Q. Wilson, Political Organizations (1973)].
179 [cite Putnam on Mothers and Civil War]
180 Suzanne Mettler, Reconstituting the Submerged State: The Challenges of Social Policy Reform in the Obama Era, 8 PERSP. ON POL. 803, 804–06 (2010) [hereinafter Reconstituting the Submerged State] (defining the “submerged state” as one in which “policies . . . lay beneath the surface of U.S. market institutions and within the federal tax system”); see also Transformed Welfare State, supra note 44, at 193, 202–03 (explaining how with one exception—the Earned Income Tax Credit—the hidden welfare state disproportionately benefits the wealthiest Americans).
181 See Reconstituting the Submerged State, supra note 188, at 804 (noting that “such policies . . . shroud[ ] the state’s role, making it largely invisible to most ordinary citizens, even [those] beneficiaries of existing policies”).
are especially revealing in this regard. One thousand four hundred Americans were asked whether they had “ever used a government social program”; this initial response was compared to answers about usage of nineteen federal social policies, consciously chosen to include both entitlement and tax programs.\textsuperscript{182} The vast majority of recipients of the most salient entitlement programs (e.g., Social Security Disability, Medicaid, Public Assistance and Food Stamps) recognized that they had been the beneficiaries of a government social program.\textsuperscript{183} By contrast, over 50% of respondents who had used one of the six policies of the submerged state reported that they had never “used a government social program.”\textsuperscript{184} For example, 64.3% of those who reported taking advantage of a 529 College Savings Plan or Coverdell Education Savings Account denied having “ever used a government social program.”\textsuperscript{185} Other visible entitlement programs fell somewhere between these two extremes: 44.1% of recipients of Social Security Retirement benefits, 43.0% of Unemployment benefits, 40.3% of the G.I. Bill, and 39.8% of Medicare recipients reported not having received benefits of a government program.\textsuperscript{186}

This obfuscation would not matter if ordinary Americans did not care about distributional effects, but they do. The Social and Governmental Issues and Participation Study of 2008 found that when respondents received information explaining that the benefits of the home mortgage interest deduction largely accrue to affluent households, “\textit{opposition grew sharply}, particularly among those with low to moderate incomes and among liberals and Democrats;” whereas “\textit{support grew}” for the Earned Income Tax Credit when it was explained that it helped households with low to moderate incomes.\textsuperscript{187} Indeed, it may not be an accident that politicians have opted to implement policies that disproportionately benefit wealthier Americans through complicated tax incentives that render invisible those who actually benefit from those programs.

\textsuperscript{182} Id. at 808–09. Conducted as a telephone survey, the Social and Governmental Issues and Participation Study of 2008 included a national random sample of 1,000 Americans, plus oversamples of low-income Americans (200 additional interviews) and young Americans (25-34 years of age) (200 additional interviews).

\textsuperscript{183} Id. (noting that only 25.4%-28.7% of those who had used these entitlement programs failed to respond in the affirmative to the initial question).

\textsuperscript{184} Id. at 809, Tbl. 3. The submerged state programs within the list include 529 College Savings Plan or Coverdell Education Savings Account, Home Mortgage Interest Deduction, Hope or Lifetime Learning Tax Credit, Student Loans, Child and Dependent Care Tax Credit, and the Earned Income Tax Credit.

\textsuperscript{185} Id. at 809, Tbl. 3.

\textsuperscript{186} Id.

\textsuperscript{187} Id. at 809.
Invisibility with respect to both beneficiaries and effects has one further democratic drawback: It makes it incredibly difficult to organize or be organized. As Soss and Jacobs observe, since the rise of neoliberalism in 1980s, American policymaking has “fostered atomized publics with little sense of what they have in common [or] . . . what is at stake in politics and government.”

The middle-class recipients of both the home mortgage interest deduction and subsidized employer sponsored health insurance do not see themselves as the beneficiaries of federal programs and are not organized to advocate on their behalf.

The corporations and industries that benefit from these programs are not, however, similarly blind. Indeed, the untouchability of the subsidization of homeownership and employer sponsored health insurance is a product of industry interest groups rather than the direct advocacy of the individual beneficiaries. As Mettler observes, even as the policy implications of the submerged state “eludes most ordinary citizens,” who “have little awareness of its policies or their upwardly redistributive effects, . . . the submerged state has fostered the profitability of particular industries and induced them to increase their political capacity . . .[in order] to maintain the status quo.”

In some cases, this virtual representation is adequate to protect individual interest, but in most it diverges. For example, federal policy in the late twentieth century sought to make college more affordable for middle-class families through subsidized, private educational loans—rather than distributing government support directly. The effect was to create an entrenched set of special interests

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188 Id. at 805; Transformed Welfare State, supra note 44, at 212–17.
189 Soss & Jacobs, supra note 50, at 110, 113 (attributing reduced policy capacity to the increasingly prominent role of tax expenditures as the vehicle for social policy).
190 Reconstituting the Submerged State, supra note 188, at 803; see also id. at 806–07 (describing the economic pay off of the political activity of the financial, insurance and real estate sector); id. at 811–16 (describing political opposition of the beneficiaries of regressive tax policies in the early days of the Obama administration).
191 In 1997, responding to the fact that federal educations grants no longer were keeping up with rising costs in higher education, the federal government introducing the Hope Scholarship Credit and Lifetime Learning Credit—a generous educational tax credits available to more households. In 2009, it upped the commitment significantly with the adoption of the American Opportunity Tax Credit (“AOTC”), which made these generous educational tax credits available to more households. Id. at 3 (reporting that, between 2008 and 2011, the number of taxpayers claiming educational tax credits jumped to 18 million from about 7.7 million, and that approximately 8 million Americans received a tax refund pursuant to the AOTC); id. at 1–3, 6, 11 (arguing that education tax credits are ineffective, too expensive and largely serve as a “windfall for universities and recommending, among other things, the expansion of Pell Grants and direct loans to those most in need of federal aid); [insert Mettler].
opposed to any changes to the system, despite its well-known economic inefficiencies, including self-dealing between lenders and universities. When Congress, in 2010, changed the system to be more generous to beneficiaries (with the federal government now being the source of the educational loans), it was forced to make significant concession to special interests: The new federal loans are originated by private lenders, who receive fees from the government for their services.192

Taken together, changes to the form of policymaking since the 1980s have exacerbated the unhappiness of the chorus of political interest. Neoliberal policymaking has exacerbated political inequality not only as a matter of first-order policy preferences but also because of its second-order effects on the democratic engagement and political capacity of ordinary Americans. The choice to distribute government largesse in a form that is both invisible to most Americans and individualizing has produced two effects that intersect to enhance the political power of corporate and moneyed elites. It has demobilized lower- and middle-income Americans while, at the same time, creating increased incentives for narrow business interests to mobilize. The result is that ordinary Americans have been disempowered just as the incentives for corporate beneficiaries to organize in defense of their wins has increased.

To make matters worse, the scaling back of New Deal entitlement programs over the last thirty years has been partial and uneven, thereby further contributing to differential and unequal political mobilization.193 Inroads in to New Deal welfare policies as well as the expansion of the criminal justice system have contributed to the demobilization of the economically and racially marginalized. In this regard, it matters to our story that Social Security and Medicare are the only major New Deal entitlement programs to have survived the deregulatory turn intact—a product of a strong organization, it is also an explanation for seniors’ remarkable continued political engagement.

Moving from the history of policy feedbacks to its prescriptive relevance, the critical point is that legislative choices inevitably shape civil society and political engagement. As such, legislative initiatives that are not directly focused on democratic reform constitute a critical point of entry for rebuilding the civic and

192 See HODGE & POMERLEAU, supra note 199, at 1–3, 6, 11 (arguing that education tax credits are ineffective, too expensive and largely serve as a “windfall for universities and recommending, among other things, the expansion of Pell Grants and direct loans to those most in need of federal aid); [insert Mettler].

