

ARTICLES

PARTISANSHIP, SOCIAL IDENTITY, AND AMERICAN GOVERNMENT: REALITY AND REFLECTIONS

by
Todd E. Pettys*

On the conventional account of American voter behavior, voters assess policy options in a range of areas, they develop preferences among those options, and then they bring those preferences to bear when casting their ballots on Election Day. In this symposium contribution, Professor Pettys begins by pointing out ways in which this conventional belief in a policy-driven electorate undergirds important constitutional doctrines in the areas of voting, speech, and federalism. He then examines the substantial body of evidence indicating that electoral behavior often has little to do with voters' autonomous evaluation of policy options, and has much to do with the belief- and behavior-shaping power of voters' social identifications, particularly those of a politically partisan variety. Professor Pettys closes by reflecting on ways in which those who teach and write about the law might respond to this continually growing body of empirical work.

* H. Blair and Joan V. White Chair in Civil Litigation, University of Iowa College of Law. Many thanks to the editors of the *Lewis & Clark Law Review* for inviting me to participate in this symposium. Thanks, too, to Ross Andrews for his research assistance.

I.	THE FOLK THEORY AS CONSTITUTIONAL PREMISE	306
II.	CHALLENGING THE CONVENTIONAL STORY	310
	A. <i>Voters' Knowledge</i>	311
	B. <i>Voters' Social Identifications</i>	315
	1. <i>Features and Implications of Social Identities</i>	315
	2. <i>Partisan Identifications in the Political Realm</i>	319
III.	REFLECTIONS.....	326

A fifth-grade teacher asks you to speak to her class on Election Day. She wants you to help her students understand what voters in the United States are really doing when they fill out their ballots. You accept the assignment—after all, you’ve been trained in the law, you pay close attention to politics, and the kids will be charming. Setting aside your well-chosen anecdotes and your winning sense of humor, what will be your core message to the students?

The story might go something like this. In the United States, the people are sovereign. That means—as the authors of the Declaration of Independence put it—that the people have “the Right” to establish the governmental arrangements that they believe will best secure “their Safety and Happiness.”¹ Under the system that the founding generation established, we don’t personally write the nation’s laws, but we shape the laws under which we live by collectively deciding who our lawmakers will be.² In a vast range of areas—from immigration to endangered species, from health care to taxes, from education to climate change—we can decide which policies we favor and then vote for the candidates we believe will pursue those policies most effectively.³ Or perhaps we would flip the sequence in which voters and politicians appear in our story, explaining that political parties and their candidates make policy proposals that they hope will inspire voters to come out on Election Day, and then voters select the parties and candidates they find most

¹ THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

² *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (“[I]n our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts.”). In about half the states, we also vote on ballot initiatives and referenda. See NAT’L CONFERENCE OF STATE LEGISLATURES, INITIATIVE AND REFERENDUM STATES (Dec. 2015), <http://www.ncsl.org/research/elections-and-campaigns/chart-of-the-initiative-states.aspx>.

³ See ROBERT A. DAHL, A PREFACE TO DEMOCRATIC THEORY 37 (1956) (“The condition of popular sovereignty is satisfied if and only if it is the case that whenever policy choices are perceived to exist, the alternative selected and enforced as governmental policy is the alternative most preferred by the members.”); ROBERT A. DAHL, ON DEMOCRACY 37 (1998) (arguing that, for there to be a democracy, voters “must have equal and effective opportunities for learning about the relevant alternative policies” and equal opportunities to cast ballots).

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 303

appealing.⁴ Either way (our story would go), voters' decisions give our governmental system a legitimacy it otherwise would lack.⁵ As Abraham Lincoln famously put it at Gettysburg, ours is a "government of the people, by the people, for the people."⁶ That is what Election Day is all about.

Now suppose—in keeping with one of the focal points of the symposium that occasioned this Article—that some of the school's families have been directly impacted by the actions of federal immigration authorities, and so the teacher asks you to draw a few connections between Election Day and immigration law. Because it pertains to some of the immigration headlines that the children's parents are likely talking about, the ambitious teacher also asks you to throw in a few words about federalism. There are different ways you could go. You might begin by explaining that, no matter where a person stands within the United States, he or she is standing within both a state and a nation, and voters elect the leaders of each.⁷ The Constitution does not itself bar noncitizens from voting in state and national elections,⁸ but—in response

⁴ See ANTHONY DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* 35 (1957) (arguing that "the main goal of every party is the winning of elections" and that each party "treats policies merely as means towards this end"); JOSEPH A. SCHUMPETER, *CAPITALISM, SOCIALISM AND DEMOCRACY* 269 (3d ed. 1976) (arguing that, rather than think of democracy as a system in which elected officials carry out the electorate's will, our theory of democracy should make "the deciding of issues by the electorate secondary to the election of the men who are to do the deciding").

⁵ See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) ("Governments . . . deriv[e] their *just* powers from the consent of the governed." (emphasis added)).

⁶ GARRY WILLS, *LINCOLN AT GETTYSBURG: THE WORDS THAT REMADE AMERICA* 263 (1992) (reproducing the text of President Lincoln's address).