193 See, e.g., Soss & Jacobs, supra note 50, at 112 (arguing that the “complex and uneven” changes in welfare policies since the 1970s “have worked to reverse [the] civic and political incorporation” of low- and middle-income Americans, even veterans).
political capacity of everyday Americans. More specifically, democratic reformers should forcefully advocate to secure generous, universal, visible benefits in ways that are fair and well administered, whenever the opportunity arises, and they should oppose all efforts to distribute government largesse in ways that obscure either the fact of the benefit or who benefits.\textsuperscript{194}

Form matters. Legislation can either enhance democratic responsiveness by “stimulate[ing] political organizations, solidarity, and accountability” or undermines it by foster individual anomie and corporate rent-seeking.\textsuperscript{195}

Visibility, generosity and universality are key. The visibility of generous non-means tested benefits influences individual participation by making the value of government apparent to the beneficiaries.\textsuperscript{196} When individuals experience the utility of government, they are more likely to recognize the importance of taking time to engage in politics.\textsuperscript{197} Programs that are experienced by recipients as harsh, paternalistic or stigmatizing, by contrast, undermine civic and political participation.\textsuperscript{198} Similarly, programs that are experienced as irrational or poorly administered may undermine civic engagement.\textsuperscript{199} For example, the rate of political participation amongst those who are subject to Temporary Assistance for Needy Families (TANF) is significantly lower than other groups.\textsuperscript{200} Moreover,

\textsuperscript{194} Mettler & Soss, supra note 21, at 60–64 (identifying several axes of policy design that are likely to affect the structure of politics—including “visible versus hidden, targeted versus universal, obligation-oriented versus rights-oriented, participatory versus nonparticipatory, . . . generous versus stingy, privately provided versus publicly provided”).

\textsuperscript{195} Id. at 110 (arguing this is one of four major ways that public policies can affect political engagement); see also Suzanne Mettler & Joe Soss, The Consequences of Public Policy for Democratic Citizenship: Bridging Policy Studies and Mass Politics, 2 Persp. on Pol. 55, 62–63 (2004) (arguing for further research into the ways public policies influence political organization and capacity, among other things).

\textsuperscript{196} Cf. Reconstituting the Submerged State, supra note 188, at 809–10, Tbl. 4 (finding that “[t]hose who had used a greater number of visible [government] programs were significantly more likely to report that they paid their ‘fair share’ in taxes;” whereas those who benefit from valuable tax breaks such as the home mortgage interest deduction do not); see also Mettler & Soss, supra note 204, at 62.

\textsuperscript{197} Soldiers to Citizens, supra note 113, at 12–13.

\textsuperscript{198} Vesla Weaver & Amy Lerma, Political Consequences of the Carceral State, 104 Am. Pol. Sci. Rev. 817 (2010) (finding that those who have been incarcerated are significantly less likely to vote even after controlling for income and race); see also Soss & Jacobs, supra note 50, at 113–15; Mettler & Soss, supra note 204, at 62 (contrasting evidence that attributes the political engagement of beneficiaries of Social Security Disability Insurance to their positive experiences with the program with evidence of the negative effects on political engagement of encounters with Aid to Families with Dependent Children and the criminal justice system).

\textsuperscript{199} Michener, supra note 89, at __.

\textsuperscript{200} Soss & Jacobs, supra note 50, at 114.
the low rates of participation are not explained by lower SES status as the figures were much less dramatic in the mid-twentieth century when welfare programs were more generous.201

Jamila Michener, in her recent study of Medicaid, found, similarly, that beneficiaries of the program are “significantly less likely to vote, register, and participate more generally” compared to similarly situated individuals.202 Yet, what is most striking about her study is how the magnitude of the effect differs depending on differences in generosity and administration of the program between states.203 In particular, she found:

Beneficiaries living in states that expanded benefits in the previous year are significantly more likely to register and participate more generally; those living in states with a higher density of welfare employees are substantially more likely to register; those in states offering a wider scope of optional services are more likely to vote; [by contrast] those living in states that have recently reduced benefits are significantly less likely to participate, vote, and register.204

In other words, Medicaid recipients “living in states offering a wide scope of services, fiscally equipped bureaucracies, and expanding Medicaid programs are significantly more likely to participate in politics” while those living in states that had recently contracted services were significantly less politically

201 Id.

202 MICHER, supra note 50, at 79 (The empirical support . . . is not incontrovertible, but it is strong evidence that Medicaid enrollment has an overall negative individual-level correlation with political participation."). This finding was the result of a quantitative analysis comparing the political engagement of Medicaid beneficiaries to similarly situated individuals through the use of the Fragile Families and Child Well-Being Study (FFS), a longitudinal survey of 5,000 children born in U.S. cities. Although the Medicaid beneficiaries, who constituted 53% of the sample, were somewhat better off than representative sample of traditional Medicaid beneficiaries, and still, Michener found that “compared to the rest of the FFS sample, respondents who indicated being Medicaid beneficiaries are significantly less likely to vote, register, and participate more generally.” Id. at 77 (reporting that they were about five-percentage point less likely to vote or register and a six-percentage point less for other forms of participation). This finding holds steady even after controlling for an array of individual characteristics (age, sex, education, race, income) as well as factors that would affect mobilization (church attendance, health status, including drug and alcohol dependence, depression), and incarceration. Id. at 76–79.

203 Id. at 8 (explaining that stark differences is program provision and administration depending on differences in generosity and administration between states “produces geographically differentiated political capacity across its population of beneficiaries”).

204 Id. at 81.
involved. Michener notes, further, that how states treat so-called optional services (such as eye examinations and dental hygiene) proves among the most visible and communicative choices with respect to generosity or stinginess. She concludes that while “Medicaid has the potential to be either a boon or a bust for political engagement,” the actual outcomes realized depends on the ways the program is formulated and implemented.

Visibility of beneficiaries is similarly critical. Where the class of beneficiaries is evident, the incentives to mobilize and be mobilized, including by the socioeconomic elites capable of affording the transaction costs of organization, are much more pronounced. Once mobilized, such citizens are in a better position to demand responsiveness. In fact, some researchers attribute the recent decline in voter turnout among lower income Americans not just to TANF but to the fact that political parties no longer feel the need to mobilize these voters.

To be sure, visible beneficiaries provide a target for counter-mobilization and scapegoating. That said, this dynamic is most problematic where, as in the world in which we live, visibility is differential: The recipients of government largess that are visible tend to be those who are ready targets for backlash while those who receive the most from the federal government are hidden and out of range.

The Affordable Care Act (ACA or Act) and the various repeal and replace options that were discussed in August 2017 provide a contemporary illustration of the potential for substantive legislation to have positive democratic returns while, at the same time, illustrating the policy feedback analysis that Part III argues should inform democracy reformer’s agendas.

The ACA is a hybrid of Reagan-era and more traditional New Deal policymaking. Certain elements of the law dispensed direct government benefits and created visible beneficiaries while others did not. The expansion of Medicaid and the ACA’s protection against rate discrimination based on preexisting

205 Id. at 14. Indeed, she finds that the biggest effect was in states that reduced Medicaid coverage. Id. at 81–82 (“As shown, compared to beneficiaries living in states that did not reduce benefits, beneficiaries in states that had made the most reductions were between four and nine percentage points less likely to vote, register, or participate.”).
206 Id. at 52 (arguing that this is because they “are crucial for coping with everyday life and with the difficulties that affect low-income people”).
207 Id. at 14.
208 Transformed Welfare State, supra note 44, at 209–10 (noting that the beneficiaries of government largess are much more likely to be represented by organizations and “much more likely to be mobilized by political parties and candidates” regardless of income “than are beneficiaries of . . . weak policies”).
209 Id. at 204–12.
conditions as well as its requirement that insurers permit dependents under twenty-six to remain on their parents’ employer-based policies created visible benefits and beneficiaries. The host of benefits accruing to individuals with employer-sponsored health insurance, by contrast, largely remained invisible to the public.

The ACA’s expansion of Medicaid illustrates the democratic returns of the classic form of New Deal policymaking. Early data suggests that both the expansion of Medicaid, and the passage of the ACA more broadly, have positive effects on political participation. Even with only thirty-one states and the District of Columbia adopting the expansion, over 10 million Americans were newly insured as a result. The expansion was both visible and generous. Moreover, by simplifying eligibility criteria and enhancing state incentives to enroll eligible individuals, the ACA appears to have improved participants’ experiences of program administration. 210 Consistent with the literature, a variety of studies have found positive effects on political participation in the wake of Medicaid expansion. 211 Michener, for example, found that Medicaid recipients in states that had expanded were significantly more likely to have register and participated in some other way in the following election cycle. 212

Not surprisingly when repeal efforts got underway, beneficiaries and other mediating advocacy groups were well positioned to mobilize against repeal efforts, attending hundreds of rallies and town halls meetings to share their personal stories. 213 Indeed, Michener’s qualitative research depicts vividly stories

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211 See, e.g., Joshua D. Clinton & Michael W. Sances, The Politics of Polices: The Initial Mass Political Effects of Medicate Expansion in the States, 112 AM. POL. SC. REV. 167, 168, 170, 175, 181 (2018) (finding that while “the expansion of Medicaid increased voter registration” in both 2014 and 105 (probably because of federal law), it had a more limited effect on voter turnout in the 2014 and no effect on turnout in 2016); Jake Haselswerdt, Expanding Medicaid, Expanding the Electorate: The Affordable Care Act’s Short-Term Impact on Political Participation, 42 J. HEALTH POL. POL’Y & L. 667, 668, 681, 686, (2017) (finding that expanded enrollment in Medicaid as a result of expansion “significantly correlated with higher voter turnout in the 2014 U.S. House elections” controlling for a wide range of variables and hypothesizing that this is because “both beneficiaries and opponents” were inclined to vote).

212 Mettler, supra note, at 81.

213 Michener, supra note 50, at 11–12.
of individual activism giving birth to grassroots advocacy by beneficiaries of Medicaid during various stages of the ACA fight.  

Those 10 million Americans knew exactly whom to thank for their eyeglasses and their prescriptions. Some are even likely to have noticed the ease with which they were able to register for Medicaid coverage. Equally importantly, Democrats, state Governors and an array of other advocacy groups, including those of healthcare professionals, knew exactly whom to organize in their effort to save the Act.

The repeal of Medicaid expansion along with the efforts to replace the current system with one of block grants ultimately failed. Congressional Republicans retreated in the face of significant grassroots and elite opposition, including among Republican Governor. During the process, an array of compromises, including a delayed repeal of the ACA’s expansion of Medicaid, were extracted. The delayed repeal proposal appears to have been a compromise in the face of mounting political opposition to this scaling back of a visible benefit and perhaps a bow to its recent popularity. Even this did not ultimately pass.

214 Id. at 136–52 (describing the organizing efforts of one beneficiary, including orchestrating a bus for beneficiaries to attend hearings at the state legislature and training other beneficiaries to be more effective political advocates).
216 See Brooks, supra note 219 (noting that eligibility in some states is verified “immediately or overnight for more than 75 percent of applicants”).
217 Thomas Kaplan & Robert Pear, Republican Unity on Health Care Is Elusive, Despite Trump’s Support, N.Y. TIMES (Mar. 1, 2017), https://www.nytimes.com/2017/03/01/us/politics/affordable-care-act-health-care-trump.html (noting that “[l]awmakers from states that expanded Medicaid under the Affordable Care Act face pressure back home—in some cases, from Republican governors”—to oppose its repeal); Castele, supra note 224 (noting that the 11 Republican Governors from states that chose to expand Medicaid are lobbying to keep it and highlighting Governor Kaisch’s efforts on behalf of the 700,000 Ohioan who have received coverage through the expansion).
To be sure, the Medicaid expansion was so visible and perceived to be so generous that it created resentment, particularly among individuals who were forced to purchase more expensive and less generous coverage through the private exchanges.\textsuperscript{220} Resentment bred activism, so in itself this resentment is not per se a democratic drawback. Moreover, it is worth noting that some number of supporters of ACA repeal, who participate in the exchanges, have expressed hope that the Act would be replaced with a broader expansion of Medicaid to offer “the working poor a chance at the same coverage the very poor receive.”\textsuperscript{221}

In other respects, however, the ACA was a quintessential example of American policymaking in the post-Reagan era in which invisibility undermined political mobilization. The least visible of the Act’s beneficiaries are the approximate 150 million Americans who receive coverage through employer-based health insurance plans. Even relatively informed citizens are unlikely to be fully cognizant of the range of protections that they have received from the ACA: for example, the requirement that health plans cover preventative care services without patients first either meeting plan deductibles or paying a co-pay, the introduction of out-of-pocket limits to cap the dollar amount individuals can be expected to pay in co-payments annually, and the prohibition on annual and lifetime limits.\textsuperscript{222} These individuals are also largely unaware of the indirect benefits they have received from the ACA in the form of the lowest increases in healthcare premiums in decades. Most importantly, these individuals are unlikely to fully understand how the robust coverage, at relatively low costs, that they take for granted is subsidized by federal tax policy that long pre-dates

\textsuperscript{220} Sarah Kliff, \textit{Why Obamacare Enrollees Voted For Trump}, Vox (Dec. 13, 2016), https://www.vox.com/science-and-health/2016/12/13/13848794/kentucky-obamacare-trump (reporting that interviews with Trump supporters, enrolled through the exchanges, reveal a pattern of frustration that those on Medicaid are “getting even better, even cheaper benefits”).

\textsuperscript{221} \textit{Id.}; see also Drew Altman, \textit{The Health Care Plan Trump Voters Really Want}, N.Y. TIMES (Jan. 5, 2017), https://www.nytimes.com/2017/01/05/opinion/the-health-care-plan-trump-voters-really-want.html (reporting similar findings from a Kaiser Foundation focus group based study of Trump supporters enrolled in either Medicaid or through the marketplace).

the ACA.\textsuperscript{223} Not surprisingly, then, there has been much less activism against the repeal of the ACA from healthy individuals who receive health insurance through work.

In between these two extremes was the ACA’s introduction of government-run health insurance exchanges. A hybrid policymaking structure the exchanges marry elements of the Reagan school (delegating the provision of public goods to the private sector and distributing benefits through the tax code) with elements from the New Deal school (creating and subsidizing, through a tax credit, the social safety net). Thus, on the one hand, the exchanges create a forum in which private insurers compete to provide health insurance to individuals who are unable to obtain coverage through their employers and are too well off to be eligible for Medicaid or Medicare. On the other hand, these private exchanges, like the ability of individuals to use them, are subsidized by the government. Moreover, subsidies for individuals are provided on a means-test basis through an array of tax credits. Finally, the obligation to participate in the exchanges was underwritten by the least liked provision of the Act, the so-called individual mandate which requires individuals to obtain health insurance or pay a penalty with their annual income taxes.

Despite the provision of subsidies through the tax code, the exchanges have been visible—but also confusing and fraught with administrative hiccups.\textsuperscript{224} At the same time, while an estimated 9.2 million Americans have been insured through these exchanges,\textsuperscript{225} the jury remains hung on the question of generosity and efficacy.

And still, the policy feedback loop from these exchanges has surely positive, where the measure is political engagement and mobilization. Those who have gained, or been required to obtain, health insurance through the exchanges know full well who to hold responsible and have made their voices heard loudly and often since 2010. Moreover, both political parties have been moved to organize those Americans whose experiences of the exchanges comports with the party’s platform.


\textsuperscript{224} Despite being visible, there has been a good deal of confusion about the ACA. [cite articles on beneficiaries of ACA not being aware it is same as Obamacare].

\textsuperscript{225} ObamacareFacts, \url{http://obamacarefacts.com/obamacare-subsidies/} (last visited Mar. 3, 2017) (reporting that, in 2015, 87\% of individuals who purchased health insurance through the private exchanges received some government subsidy).
The politics surrounding efforts to repeal the ACA in the fall of 2017 are a testament to all of the dynamics described above—highlighting the political power of visibility and generosity as well as the importance of giving political parties, and their civic allies, an incentive to help mobilize their constituents.\(^\text{226}\) To be sure, the Act created many vested interests, including hospitals, doctors and insurers, who were active during the debate. But special interest lobbying, as we know, looks different when individual activism and organizational advocacy is present.\(^\text{227}\) The end result was a fluid political contest with individuals showing up at town halls and rallies to plead their cases. The AARP forcefully opposed the repeal by producing data showing that that seniors on the cusp of Medicare eligibility (i.e., between 50-55) would face $2,000-$3,000 increases in premiums under Republican proposals.\(^\text{228}\)

In the end, Congress did not manage to repeal and replace the ACA.\(^\text{229}\)


\(^{228}\) Pear, *supra* note 236; see also Sanger-Katz, *supra* note 236 (reporting that the $18,470 subsidy that “[a] 60-year-old earning $20,000 in Lincoln, Neb., currently” receives under the ACA will be replaced by a $4,000 tax credit and the additional subsidies for co-payments and deductibles currently available under the ACA will be removed).