⁷ See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring) ("The Framers split the atom of sovereignty. It was the genius of their idea that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other."); WILLIAM H. RIKER, *FEDERALISM: ORIGIN, OPERATION, SIGNIFICANCE* 5 (1964) (defining federalism as a system in which multiple "governments rule over the same territory and people and each . . . has the authority to make some decisions independently of the other"). So far as voters' role is concerned, the Electoral College is a story of its own. See U.S. CONST. art. II, § 1, cl. 2 (giving states the power to decide how to appoint presidential electors). Municipalities, juries, school districts, zoning commissions, and the like add additional layers to voters' political capacities. See Heather K. Gerken, *The Supreme Court 2009 Term—Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4, 21–33 (2010).

⁸ See U.S. CONST. art. I, § 2, cl. 1 (stating that those voting in a state's elections for seats in the House of Representatives "shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature"); *id.* amend. XVII (imposing the same derivative standard for those voting in a state's elections for seats in the Senate); *id.* art. II, § 1, cl. 2 (stating that, for presidential elections, "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors").

to prevailing political sentiment—lawmakers today almost always limit voting rights to American citizens.⁹ For some areas of our lives, lawmaking responsibility rests largely or entirely in the hands of either the federal government or the states. It is the federal government, for example, that determines who can lawfully be present within the United States,¹⁰ and so voters' preferences regarding America's immigration policy are most powerfully brought to bear when evaluating candidates in congressional and presidential elections. But even in areas of predominant federal control, there are important decisions for state and local politicians and their constituents to make. If federal officials are searching for undocumented immigrants, for example, do voters want their state and local leaders to cooperate in the search?¹¹

Resting at the heart of these Election Day remarks are some familiar presuppositions—namely, that voters assess policy options in a wide range of areas (either on their own initiative or in response to the choices that candidates lay out before them), they develop preferences among those options, and they bring those preferences to bear when casting their ballots and lobbying elected officials. As party platforms, candidate debates, and the like would seem to make clear, these honorable presuppositions permeate our politics. So we're poised to do a pretty good job in our Election Day remarks to the fifth graders, aren't we?

⁹ See, e.g., 18 U.S.C. § 611(a) (2012) (stating that, with limited exceptions, “[i]t shall be unlawful for any alien to vote in any election held solely or in part for the purpose of electing a candidate for the office of President, Vice President, Presidential elector, Member of the Senate, [or] Member of the House of Representatives”); IOWA CONST. art. II, § 1 (“Every *citizen of the United States* of the age of twenty-one years . . . shall be entitled to vote at all elections which are now or hereafter may be authorized by law.”(emphasis added)). There are, however, rare exceptions. In 2016, for example, San Francisco voters opted to allow noncitizen residents of the city to vote in school-board elections if they have one or more children living within the school district's boundaries. See S.F. DEP'T OF ELECTIONS, NOVEMBER 8, 2016 OFFICIAL ELECTION RESULTS (Dec. 6, 2016), <http://www.sfelections.org/results/20161108/> (reporting the voting results for Local Measure N—Non-Citizen Voting in School Board Elections).

¹⁰ See, e.g., *De Canas v. Bica*, 424 U.S. 351, 354 (1976) (“Power to regulate immigration is unquestionably exclusively a federal power.”).

¹¹ See, e.g., CITY AND CTY. OF S.F., OFFICE OF CIVIC ENGAGEMENT & IMMIGRANT AFFAIRS, SANCTUARY CITY ORDINANCE, <http://sfgov.org/occia/sanctuary-city-ordinance-0> (describing ways in which San Francisco has refused to aid federal efforts to enforce national immigration laws); Maria Sacchetti, *Texas Law on Sanctuary Cities Challenged in Federal Court*, WASH. POST (June 26, 2017), https://www.washingtonpost.com/local/social-issues/challenge-to-harsh-texas-immigration-texas-to-be-heard-monday/2017/06/25/c689254c-59c4-11e7-a9f6-7c3296387341_story.html?utm_term=.c253dba87bab (reporting on a sanctuary-city battle between state and city leaders in Texas).

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 305

If our goal is to describe what voters have long been conventionally understood as doing, then we are in good shape, particularly given that our audience will be children who are taking early steps toward building their own notions of civic responsibility. It would be understandable, however, if we felt nagging misgivings about the accuracy of the story we were telling. A growing body of scholarship—emerging with particular frequency from the halls of political science—indicates that the story of what a great many voters are *actually* doing on Election Day is a good bit more complicated.

The conventional picture we have painted of elections and voter behavior is one that political scientists Christopher Achen and Larry Bartels recently described as “a kind of ‘folk theory’ of democracy, a set of accessible, appealing ideas assuring people that they live under an ethically defensible form of government that has their interests at heart.”¹² But that theory, they argue, “has been severely undercut by a growing body of scientific evidence presenting a different and considerably darker view of democratic politics.”¹³ If we aspire for “intellectual honesty,” Achen and Bartels write, then we must “grapple with the corrosive implications of that evidence for our understanding of democracy.”¹⁴

My aim here is to provide an orientation to this important conversation and to encourage readers to join it. To underscore the fact that the “folk theory” of American democracy is more than mere popular rhetoric or idle philosophizing, I begin in Part I by pointing out ways in which a foundational belief in a policy-driven electorate undergirds important constitutional doctrines in the areas of voting, speech, and federalism. In Part II, I catalogue some of the evidence suggesting that the conventional understanding of what typically drives most American voters is either misguided or incomplete. A substantial body of evidence indicates that electoral behavior often has surprisingly little to do with voters’ autonomous evaluation of policy options, and has much to do with the belief- and behavior-shaping power of voters’ social identifications, particularly those of a politically partisan variety. In Part III, I reflect on some of the ways in which we might respond to this growing body of empirical work, and then I close by suggesting how we might amend our remarks to the schoolchildren.

¹² CHRISTOPHER H. ACHEN & LARRY M. BARTELS, *DEMOCRACY FOR REALISTS: WHY ELECTIONS DO NOT PRODUCE RESPONSIVE GOVERNMENT* 1 (2016).

¹³ *Id.*

¹⁴ *Id.* at 2.

I. THE FOLK THEORY AS CONSTITUTIONAL PREMISE

The folk theory of American democracy is not merely the stuff of campaign rhetoric and Fourth of July celebrations. It frequently serves as an animating premise in constitutional reasoning. Three areas of constitutional law will briefly illustrate the point: the right to vote, the freedom of speech, and federalism doctrine and theory.

More than a century ago, in one of its first significant discussions of the Fourteenth Amendment's Equal Protection Clause, the Court observed in *Yick Wo v. Hopkins*¹⁵ that the right to vote "is regarded as a fundamental political right" because, in our representative system of government, voting is the principal means by which people protect their other rights and interests.¹⁶ As the Court explained in 1964's *Reynolds v. Sims*,¹⁷ "[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government."¹⁸ When the government allows some adult citizens to vote but not others, the Court wrote in a subsequent ruling, it raises "the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives."¹⁹ As a result, restrictions on citizens' right to vote "must be carefully and meticulously scrutinized."²⁰ Holding that states must apportion their legislatures by population rather than by acreage or some other measure, for example, the *Reynolds* Court explained that, "[s]ince legislatures are responsible for enacting laws by which all citizens are to be governed, they should be bodies which are collectively responsive to the popular will."²¹ Several months earlier, the Court had held in *Wesberry v. Sanders*²² that those same principles of equal representation apply in federal congressional elections, reasoning that "[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live."²³ All of these republican principles presuppose that elections are a vital

¹⁵ 118 U.S. 356, 370 (1886).

¹⁶ *Id.*

¹⁷ 377 U.S. 533 (1964).

¹⁸ *Id.* at 555. The Court made the same point five years later, writing that "[a]ny unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government." *Kramer v. Union Free Sch. Dist.*, 395 U.S. 621, 626 (1969).

¹⁹ *Kramer*, 395 U.S. at 627.

²⁰ *Reynolds*, 377 U.S. at 562.

²¹ *Id.* at 565.

²² 376 U.S. 1 (1964).

²³ *Id.* at 17.

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 307

mechanism by which state and federal laws are brought into alignment with prevailing policy preferences.

The centrality of elections in our representative system of government has powerfully informed our understanding of the First Amendment right to freedom of speech.²⁴ On even the narrowest account, speech about public policy and government officials rests at the heart of that constitutionally protected freedom. Judge Robert Bork famously argued, for example, that the Speech Clause’s “protection should be accorded only to speech that is explicitly political,” by which he meant speech that provides “criticisms of public officials and policies, proposals for the adoption or repeal of legislation or constitutional provisions and speech addressed to the conduct of any governmental unit in the country.”²⁵ Alexander Meiklejohn similarly contended that the First Amendment’s protection is focused on speech concerning matters relating to the execution of our system of “political self-government.”²⁶ The modern Court has taken a vastly broader view of the Speech Clause’s reach, but still has made it clear that “[a]t the core of the First Amendment are certain basic conceptions about the manner in which political discussion in a representative democracy should proceed,”²⁷ and that “the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office.”²⁸ The chief reason why the founders insisted upon protecting the freedom of speech, the Court has said, was “to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.”²⁹ The Court’s campaign-finance ruling in *Citizens United, Inc. v. FEC*³⁰ is a lightning rod for political controversy (and thus has itself

²⁴ See U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech . . .”).

²⁵ Robert H. Bork, *Neutral Principles and Some First Amendment Problems*, 47 IND. L.J. 1, 20, 29 (1971).

²⁶ ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* 24–25 (2d prtg. 2002); cf. Lillian R. BeVier, *The First Amendment and Political Speech: An Inquiry into the Substance and Limits of Principle*, 30 STAN. L. REV. 299, 358 (1978) (concluding that, while there are reasons to extend the First Amendment’s protection to nonpolitical speech, “the sole legitimate first amendment principle protects only speech that participates in the process of representative democracy”).

²⁷ *Brown v. Hartlage*, 456 U.S. 45, 52 (1982).

²⁸ *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971); see also *Buckley v. Valeo*, 424 U.S. 1, 14–15 (1976) (per curiam) (“In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential . . .”); *Williams v. Rhodes*, 393 U.S. 23, 32 (1968) (“Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms.”).

²⁹ *Roth v. United States*, 354 U.S. 476, 484 (1957).