\(^{229}\) All of the repeal proposals shared the same basic framework: First, eliminate the individual mandate, the government-sponsored exchanges and the Act’s relatively generous array of subsidies for both individuals and employers thereby returning the provision of health insurance to the private market. Second, repeal the Medicaid expansion. Where they differed was the degree to which the private market would be buttressed by government subsidies (whether as tax credits or expansions to health savings accounts). The American Health Care Act—the centerpiece of which was a refundable tax credit pegged to age rather than income (although the latter was ultimately scaled back)—was significantly more visible (and less regressive) than other proposals that had been floated which depend entirely on tax deductions and expanding health savings accounts. This is because advance-able and refundable tax credits come to individuals as a sum of money from the government. As such, they are much more visible as a government benefit than a variety of other tax strategies. Tax credits are also significantly more universal than either tax deductions, which require itemization, or health savings accounts—tax options
Instead, it tacked a repeal of the individual mandate to the 2017 Republican tax bill. This is expected to significantly reduce coverage and undermine affordability while also exploding the federal deficit.\textsuperscript{230}

For our purposes, the critical point is that despite control of all three branches of government and a longstanding platform promising repeal, spearheaded by key donors, the Republican Party was not able to repeal the ACA. Not only did the effort to scale-back existing entitlements fail, but shortly after repealing the individual mandate, a Republican Congress was forced to concede to fund CHIP for a decade.

This constitutes a significant political win for low- and middle-income Americans, and it should not be underestimated even though the ACA remains vulnerable and politics is fluid. It stands as a tribute to the civic and political returns from visible entitlement programs. By the same token, it is worth noting that in some states the positive democratic returns of Medicaid expansion, for instance, are likely being undermined by the adoption of work requirements and other conditions on eligibility that are likely to subvert messages of inclusion and citizenship.

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Moving again from the details of policy feedbacks to their prescriptive relevance, the critical point is that legislation does far more than distribute or deny benefits and rights to individuals. It also shapes individual relationships to democracy, creates political constituencies and stimulates civic organization.

Form, once again, matters. Legislation, depending on its form, can either enhance democratic responsiveness by “stimulate[ing] political organizations, solidarity, and accountability” or undermines it by fostering individual anomie and corporate rent-seeking.\textsuperscript{231} In this way, legislative choices inevitably shape \begin{footnote}{230}https://www.commonwealthfund.org/blog/2017/how-new-us-tax-plan-will-affect-health-care (noting that the Congressional Budget Office estimated that the repeal of the individual mandate was likely to result in as many as 13 million fewer Americans having health insurance, including “[a]bout 5 million . . . who previously bought health insurance as individuals”).\end{footnote} \begin{footnote}{231}Soss & Jacobs, supra note 50, at 110 (arguing this is one of four major ways that public policies can affect political engagement); see also Mettler & Soss, supra note 204, at 62–63 \end{footnote}
civil society and political engagement at both the individual and organizational level.

**PART III: OUR VISION OF DEMOCRACY REFORMS**

Just as the demise of American democracy was not, and still is not, inevitable, the restoration of functionality to American democracy is similarly neither inevitable nor foreclosed. Those interested in restoring functionality to our democratic institutions must, however, broaden our horizons.

The foundational insight from the previous section is that legislation, regardless of its substantive area, will play some role in the trajectory of civil society. Legislation can engage citizens and incentivize the creation of civic groups, or it can breed political disengagement, demobilization and anomie. Indeed, the present political incapacity of Main Street is a product of the form and extent of deregulation in the past thirty years.

It is time, therefore, to appreciate that the pursuit of policies that are likely to motivate individuals to participate in our democracy, to stimulate the reorganization of the interests of everyday Americans, and to fuel the nascent signs of civic revival in the past few years must be part of any effort to restore our democracy. Time to move beyond the myopic focus on procedural reforms—from campaign finance to independent redistricting commissions: The electoral interface is only one aspect of the democracy puzzle; access is only the first barrier to participation. Policies that distribute visible and generous (ideally universal) benefits in fair, non-arbitrary ways recognize individuals’ citizenship and communicate the value of government. Equally importantly, they create reasons to organize on the part of beneficiaries and incentives for political parties and elites to mobilize those same beneficiaries.

The analyses in the previous two sections suggest yardsticks for the sorts of non-procedural legislative policies that should be central to the broader democracy reform platform. They suggest that democratic reformers should seek out legislative opportunities that would:

- Draw a broader, more representative swath of Americans, particularly the low- and middle-income and young, into politics.

- Spawn civic and political networks that span economic, partisan and geographic divides.

(appearing for further research into the ways public policies influence political organization and capacity, among other things).
Offset the socioeconomic segregation of contemporary life that undermine individuals and civic groups’ participation in socioeconomically integrated networks.

Stimulate the growth of membership-based civic associations organized through democratic governance structures that operate in every state, whether or not formally through a federated structure, to represent the broad range of public interests.

Let’s start with legislative proposals that offer the potential to draw young as well as low- and middle-income Americans into politics. These include efforts to make college education free, Medicare for All, felon re-enfranchisement, and paths to citizenship for undocumented immigrants.

The variety of efforts at the state and local level to make higher education more accessible and affordable illustrate both their democratic potential and the approach that would be necessary to achieve that potential. Student debt currently constitutes the highest proportion of consumer debt, and its burden on middle and upper-middle class families in an era of declining household incomes and rising costs of universities is well documented. This is particularly unfortunate given that a college degree is the great dividing line when it comes to economic resilience and success over a lifetime. Indeed, some researchers argue that college access is an extremely effective anti-poverty strategy for poor and working parents insofar as it will lift the families out of poverty and their children out of the cycle of poverty.

A number of states and localities have begun to address the college affordability crisis. In 2015, Tennessee became the first state to make community college free to high school graduates who complete eight hours of community service, attend mentorship meetings each semester, and maintain a

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232 See [Title] No Jargon Podcast (date) (noting student loan debt as most significant form of consumer loan debt despite fact that most individuals owe relatively small amounts given caps on amount of debt available for an undergraduate degree); see Scott A. Hodge & Kyle Pomerleau, Is the Tax Code the Proper Tool for Making Higher Education More Affordable at 5, Special Report No. 220, TAX FOUNDATION (July 2014) (noting that student loan debt, which averages just below $25,000, “is now the largest single type of outstanding debt, larger than both credit card debt and auto loan debt”). [look for newer cite]

233 SSN Podcast on Maine.
minimum grade point average. Since then, sixteen states, including New York, have followed suit. San Francisco became the first city to offer free tuition to all city residents, regardless of age or income, who enroll in the City College of San Francisco, while providing supplemental assistance to cover books, health insurance, and other fees for low-income students. Twenty of the 50 largest cities in the United States have since followed suit.

The research described in Part II suggests the potential for such visible programs to have positive civic returns. A life-transforming experience made possible by the support of the government is likely to promote trust and interest in government. The beneficiaries of free community college will not only be better educated (and thus more likely to participate in politics), but like the beneficiaries of the G.I. Bill before them, they may well come to see the political benefits of government and engaging in politics. Mettler, for example, found that the civic returns to the G.I. Bill’s non-four-year programs were actually higher than the four-year college. Once established, such programs are likely to motivate organizations to maintain it and motivate political elites to attend to these new political constituencies (although the fact that these programs are structured to have participants cycle through every two years may lower that particular impact).