³⁰ 558 U.S. 310 (2010).

provoked a vast quantity of protected political speech),³¹ but one of the Court's First Amendment premises in that ruling enjoys broad support: "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it."³²

Faith in a policy-driven electorate also underlies some accounts of the functions of federalism in our constitutional system. In many areas of our lives, the state and federal governments' powers overlap, giving rise to the possibility that the electorate might wish to reallocate regulatory responsibilities from time to time when one set of lawmakers seems better able than the other to satisfy voters' desires.³³ James Madison argued, for example, that if the federal government won the people's trust through "manifest and irresistible proofs of a better administration," the people might "become more partial to the federal than to State governments" and might wish to shift responsibility from state to federal officials accordingly.³⁴ Although Madison predicted the states would perform well in the battle for voters' confidence, he insisted that, if citizens wanted to shift lawmaking responsibility from the states to the federal government, "the people ought not surely to be precluded from giving most of their confidence where they may discover it to be most due."³⁵ Alexander Hamilton similarly forecast that the states would at least temporarily lose some of their regulatory prerogatives if they failed to "administer their affairs with uprightness and prudence."³⁶ If a state's public K-12 schools are poorly run, for example, constituents might gravitate toward candidates who favor having the federal government demand curricular reforms in exchange for further financial assistance, while those who deem past federal interventions a failure might support candidates who favor continued local control. This state-federal competition only works as planned, however, if voters appraise their state

³¹ Gabrielle Levy, *How Citizens United Has Changed Politics in 5 Years*, U.S. NEWS (Jan. 21, 2015), <https://www.usnews.com/news/articles/2015/01/21/5-years-later-citizens-united-has-remade-us-politics>.

³² *Citizens United*, 558 U.S. at 339.

³³ Todd E. Pettys, *Competing for the People's Affection: Federalism's Forgotten Marketplace*, 56 VAND. L. REV. 329, 338-44 (2003) (describing some of the leading founders' understanding of competitive federalism); Jack N. Rakove, *The Origins of Judicial Review: A Plea for New Contexts*, 49 STAN. L. REV. 1031, 1042 (1997) ("Federalism . . . involves a struggle or competition for the political allegiance and affections of a population that has consented to be ruled simultaneously by two levels of government.").

³⁴ THE FEDERALIST NO. 46, at 295 (James Madison) (Clinton Rossiter ed., 1961).

³⁵ *Id.*

³⁶ THE FEDERALIST NO. 17, at 119 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 309

and federal leaders' policy pledges and track records and then bring those appraisals to bear on Election Day.

The federalism-focused anti-commandeering doctrine illustrates a similar point from a different angle. The Court has concluded that “[i]t is an essential attribute of the States’ retained sovereignty that they remain independent and autonomous within their proper sphere of authority.”³⁷ As a result, the Constitution does not allow the federal government to “‘commandeer’ state governments into the service of federal regulatory purposes.”³⁸ The anti-commandeering principle is grounded (at least in part) in the belief that voters hold state and federal officials separately accountable for their respective actions and that “[a]ccountability is . . . diminished when, due to federal coercion, elected state officials cannot regulate in accordance with the views of the local electorate in matters not pre-empted by federal regulation.”³⁹ If a state’s citizens wish to elect state leaders who will refuse to help federal officials arrest individuals who are in the country illegally, for example, our constitutional system insists that they be free to do so.⁴⁰

There is at least one other commonly touted dimension of federalism that substantially relies on the presupposition that voters are policy-savvy decision-makers who seek to align the legal regime under which they live with their own policy preferences. States and locales compete with one another to attract productive residents.⁴¹ Our constitutional right to travel makes that competition inevitable: if a person finds the legal regime in a different state or community sufficiently desirable, he or she can relocate.⁴² Two truths are thus stamped on opposite sides of the same coin: the decisions that voters

³⁷ *Printz v. United States*, 521 U.S. 898, 928 (1997).

³⁸ *New York v. United States*, 505 U.S. 144, 175 (1992); *accord Printz*, 521 U.S. at 925–28.

³⁹ *New York*, 505 U.S. at 169.

⁴⁰ See Ilya Somin, *Why Trump’s Executive Order on Sanctuary Cities Is Unconstitutional*, WASH. POST (Jan. 26, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/01/26/constitutional-problems-with-trumps-executive-order-on-sanctuary-cities/?utm_term=.f1a873979daa.

⁴¹ See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956) (famously examining this virtue of federalism); see also MICHAEL S. GREVE, *THE UPSIDE-DOWN CONSTITUTION* 6–7 (2012) (championing a Tiebout-inspired “competitive federalism” that will “enable citizens to choose among varying bundles of public services and the taxes that come with them, and . . . will force the junior governments to compete for productive citizens and firms”); Seth F. Kreimer, *Federalism and Freedom*, 574 ANNALS AM. ACAD. POL. & SOC. SCI. 66, 70–71 (2001) (emphasizing this feature of federalism). For a critique of Tiebout’s theory as applied to American federalism, see Todd E. Pettys, *The Mobility Paradox*, 92 GEO. L.J. 481 (2004). For a critique of Greve’s argument, see Larry Yackle, *Competitive Federalism: Five Clarifying Questions*, 94 B.U. L. REV. 1403 (2014).

⁴² See *Saenz v. Roe*, 526 U.S. 489, 498–99 (1999) (describing the various dimensions of people’s constitutional right to travel).

make on Election Day can play important roles in determining the appeal and vitality of their neighborhoods, and voters can change neighborhoods if their electoral efforts to secure political satisfaction are unavailing.

II. CHALLENGING THE CONVENTIONAL STORY

Over the past half century, political scientists and other scholars have been steadily producing studies suggesting that, as a descriptive matter, the conventional understanding of American voter behavior is far too optimistic. Some of that evidence concerns cognitive weaknesses that afflict human beings in a vast range of decision-making settings. James Kuklinski, Paul Quirk, and others have found, for example, that people facing public-policy choices commonly deploy inaccurate stereotypes, are overconfident in the factual accuracy of their beliefs, dismiss information that conflicts with already-formed opinions, and gravitate toward arguments that do not demand the kind of mental work that evaluating evidence requires.⁴³ Milton Lodge and Charles Taber argue that—just like the motivated reasoning that researchers find in other contexts—much of what we experience as political reasoning is really just the after-the-fact process of rationalizing our “instantaneous[ly] experience[d]” positive or negative affective responses to stimuli.⁴⁴ We do not shed these cognitive tendencies when we act in an electoral capacity; indeed, they might rear their heads with particular force when we are confronting complex questions amidst campaign rhetoric designed to obfuscate rather than clarify. Nor are these tendencies confined to the uneducated or unenlightened. Lodge and Taber contend, for example, that the lure of motivated reasoning can be especially powerful among highly informed people who have “the facts, figures, and cognitive wherewithal to rationalize away disconfirming evidence and better defend their prior attitudes.”⁴⁵ These kinds of phenomena challenge the notion that, in a typical election, voters rationally evaluate their public-policy options and then cast the votes that best suit their reasoned preferences.⁴⁶

Rather than elaborate on these familiar (but certainly significant) obstacles to thoughtful decision-making, I want to focus here on research

⁴³ James H. Kuklinski & Paul J. Quirk, *Reconsidering the Rational Public: Cognition, Heuristics, and Mass Opinion*, in *ELEMENTS OF REASON: COGNITION, CHOICE, AND THE BOUNDS OF RATIONALITY* 153, 170–74 (Arthur Lupia et al. eds., 2000).

⁴⁴ MILTON LODGE & CHARLES S. TABER, *THE RATIONALIZING VOTER* 206 (2013).

⁴⁵ *Id.* at 209; see also Cengiz Erisen et al., *Affective Contagion in Effortful Political Thinking*, 35 *POL. PSYCH.* 187 (2014) (further developing this account of motivated reasoning).

⁴⁶ See generally JASON BRENNAN, *AGAINST DEMOCRACY* 36–48 (2016) (concisely describing many of these cognitive phenomena).

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 311

findings that are tailored more specifically to the political realm. Those findings fall into two categories—one dealing with the knowledge base from which many voters make their decisions and the other dealing with the formative power of voters' social identifications.

A. *Voters' Knowledge*

Scholars and other observers have long recognized that citizens commonly lack the information necessary to evaluate complex public-policy proposals, assess candidates' campaign pledges, and make electoral decisions that serve their own policy preferences. The fact that voters do not possess that information is hardly surprising—to the contrary, it sometimes is a function (albeit a dispiriting one) of voters' ability to make rational choices. As Anthony Downs pointed out more than half a century ago, it often “is irrational to be politically well-informed because the low returns from data simply do not justify their cost in time and other scarce resources.”⁴⁷ A harried citizen might rationally ask herself why she should carve out time from her relentless schedule to study candidates' positions on complex governmental questions, if her vote is going to be nothing more than a mere drop in the proverbial bucket. Judge Learned Hand—a thoughtful citizen by any reasonable measure—recognized the problem in his own life:

One difficulty . . . in the traditional theory [of democracy] is inherent; it arises from our necessary preoccupations and our incapacity to understand and deal with the multitude of questions that increasingly call for answer in a desperately complicated world. I do not know how it is with you, but for myself I generally give up at the outset. The simplest problems which come up from day to day seem to me quite unanswerable as soon as I try to get below the surface. Each side, when I hear it, seems to me right till I hear the other. I have neither the time nor the ability to learn the facts, or to estimate their importance if I knew them . . . My vote is one of the most unimportant acts of my life; if I were to acquaint myself with the matters on which it ought really to depend, if I were to try to get a judgment on which I was willing to risk affairs of even the smallest moment, I should be doing nothing else, and that seems a fatuous conclusion to a fatuous undertaking. Because, if all were done, for what after all does my single voice count among so many?⁴⁸

Studies confirm that—whether by rational choice or otherwise—voters often know precious little about the policy questions of their day or the policy positions that competing candidates are taking. In their influential 1960 book *The American Voter*, for example, Angus Campbell

⁴⁷ ANTHONY DOWNS, AN ECONOMIC THEORY OF DEMOCRACY 259 (1957).