But the same research comes with a critical caution: The civic returns of such programs will importantly depend on both generosity and implementation. New York has gone the furthest in terms of generosity—adopting a program that provides free college tuition at SUNY and CUNY to families earning up to $125,000 a year. Nearly a million households are eligible, although the assumption is that many fewer will actually use the program. Unfortunately,

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234 Katie Loboscho, *Tennessee is Picking Up the Tab for Community College Students*, CNN.COM (Sept. 18, 2015 10:07 AM EST) (estimating 15,000 students would take advantage of the program during its first year and explaining that the program is funded by the state lottery fund).


236 Dave Berndtson, *San Francisco Becomes First City to Offer Free Community College Tuition to All Residents*, PBS NEWS HOUR (Feb. 8, 2017 9:52 PM EST) (noting Mayor estimates the program will assist between 28,000-30,000 students at a cost of about $5.4 million annually).


238 Editorial Board, *A Promising Proposal for Free Tuition*, N.Y. TIMES, Jan. 5, 2017 (estimating that 200,000 students would use the program if adopted).
its implementation may undermine second-order political returns.\textsuperscript{239} The first potential problem with the program’s design is its requirement that individuals attend college as full-time students in order to qualify for the program. This renders the program inaccessible for many New Yorkers who can only afford to attend college on a part-time basis. Maine’s 2017 Lift 2.0 law, like San Francisco’s program, by contrast, includes in their design the provision of financial resources to cover the specific impediments to successful college completion that arise out of poverty. In Maine’s case, the program was carefully designed to address the known needs of working parents—including childcare and transportation costs. Of course, Maine’s program is anticipated to reach far fewer individuals.

A second, related concern that has been raised about the New York program is that the state operates with an exceedingly narrow definition of what courses can be used to achieve the full-time eligibility requirement.\textsuperscript{240} This administrative choice is the source of frequent anxiety for students. As Michener’s work on Medicaid demonstrates, if New York’s implementation rules are perceived as arbitrary, the second-order civic and democratic returns are unlikely to follow.

Moves to make higher education more affordable and accessible have the potential to draw a wider swath of citizens into civil society and politics, as to programs aimed to universal access to quality healthcare and to grant legal status to undocumented immigrants, but those constructing these programs must take care to ensure they are designed more like the G.I. Bill and less like Medicaid.

Democracy reformers should also prioritize legislative opportunities with the potential to create constituencies that span economic, partisan and geographic divides. Access to quality affordable healthcare, including mental health and addiction care, once again comes to mind as does paid family and medical leave.

Postal banking, while not in the foreground for many people, offers a significantly underappreciated potential opportunity to bridge the growing divide between rural and urban communities—particularly the poorer elements of both—and has the added virtue of not being an already polarized issue.\textsuperscript{241}

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\textsuperscript{239} Press Release, Governor Cuomo Presents 1st Proposal of 2017 State of the State: Making College Tuition-Free for New York’s Middle Class Families (Jan. 3, 2017) (explaining program would cover costs outstanding after federal and state TAP grants are applied).
\textsuperscript{240} Aaron Major, \textit{The Hidden Cost of Free College}.
\textsuperscript{241} See also Gilman & Rahman, at 3 (arguing that we need to seek out opportunities “to build multi-racial constituencies and alliances to make our democracy more inclusive”—a “type of ‘us’ populism” to replace a “‘them’ populism”).
\end{flushright}
Deregulation and technological advances since the 1970s have lead many commercial banks to abandon both rural areas and impoverished urban neighborhoods alike. These banks have also jettisoned less-profitable products, including small loans to low-income customers and low-profit businesses. A 2013 study determined that 28% of households in the United States are “unbanked” (no formal relationship with a bank) or “underbanked” (no access to incremental credit).242 “Fringe lenders” have taken the place of regulated banks in these low-income areas. Fringe lenders charge high interest rates and fees and seek to maximize profits in ways many perceive to be taking advantage of low-income customers.

A number of legal academics, most prominently Professor Mehrsa Baradaran, have proposed postal banking to replace low-income families’ reliance on check-cashing services, payday lenders, and title vendors that charge fees and interest far beyond what chartered banks may charge.243 Baradaran explains that post offices could offer the same services that fringe lenders currently offer as well as depository services like checking and savings accounts at much lower costs. Moreover, a revival of postal banking would be more efficient than imposing on mainstream banks the responsibility for serving the needs of low-income banking customers.244 Beyond the economics, she notes that the Post Office already has offices in low-income areas that commercial banks have vacated and emphasizes that the Post Office is a highly familiar place that America’s communities have come to trust.

Her proposal turns on the Post Office’s capacity to provide immediate and easy access for low-income customers but also historical precedent. Unbeknownst to many, the federal government operated a postal banking system from 1910 to 1966.245 The Postal Savings System, as it was called, was devised to “encourage thrift and economy among all classes of citizens.” Its goal was to “place savings facilities at the very doors of those living in remote sections, and . . . [to] afford[] opportunity for safeguarding the savings of thousands who have absolute confidence in the Government and will trust no other institution.”246 It was structured to eschew the profit motive.

244 Baradaran 2014, at 167-169.
245 Id. at 168.
246 Id.
In April 2018, Senator Kirsten Gillibrand introduced legislation that mirrors Baradaran’s proposal. Although there is a good deal of debate regarding the risks associated with the Post Office getting involved in micro-lending (second pillar of Baradaran’s proposal), postal banking in the form of the provision of depository services (checking and savings accounts, debit cards, ATMs, online banking, and bill payment) appears to be a viable solution to the banking needs of individuals and businesses in both urban and rural communities.

The potential second-order democratic returns of postal banking should not be ignored in this debate. Postal banking would be a highly visible government policy that many individuals would directly experience. If that experience were positive, it could instill renewed faith in the federal government. Whenever an individual or business owner used a Post Office to cash a check, deposit money, or take out a loan, they would unavoidably recognize and appreciate that it was the federal government they were interacting with. By contrast, alternative solutions to the banking problem such as federally subsidized credit unions, savings and loan associations, and Morris Banks, as well as proposals to administer federal banking through the Federal Reserve, would not provide the level of transparency that postal banking would provide, and, therefore, do not create the policy feedback that postal banking could. Equally importantly, postal banking would create a beneficiary class that spans current political divides, including creating incentives for the emergence of urban-rural civic groups.

Third, good government reformers should look to adopt policies that could offset the socioeconomic segregation of contemporary life. The most significant, and likely intractable, constraint that efforts to revitalize a robust civil society will have to navigate is the rise of pervasive socioeconomic segregation.

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247 The plan is expected to be opposed by fringe lender lobbyists. Many who have expressed doubt about postal banking are weary of the risks associated with offering low-income people loans at rates well below those justified based on the risk of default. There is an argument that the Postmaster General could simply begin to offer postal banking services under existing authority. The current Postmaster General, however, opposes the policy.


249 Id. Rural businesses to be sure suffer from significant problems getting credit lines and loans, but they also suffer from the basic problem of not having easy access to depository accounts. Cf. Ruth Simon and Coulter James, Rural Business Owners Face Dwindling Pool of Lenders—Banks Abandon Small Towns to Focus on Booming Urban Markets, WALL ST. J. (Dec. 26, 2017).
Mixed-income neighborhoods have become rare while “exclusively affluent and exclusively poor neighborhoods” have become the norm. This socioeconomic segregation undermines the democratic virtues of civil society in a variety of ways.

It undercuts the integrative potential of public schools and other forms of civic engagement. During the heyday of the PTA, mothers attended meetings with other public-school mothers, including those less well off than themselves. Today, by contrast, there are simply fewer opportunities to forge social ties across classes—and, for that matter, races. When parents volunteer in their children’s classrooms, attend parent-teacher association meetings, or volunteer in Little League, they are unlikely to come into contact with parents from widely different socioeconomic backgrounds.

Social isolation, in turn, reinforces the political distance between elites and the rest of America. As Thomas Edsall recently remarked, a consequence of geographic sorting is that “[t]he well-to-do are isolated from the day to day struggles of the middle class and below—from health care and education to unemployment and lack of retirement savings.”

Most importantly, insofar as political participation is importantly social, socioeconomic segregation itself contributes to inequalities in civic and political participation. As Soss and Jacobs explain, the likelihood of “participat[ing] in politics depend[s] on the interactions” individuals have “in families, peer groups, neighborhoods, workplaces, . . . religious organizations, and community groups.” Where individuals are isolated from peers privileged in the political game—by their education, wealth and political knowledge—the losses for those who are already disadvantaged multiply. As Soss and Jacobs explain:

The advantages that flow from individual resources and skills are compounded by the returns that accrue from living in a community

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251 See Thomas B. Edsall, *How the Other Fifth Live*, N.Y. TIMES, Apr. 27, 2016 (summarizing recent studies demonstrating increased geographic and social isolation of economic elites and providing a clear graph of the significant change since the 1970s).
252 Edsall, supra note (quoting Timothy Smeeding, a professor of Public Affairs and Economics at the University of Wisconsin); but see METTLER at 131 (observing that membership in socioeconomically integrated civic groups probably helped “highly educated” veterans “better understand the needs, concerns, and perspectives of citizens less well-off than themselves”).
253 Soss & Jacobs, supra note, at 123 (reviewing evidence that residential class segregation along with educational, occupational and marital economic segregation have been on the rise since the 1970s).
254 Soss & Jacobs, supra note, at 121.
where political information is plentiful and organizations engage local residents. Conversely, living in deeply disadvantaged neighborhoods both imposes harsh conditions and removes critical communities and networks . . . that might bolster skills and opportunities for enterprising individuals. Political parties and candidates acutely evaluate these changes and community conditions and behave as rationale prospectors.255

In sum, “[a]s Americans have become more segregated by class, distinctive ecologies of political advantage and disadvantage have emerged in higher and lower income communities.”256

Although there are a variety of policies that might offset this dynamic, from reconceiving how children are districted into public schools to reinstituting the draft or adopting two years of national service, none have prominence on the policy agenda. This, then, is an area for creative thinking, including as to whether state and local policy initiatives with respect to housing and zoning could make inroads.

Finally, and arguably most importantly, a broader democracy reform agenda must include efforts to stimulate the growth of participatory civic associations in which members have a role in governance and that operate at a sufficient scale to make them politically viable.257

Legislation can play a part in generating both individual political engagement and the formation of civic groups, as we have seen, but it is not apparent that the influence of education, health and welfare policy extends to the structure of the civic groups that form. Tax Code, to be sure, is another matter. It could theoretically be revised to incentivize the sorts of membership-based civic groups that hold most democratic promise. Still, this fourth benchmark might well be at the limits of law.

The limits of law to shape the form of civic organizations are less discouraging when we appreciate that the burden of restoring American democracy can be shared. We are at a unique moment politically and technologically in our democracy. With a good nudge from philanthropists, various strands of democratic renewal could well converge to make significant strides toward rebuilding, over the long haul, participatory civic associations

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255 Soss & Jacobs, supra note, at 121.
256 Soss & Jacobs, supra note, at 124 (explicitly contrasting the current situation to the past “[w]hen communities were more integrated along class lines” and “citizens with fewer political resources . . . benefit[ed] from their connections to the politically advantaged”).
capable of vindicating the interests of everyday Americans through their mass participation.

Recent years have witnessed a resurgence in political activism. The 2008 election was a high point for voter turnout. It was followed shortly, thereafter, with a series of protest movements drawing renewed attention to key concerns of the public, from income inequality and money in politics to racism in the criminal justice system. Then, there was the unexpected election of Donald Trump, and renewed grassroots engagement with democracy moved from the political fringes to the mainstream. Indeed, by a variety of measures, his presidency has marked a significant renewal in civic engagement, culminating in the highest midterm voter turnout in nearly a century.

Most promisingly, much of the recent grassroots activism has been channeled into participatory political acts and participatory civic associations. Opposition to the election and presidency of Donald Trump has brought Americans together in their neighborhoods to take both local and national action. Political participation has moved from being largely a matter of signing an online petition or making an online donation, to protesting at the Women’s March or against family separation, sitting in at the offices of one’s Senator, or creating a local Indivisible chapter.

Indeed, more than 5,000 Indivisible chapters have been established since 2016. Even more unanticipated has been their participatory structures. Organized on social media, often per a template written by former Capitol Hill staffers, most operate through local chapters that have meetings in which attendees negotiate priorities and divide responsibilities.

Equally importantly, these initial forays into partisan politics—e.g., the decision to join the Women’s march or found an Indivisible—have bred still

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258 There is some evidence that in the wake of Black Lives Matter protests, communities of color, as part of Black Lives Matter, have also been setting up grassroots organizations. For example, there has been a surge in copwatching groups community bail funds. Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. x, 394, 409 (2016) (describing the resurgence in copwatching groups since Ferguson). Unfortunately, the existing literature is more focused on the groups’ goals and less on how they are organized or whether they coordinate nationally with similar groups.

259 It was launched when a few young Democrats, who had served as congressional aids during the early years of the Obama administration, created an online guide to effective political resistance at the grassroots level based on analysis of what had driven the success of the Tea Party. See generally Osita Nwanevu, Indivisible, an Early Anti-Trump Group, Plans for a Democratic Future, New Yorker (Nov. 9, 2018), https://www.newyorker.com/news/newsdesk/indivisible-an-early-anti-trump-group-plans-for-a-democratic-future.
broader political engagement (as the social science literature would predict).\textsuperscript{260} There are numerous stories of individuals (mostly women) inspired to run for office, but there have also been other forms of political engagement. 2018 saw a sweep of teacher’s strikes, including in right-to-work states, and in many places anti-Trump activism has been sustained by being rechanneled into a variety of local concerns and projects, including, again, public education.\textsuperscript{261}

The sparks of civic revival in the form of renewed interest in face-to-face forms of participatory civic engagement, in other words, are already present. Ironically, this appears, at least partly, to be a product of advances in the digital age. The internet has long been understood to reduce the transaction costs associated with political organizing.\textsuperscript{262} With its maturation, however, there has been a rekindling of face-to-face politics as activists have absorbed that the political potential of social media is greatest when it capitalizes on rich relationships and then scales up by bridging between closer-tie groups.\textsuperscript{263}

Foundations could step in at the limits of law to channel these encouraging sparks into a civic reorganization capable of significantly impacting both electoral politics and policymaking in both legislatures and administrative agencies. What has not occurred to date is the scaling up of such organizations such that their capacity to operate at the state, let alone, national level is assured. It also appears that, at the moment, that the choices is viewed as foundation funded or entirely voluntary. Organizations have yet to see the value of membership dues tied to participatory rights as a way to sustain such organizations.

In particular, foundations that have already pivoted to funding promising groups (rather than individual projects) could structure grants to foster civic

\textsuperscript{260} Abu El-Haj, Friends, Associates, and Associations, supra note, at 81-82, 85–86 (noting “empirical research indicates that civic participation breeds more participation” and that “[i]nitial forays into public life quickly turn into a habit, as individuals become part of social networks likely to encourage it”).


\textsuperscript{262} Dana R. Fisher & Marije Boekkooi, Mobilizing Friends and Strangers: Understanding the Role of the Internet in the Step It Up Day of Action, 13 Info., Comm. & Soc’y 193, 195 (2010) (reviewing research on ways internet can be used to “blend new and old forms of association” and how “rather than replacing personal contact, the Internet has been seen to supplement it”).
associations that promote and embody social ties (online but also in-person), particularly ones that are socioeconomically and geographically integrated and that operate through participatory governance structures. Over time, they could seek to build up the capacity of such organizations to operate at a national scale. Each of these features, as we saw previously, are critical to successfully broadening political participation and creating a muscular Main Street counterweight to the current outsized political influence of the wealthy.

Indeed, the Ford Foundation recently solicited a review of its programming with respect to its initiative, Promoting Electoral Reform and Democratic Participation. Among the challenges identified in the review was “the decline of democratic institutions that have the local infrastructure” necessary to grow a membership. And among the report’s recommendations to the foundation was that it prioritize the long-term value of investing to create “strong [federated] organizations that can continuously hold institutions [politically] accountable” while themselves being organized to be accountable to their constituencies. Indeed, the report specifically recommended revising metrics to assess potential grantees in terms of their capacity to achieve tangible, near-term wins (profits) but also their capacity to build governance structures and membership levels (assets) that speak to longer-term goals of democratic participation and engagement.