⁴⁸ LEARNED HAND, *Democracy: Its Presumptions and Realities*, in THE SPIRIT OF LIBERTY 90, 92–93 (Irving Dillard ed., 1953).

and his coauthors took a close look at the presidential elections of 1948, 1952, and 1956, and concluded that most voters went to the polls remarkably uninformed about the choices that were at stake:

We have, then, the portrait of an electorate almost wholly without detailed information about decision making in government. A substantial portion of the public . . . knows little about what government has done on these [current] issues or what the parties propose to do. It is almost completely unable to judge the rationality of government actions; knowing little of particular policies and what has led to them, the mass electorate is not able to appraise either its goals or the appropriateness of the means chosen to serve these goals.⁴⁹

In a comparably important essay published in 1964, Philip Converse—one of Campbell’s coauthors—concluded that “large portions of an electorate do not have meaningful beliefs, even on issues that have formed the basis for intense political controversy among elites for substantial periods of time.”⁵⁰

Unfortunately, the picture has not significantly improved in more recent years, notwithstanding the vastly increased availability of information in the Internet age. Having reviewed public-polling data concerning the elections of 2000, 2004, 2008, and 2010, for example, Ilya Somin concludes that “[t]he sheer depth of most individual voters’ [political] ignorance may be shocking to readers not familiar with the research,”⁵¹ with that ignorance extending from candidates and their public-policy pledges, to the factual backgrounds against which candidates campaign, to the structure of America’s political institutions.⁵² In 2000, for example, barely half the electorate knew that Republicans controlled the House of Representatives, and fewer than half knew which presidential candidate (Al Gore or George W. Bush) was in greater support of abortion rights, environmental regulation, and increased government aid for African Americans.⁵³ Michael Delli Carpini and Scott Keeter have painted a more nuanced portrait of modern Americans’ political knowledge, yet still find that, “in spite of numerous changes in their political, social, economic, and technological environments, Americans are essentially no more nor less informed about politics than they were fifty years ago.”⁵⁴

⁴⁹ ANGUS CAMPBELL ET AL., *THE AMERICAN VOTER* 543 (1960).

⁵⁰ Philip E. Converse, *The Nature of Belief Systems in Mass Politics*, in *IDEOLOGY AND DISCONTENT* 206, 245 (David E. Apter ed., 1964).

⁵¹ ILYA SOMIN, *DEMOCRACY AND POLITICAL IGNORANCE* 17 (2013).

⁵² *See id.* at 20–35 (presenting numerous examples).

⁵³ *See id.* at 31 (presenting data from the American National Election Studies, a highly respected source of voter polling).

⁵⁴ MICHAEL X. DELLI CARPINI & SCOTT KEETER, *WHAT AMERICANS KNOW ABOUT*

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 313

Emphasizing heuristics and a faith in collective judgments, many scholars have tried to discount the significance of individual voters' political ignorance, but there are nontrivial reasons (described in the sources cited in the ensuing footnote) to be skeptical about those efforts' success.⁵⁵ It thus is perilous to assume in any given election that voters' collective embrace of one political candidate and rejection of another reliably reveals the will of a majority on the policy issues about which the candidates publicly locked horns.⁵⁶ That conclusion cuts to the core of the conventional understanding of American democracy.

Voters' thin knowledge base has additional consequences that might be less obvious. Converse argued in his 1964 essay, for example, that voters' political ignorance reduces their ability to construct coherent ideologies, defined here as stable structures of interdependent beliefs.⁵⁷ In a 2017 defense of Converse's thesis, Donald Kinder and Nathan Kalmoe contend that today's voters—notwithstanding their eagerness to apply ideological labels to themselves and others—are not much more ideological (in the sense just defined) than they were half a century ago.⁵⁸ Why would a paucity of interdependent political beliefs matter? Because the less one knows about why a given belief is held, and the less one perceives that one belief bears a logical relationship to another, the less constrained one is when deciding what to politically embrace or reject, and the more susceptible one is to the influence of elites who seek to shape one's short-term desires.⁵⁹ During his 2016 presidential campaign, for example, Donald Trump pledged that the nation would build a wall along the United States-Mexico border and would deport millions of individuals who were in the United States illegally.⁶⁰ Whether

POLITICS AND WHY IT MATTERS 105–06 (1996).

⁵⁵ See ACHEN & BARTELS, *supra* note 12, at 36–41; Kuklinski & Quirk, *supra* note 43, at 154–61 (arguing that individuals use heuristics in voting decisions, but not in a rational manner); SOMIN, *supra* note 51, at 90–118.

⁵⁶ See ACHEN & BARTELS, *supra* note 12, at 21–51 (presenting a chapter aptly titled “The Elusive Mandate”).

⁵⁷ See Converse, *supra* note 50 (famously developing this thesis); accord CAMPBELL ET AL., *supra* note 49, at 543 (stating that the authors' “failure to locate more than a trace of ‘ideological’ thinking in the protocols of [their] surveys emphasizes the general impoverishment of political thought in a large proportion of the electorate”).

⁵⁸ DONALD R. KINDER & NATHAN P. KALMOE, NEITHER LIBERAL NOR CONSERVATIVE: IDEOLOGICAL INNOCENCE IN THE AMERICAN PUBLIC 41–43 (2017). *But cf.* MATT GROSSMAN & DAVID A. HOPKINS, ASYMETRIC POLITICS: IDEOLOGICAL REPUBLICANS AND GROUP INTEREST DEMOCRATS 3 (2016) (“While the Democratic Party is fundamentally a group coalition, the Republican Party can be most accurately characterized as the vehicle of an ideological movement.”).

⁵⁹ See Converse, *supra* note 50, at 213–19, 248–49; see also SOMIN, *supra* note 51, at 19–20 (touching briefly on the subject).

⁶⁰ Julia Preston et al., *What Would It Take for Donald Trump to Deport 11 Million and Build a Wall?*, N.Y. TIMES (May 19, 2016), <https://www.nytimes.com/2016/05/20/us/politics/donald-trump-immigration.html>.

conservative or liberal or somewhere in between, a thoughtfully constructed political ideology could help voters come to carefully reasoned judgments about the wisdom of those proposals. Absent such an ideology, there is an increased likelihood that voters' responses are a function of forces having little or nothing to do with the complex upsides and downsides of the proposals themselves.

Voters' tenuous grasp on relevant political information also hinders their ability to assess incumbents' track records. In our system of federalism—featuring national, state, and local officials acting through a sometimes bewildering network of government offices and agencies—it can be difficult even under the best of circumstances to determine how to allocate political responsibility among lawmakers.⁶¹ But that task becomes even more difficult in the absence of hard political information. Voters do purport to evaluate incumbents in light of past events, but they often do so in misguided ways. In one of their most memorable findings, for example, Achen and Bartels conclude that, in President Woodrow Wilson's bid for reelection in 1916, a spate of shark attacks along the New Jersey coastline reduced his vote totals in those communities by about ten percentage points—not because sharks devoured thousands of pro-Wilson voters, but because voters punished the incumbent president for natural events over which he had no control.⁶² Nor is such misplaced political punishment unique to the Jersey shore. Empirical evidence suggests that, throughout the twentieth century, American voters often punished incumbents in the wake of droughts and floods.⁶³ Achen and Bartels estimate that, in the famously close presidential election of 2000, for example, natural disasters may have cost Al Gore—the vice presidential incumbent—approximately 2.8 *million* votes.⁶⁴

Of course, voters' retrospective evaluations of politicians' performances are not always so poorly grounded. Numerous studies indicate, for example, that voters' dispositions toward incumbents can be significantly influenced by economic conditions,⁶⁵ and those conditions can indeed be worsened or improved by politicians' actions. Studies also indicate, however, that when considering a politician's economic track record, voters typically do not consider their economic circumstances over the entirety of the incumbent's term in office; rather, they tend to

⁶¹ See, e.g., ACHEN & BARTELS, *supra* note 12, at 102–08 (noting the threat that random influences pose to any theory of retrospective voting, as well as the difficulty of assembling and processing the information that effective retrospective voting requires).

⁶² See *id.* at 118–28.

⁶³ See *id.* at 128–35.

⁶⁴ See *id.* at 135.

⁶⁵ See *id.* at 97–98 (concluding that there is “a virtual consensus” among scholars on this point).

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 315

focus only on conditions occurring during the election year or some fraction thereof.⁶⁶ Narrowing the temporal scope of one's analysis too greatly is problematic because the narrower one's range of vision, the greater the likelihood that, for better or worse, one's economic circumstances are the result of short-term causal factors—such as an employer's loss of a large customer, or a brief surge in the stock market—that may have about as much connection to the incumbent's past performance as shark attacks or a flood-producing series of thunderstorms. Joining *New York Times* journalist Louis Uchitelle, Achen and Bartels thus liken incumbents' fortunes to those of contestants in a game of musical chairs. “[W]hen electoral competition is sufficiently vigorous for the outcome to be in doubt,” they write, “the choice between competing governing teams is likely to hinge on the accident of whether ‘the economy is flourishing’” when the music stops playing on Election Day.⁶⁷

For those wishing to embrace the conventional understanding of what voters are doing when casting their ballots, the picture that emerges from such analyses is clearly not a happy one. It is a negative story in another sense, as well. It is a story of absences—an absence of rigorous analysis, an absence of relevant political knowledge, an absence of useful political ideologies, and so forth. But if elections are not always about voters' thoughtful evaluations of their public-policy and leadership alternatives, then what *are* they often about? Scholars from multiple disciplines have increasingly begun to point toward a leading explanatory candidate: the opinion- and behavior-shaping power of voters' social identifications.

B. Voters' Social Identifications

1. Features and Implications of Social Identities

There are different ways one might define the term “social identity.”⁶⁸ Rather than try to provide a comprehensive taxonomy of the

⁶⁶ See *id.* at 148.

⁶⁷ *Id.* at 176 (quoting Louis Uchitelle, *Beyond a President's Control*, N.Y. TIMES (July 11, 2004), <http://www.nytimes.com/2004/07/11/business/economic-view-beyond-a-president-s-control.html>); see also *id.* at 148–49 (introducing the musical-chairs analogy).

⁶⁸ See Marilyn B. Brewer, *The Many Faces of Social Identity: Implications for Political Psychology*, 22 POL. PSYCH. 115, 115 (2001). Social-identification theories of all types likely owe a debt to the mid-twentieth-century writings of Donald Campbell, who argued that a social group acquires entitativity (or, perhaps more commonly today, entity)—that is, it begins to function and to be perceived as a real entity—when its members share attributes and a common fate. See Donald T. Campbell, *Common Fate, Similarity, and Other Indices of the Status of Aggregates of Persons as Social Entities*, 3 BEHAV. SCI. 14, 17–22 (1958).

various schools of social-identification thought,⁶⁹ my aim here is simply to lay the groundwork for a discussion of social identifications' relevance to political behavior.