The key step, then, is to find useful benchmarks for foundations wishing to assess and develop the capacity of civic associations to build governance structures and membership levels capable of fostering democratic participation and engagement at a politically powerful scale. Once again, the previous sections suggest a few key yardsticks. With respect to membership, measures might include:

- the size of its membership (perhaps a goal of a minimum of 100,000 members)

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264 Hahrie Han & Lisa Argyle, A Program Review of the Promoting Electoral Reform and Democratic Participation (PERDP) Initiative of the Ford Foundation 3 (February 2016) (analyzing “strategies for increasing civic participation” with a focus on identifying strategies for ensuring that democratic participation is “powerful, possible, and probable”).
265 Id. at 21.
266 Id. at 31.
267 Id. at 8, 22, 23, 27, 29-30 (defining assets as including “strengthening the relationship between the organization and its constituency and translat[ing] those relationships into elite lobbying power,” “having a robust infrastructure at the state and local level” and advocating for policies that will have positive political feedback loops).
268 These figures are based on the membership and organizations infrastructure of the large voluntary membership groups that dominated the mid-twentieth century. See THEDA SKOCPOL,
- diversity of membership, with particularly attention to socioeconomic diversity
- active membership (membership involve participation beyond writing checks)
- ratio of professionals to volunteers
- the regular opportunities for members to form relationships—blending of online and face-to-face opportunities, including periodic meetings, conferences, and conventions.269

With respect to participatory governance structures and ability operate at political scale, measures might include:

- democratic internal governance structures
- financial reliance on membership dues (financial or in-kind) to provide both engagement and a level of independence from foundations and private donors270
- a federated structure of subchapters in different states or localities (on the order of 2,000 state or local chapters) or other evidence of geographic spread.271

The goal for these measures would be to both nurture emerging civic groups and nudge existing organizations towards greater appreciation of the democratic value of active membership, social ties between those members, and participatory structures. With respect to the goal of nudging established civic groups toward different internal structurtes, it is worth noting that some civic associations, even before the recent political revival, had begun to take notice of the cost of operating without actual members. When the ACLU of Pennsylvania and the Public Interest Law Center of Philadelphia (PILCOP) sought to challenge Pennsylvania’s voter identification law in 2012, they scrambled to identify individuals who lacked the requisite documentation proving their eligibility to vote. The NAACP presumably did not have to scramble in 1960.

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DIMINISHED DEMOCRACY: FROM MEMBERSHIP TO MANAGEMENT IN AMERICAN CIVIC LIFE 90-91 (2003).

269 There is good evidence that successful membership-based civic associations deepen the commitment of participants by creating a sense of community in the course of leadership development; however, those efforts do not require that the contact be in-person. Blended strategies work. HAN, supra note, at 17-23.

270 HAN, supra note, at 5 (identifying a key structure of membership-based organizations as dependence on volunteers and governance through elected bodies).

271 SKOCPOL, supra note, at 90-91.
When the Pension Rights Center sought to persuade the Department of Labor to adopt a rule that would make it easier for workers without access to employer-managed 401(k)s to save for retirement, it ran into similar difficulties. Eventually, it located seniors to testify to their retirement savings struggles through an affiliate that provides services to seniors and the AARP. In both of these cases, the strategy settled upon by the professionalized associations was partnering with member-oriented groups. Such groups, however, are not available for large swaths of Americans—consumers, millennials, and working parents.

Finally, it is worth noting that foundations might even find it to be in their interest to take up this particular democratic reform agenda. Foundations are often looking for ways to wean the organizations they fund without undermining the investment they have already made. In this regard, they might find it helpful to set dues paying membership goals as a condition of access to future funding, thus partial weaning the civic groups they fund off of foundations as the source of funding.

The limits of law as a lever for rekindling membership-based civic associations organized through democratic governance structures should not be overstated. In principle, the federal tax code could be used to reshape the form of civic associations by modifying the bases for offering civic groups nonprofit status. In particular, the Code could be restructured to distribute tax relief to civic groups on the basis of the quantity and quality of membership as well as internal governance structures.

The existing Internal Revenue Code (“Code) singles out organizations for preferential tax treatment based on the perceived value of their purpose, rather than in relation to their organizational structure and their potential to

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272 It has long been thought that the Tax Code significantly contribute to size and renown of the nonprofit sector in the United States. In this regard, the finding that implementing social policy through the tax code does render government spending invisible in ways that undermine the vibrancy of civic associations and political participation does not tell the whole story. See David E. Pozen, Remapping the Charitable Deduction, 39 CONN. L. REV. 531, 537 (2006) (citing 55 Cong. Rec. 6728 (1917) (statement of Sen. Hollis)); see also id. at 533 (noting that “its generosity is widely seen as an engine of America’s [robust] nonprofit sector”). Some scholars do question how much the charitable deduction induces more charitable giving, and the empirical claim is difficult to prove insofar as it depends on determining the counterfactual of how much giving would occur in the absence of the tax incentive. Moreover, it is worth acknowledging that although it is worth noting that the charitable deduction does reinforce economic incentives for private individuals, especially high-income individuals and corporations, to fund civic organizations. That said, the very use of the tax code to accomplish ends other than raising revenue is controversial.
contribute to civic engagement or political participation. As the Supreme Court explained in *Bob Jones University v. United States*, the intent of the Code is to provide tax exemption to a subset of institutions that “serve a public purpose . . .

273 The Internal Revenue Code shapes civil society largely through two provisions (Chapter 501 and Chapter 170) and the intersection between them. Chapter 501 defines a set of ends for which organizations can be set up without facing federal income taxes. See 26 U.S.C. § 501(c), (d) (providing that “[a]n organization described in subsection (c) or (d) . . . shall be exempt from taxation”). Organizations that are eligible for tax-exemption status include labor, agricultural and horticultural organizations, business leagues and chambers of commerce, recreational clubs, various types of fraternal benefit societies and orders, as well as veteran’s associations. See 26 U.S.C. § 501(c)(5-12) (19)(23). The most-preferred tax status under current law is bestowed on the subset of tax-exempt organizations, known as “public charities.” 26 U.S.C. § 501(c)(3) (providing that to constitute a public charity, under 501(c)(3), the “[c]orporation[,] . . . community chest, fund, or foundation” must be operated “exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition . . . or for the prevention of cruelty to children or animals” on a not-for-profit basis”) (emphasis added). Public charities benefit from tax breaks on both ends, as both the entity’s income and donations to the entity are tax exempt. In other words, as with other associations organized under Chapter 501(c), public charities are exempt from federal income tax. In addition, however, the tax code permits individuals and corporations to deduct contributions to such organizations from their taxable income and donations to the entity are tax exempt. In other words, as with other associations organized under Chapter 501(c), public charities are exempt from federal income tax. In addition, however, the tax code permits individuals and corporations to deduct contributions from their taxable income—thereby also potentially lowering their marginal tax rate. See 26 U.S.C. § 170; see also id. § 170(a)(1) (specifying conditions under which corporations may take advantage of the charitable deduction); § 170(b)(2)(A) (specifying total charitable contributions deduction for a corporation “shall not exceed 10 percent of the [corporate] taxpayer’s taxable income”). The key here is that individuals and corporations are permitted subtract their contributions of money or property to such organizations from their earned income. See Rev. Rul. 67-246, 1967-2 C.B. 104, 1967 WL 15031 (explaining IRS’s so-called quid pro quo test, which provides that only those contributions which are transferred “without adequate consideration” are eligible for the deduction). This latter break is intended to incentivize so-called charitable donations. Such organizations are also given discounts on postal rates for bulk-mail and some additional breaks associated with taxes related to their employees. [find cites] The only other tax-exempt groups to which contributions can be deducted are veterans groups and certain domestic fraternal orders operating through lodge systems. 26 U.S.C. § 170 (c)(1-5); see also IRS, Publication 526 (noting charitable deduction is typically capped at 50% of income, but a lower 30% rate for certain groups such as “veterans' organizations, fraternal societies, nonprofit cemeteries, and certain private nonoperating foundations”) at available [find cites] The only other tax-exempt groups to which contributions can be deducted are veterans groups and certain domestic fraternal orders operating through lodge systems. 26 U.S.C. § 170 (c)(1-5); see also IRS, Publication 526 (noting charitable deduction is typically capped at 50% of income, but a lower 30% rate for certain groups such as “veterans' organizations, fraternal societies, nonprofit cemeteries, and certain private nonoperating foundations”) at available [find cites] The only other tax-exempt groups to which contributions can be deducted are veterans groups and certain domestic fraternal orders operating through lodge systems. 26 U.S.C. § 170 (c)(1-5); see also IRS, Publication 526 (noting charitable deduction is typically capped at 50% of income, but a lower 30% rate for certain groups such as “veterans' organizations, fraternal societies, nonprofit cemeteries, and certain private nonoperating foundations”) at available
. [not] contrary to established public policy.”274 Among these, “public charities” are the most preferred insofar as individuals who contribute to a subset of such organizations are permitted to deduct those contributions from their taxable income.275

It is not that the sorts of civic associations that are most likely to realize the democratic goals of responsiveness and accountability, including unions, are not eligible for tax-exempt status. They are. Among those singled out for tax-exempt status are membership-based civic leagues, unions and professional associations.276 The problem, instead, is that such organizations are not given preferential treatment, as compared to those that are professionally run and foundation funded. For example, the tax exempt status of 501(c)(4)s and (5)s, which generally are membership based, does not turn on their organizational structure, per se, but only the purpose for which they are formed.277

This, however, could be modified. The Internal Revenue Code (“Code” or “tax code”) could be amended to provide additional tax relief to organizations that create meaningful civic opportunities for individual members. The attributes to reward would include: dues-paying membership, socioeconomic and geographic diversity of membership, opportunities for face-to-face engagement, and participatory internal governance structures.

The Code, for example, could be recalibrated so that tax-exempt status turned on both the purposes and organizational structure of an association and the interpersonal depth capable of reinforcing civic skills. For example, working within the existing structure, chapter 501 could be amended such that tax-exempt status was not an on/off switch. No longer would all 501(c) organizations be completely exempt from paying federal income tax, as they are now. Instead, under 501(c) 2.0, the federal government would distribute tax-exempt status on a pro-rated basis. Only associations meeting certain

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275 The recent tax reforms significantly limit the incentive for the average taxpayer to itemize deductions (including charitable deductions), thereby, rendering that aspect of the tax code a less significant lever.
277 The NRA, individual Boy Scout groups, the League of Women Voters, and state chapters of the NAACP and ACLU are all organized as 501(c)(4)s. For example, with respect to 501(c)(4)s, “the promotion of social welfare,” and in the case of employee groups, “charitable, educational, or recreational purposes.” 26 U.S.C. § 501(c)(4) (A) (emphasis added). IRS Regulations further specify that such organizations must be “primarily engaged in promoting in some way the common good and general welfare of the people of the community,” such as by “bringing about civic betterments and social improvements.” 26 C.F.R. § 1.501(c)(4)-1. 501(c)(5)s are entirely defined by purpose. Id. § 501(c)(5) (“Labor, agricultural, or horticultural organizations”).
organizational triggers would be fully tax exempt. For instance, one might revise the chapter such that organizations eligible for 501(c) status given their purpose are automatically relieved of tax liability for 90% of their income, and they can then apply to be upgraded to 100% tax exempt. \footnote{One advantage of an upgrade approach is that entities would have to approach the IRS for upgraded status and the agency could then audit them to ensure that the organization meet the criterion in fact, not just on paper. Once rules were established, the determination of which 501(c)(3)s meet the statutory definition would be left to the IRS. It would publish a list of eligible associations. The IRS currently issues a publication that lists all organizations eligible for the charitable contributions deduction. IRS, Publication 78 (confirm). Moreover, the Code currently requires 501(c)(4)s to file with the IRS a notice of their desire to operate as a 501(c)(4). See 26 U.S.C. § 506(a) (“An organization described in section 501(c)(4) shall, not later than 60 days after the organization is established, notify the Secretary (in such manner as the Secretary shall by regulation prescribe) that it is operating as such.”). The main obstacle with such a reform proposal is the political opposition from organizations that currently enjoy tax-exempt status under 501(c) and could never hope to be membership-based civic groups (universities and hospitals, for example) would ensure that any proposals of this kind were dead on arrival. One solution to this would be to adopt this proposal but exclude those groups that really are given tax exempt status primarily for their ends—like universities and hospitals.} The IRS could establish metrics similar to suggested for foundations and a process for applying to upgrade one’s tax exempt status to 100%.

That said, tax reforms are unlikely to offer a promising route to reform for at least two reasons. First, any changes to the current structure of the Code will face significant resistance from the current beneficiaries. Thus while the basic ideas floated here are in principle possible, they are not necessarily realistic. Second, the line between 501(c)(3)s and 501(c)(4)s is salient for corporate lawyers and on Tax Day, but phenomenologically, it is fictitious. The NRA, Boy Scouts, NOW—indeed any nationally significant civic associations that are likely to come to mind—operate both 501(c)(3)s and (4)s. For members and the public, they are experienced as a single association—just as McDonalds is experienced as a single corporation.

* * *

In sum, it is time to broaden the democracy reform agenda to include the pursuit of policies that are likely to motivate individuals to participate in our democracy, to stimulate the reorganization of the interests of everyday Americans, and to fuel the nascent signs of civic revival. Legislation, including proposals that are on the existing policy menu, if approached wisely, offer a significantly underappreciated lever through which to reinforce the recent surge in political participation. Reforms that have not yet become polarized are
particularly promising insofar as the left does not have a monopoly on dismay with the state of American democracy. And obviously, any bills that are being seriously considered should be subject to a rigorous policy-feedback analysis.

The potential for positive collateral consequences depend, however, on resisting the temptation to disguise the distribution of government largess or to prioritize the cheapest versions of policy reform. For example, during the Obama years, Democrats made significant efforts to reverse the trend toward directing the bulk of government social spending toward corporations and households in the very highest socioeconomic bracket. Unemployment benefits were extended during the Great Recession, the number of uninsured Americans substantially dropped, and the federal government took on a direct role in student lending. Unfortunately, many of these programs were distributed as tax incentives or by private actors, rendering invisible the myriad benefits the new government had conferred on middle class Americans. We must learn from Obama’s mistakes.

CONCLUSION

The path from political participation to policy responsiveness is not straightforward. Structural features of American democracy stand in the way—from the Senate and Electoral College to the fact that officials are elected in winner-take-all elections. As such, neither eagerly participating in the pluralist chorus nor electing one’s preferred candidate guarantee the policy responsiveness that many Americans are craving.

Still, there is a long way to go from where we are to a place where the gaps in policy attention can reasonably be attributed to these structural barriers to responsiveness. The path forward from the economic and political inequality in the New Gilded Age, moreover, will face significant obstacles. And this is not simply because the beneficiaries of the current system will oppose challenges to their political power. A significant obstacle to any effort to reverse the vicious cycle of democratic politics today is socioeconomic segregation. But there are others. At the same time, the demise of American democracy was not inevitable, and its revival is not foreclosed.

\footnote{That said, it is perhaps concerning that it appears that only progressive reforms have positive returns for political capacity and democratic responsiveness. Where does this leave a good government, economic conservative—firmly opposed to government redistribution of wealth in either direction, but equally concerned that elected officials are insufficiently responsive to the preferences of ordinary Americans?}

\footnote{Mettler 2010, supra note, at passim.}
The future of American democracy depends on broadening our conception of what good governance reform entails. We must move beyond the search for silver policy bullets and the myopic focus on procedural reforms; recognize that democratic dysfunctions can equally stem from distortions in the political inputs (civil society); and appreciate that access is only the first barrier to participation. Only once that conceptual leap has been made will it be possible to recognize the full array of opportunities that exist to rebuild, over the long haul, our democratic institutions or to appreciate the full allies capable of sharing that burden. Entrenched problems demand multifaceted interventions aimed at incremental change, but they also demand vision.