When we examine our self-understandings, we find that, although there certainly are fundamental ways in which we regard ourselves as autonomous individuals, there are other ways in which our individual identities are embedded in social groups.⁷⁰ The social identifications that play prominent roles in our lives typically have at least three interrelated features: we perceive attributes that distinguish members of our group from others, thereby marking the boundary between our "in-group" and the "out-group"; we perceive that our own individual fate is at least partly tied up with the fate of the in-group as a whole; and we feel a sense of loyalty to our fellow group members.⁷¹

Two sets of social-identification dynamics are especially noteworthy for our purposes here. The first concerns the allegiance and sense of shared fate that commonly prevail among a group's members. When we identify strongly with a group, there often is little or no "psychological separation between self and the group as a whole."⁷² We frequently thus

⁶⁹ Scholars have differing views, for example, about why our group identities figure so prominently in our lives and self-understandings. Some posit that we identify with certain groups but not others in order to strike a compromise between a desire to belong and a desire to be different. See, e.g., Marilyn B. Brewer, *The Social Self: On Being the Same and Different at the Same Time*, 17 PERSONALITY & SOC. PSYCH. BULL. 475, 477 (1991); cf. Rupert Brown & Dora Capozza, *Motivational, Emotional, and Cultural Influences in Social Identity Processes*, in SOCIAL IDENTITIES: MOTIVATIONAL, EMOTIONAL AND CULTURAL INFLUENCES 3, 6 (Rupert Brown & Dora Capozza eds., 2006) ("From an evolutionary perspective, group life was the strategy which allowed the survival of the human species. Accordingly, individuals . . . need to perceive themselves as included and assimilated, fearing that excessive singularity leads to exclusion and isolation." (citation omitted)). Some contend that we use our group identities to try to maximize our self-esteem. See, e.g., HENRI TAJFEL, HUMAN GROUPS AND SOCIAL CATEGORIES: STUDIES IN SOCIAL PSYCHOLOGY 254–58 (1981). Some believe we use group identities to reduce uncertainty about what to believe and how to behave. See, e.g., Michael A. Hogg, *Uncertainty, Social Identity, and Ideology*, in 22 SOCIAL IDENTIFICATION IN GROUPS 203, 209–10 (Shane R. Thye & Edward J. Lawler eds., 2005).

⁷⁰ See Brewer, *supra* note 69, at 476; Yan Chen & Sherry Xin Li, *Group Identity and Social Preferences*, 99 AM. ECON. REV. 431 (2009).

⁷¹ Kay Deaux, *Social Identification*, in SOCIAL PSYCHOLOGY: HANDBOOK OF BASIC PRINCIPLES 777, 781–82, 785 (E. Tory Higgins & Arie W. Kruglanski eds., 1996); see also Stephen Reicher et al., *The Social Identity Approach in Social Psychology*, in THE SAGE HANDBOOK OF IDENTITIES 45, 48 (Margaret Wetherell & Chandra Talpade Mohanty eds., 2010) (offering a comparable definition); Moses Shayo, *A Model of Social Identity with an Application to Political Economy: Nation, Class, and Redistribution*, 103 AM. POL. SCI. REV. 147 (2009) (same).

⁷² Masaki Yuki, *Intergroup Comparison versus Intragroup Relationships: A Cross-Cultural Examination of Social Identity Theory in North America and East Asian Cultural*

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 317

experience our in-groups' successes and failures as if they were individually our own—a phenomenon that, in turn, gives us strong incentives to want our in-groups to fare well in any competitive domains in which they participate.

Sometimes it makes good sense for us to take our in-groups' successes and failures so personally because we had something to do with producing them. Consider, for example, an analogy that Ronald Dworkin borrowed from John Rawls:

A healthy orchestra is itself a unit of agency. The various musicians who compose it are exhilarated, in the way personal triumph exhilarates, not by the quality or brilliance of their individual contributions, but by the performance of the orchestra as a whole. It is the orchestra that succeeds or fails, and the success or failure of that community is the success or failure of each of its members.⁷³

In other circumstances, however, we may experience our in-groups' triumphs and defeats as if they were our own even though we personally played no role in bringing them about. In studies focusing on fans' reactions to the wins and losses of college football teams, for example, Robert Cialdini and his coauthors found that “the personal images of fans are at stake when their teams take the field. The team's victories and defeats are reacted to as personal successes and failures.”⁷⁴ For an utterly different illustration, consider my observation in another context that, in civilizations both ancient and modern, some have believed that there is a “divine realm [that] often interacts with political communities as discrete moral entities, causing the fortunes of some cities, states, and nations to rise and the fortunes of others to fall in accordance with their public policies and conduct.”⁷⁵ When viewed through the lens of social

Contexts, 66 *SOC. PSYCH. Q.* 166 (2003).

⁷³ RONALD DWORKIN, *SOVEREIGN VIRTUE: THE THEORY AND PRACTICE OF EQUALITY* 225 (2000); *see also* JOHN RAWLS, *POLITICAL LIBERALISM* 321 (1993) (using the concept of an orchestra to illustrate the way in which an individual can become more “complete” by joining with others in a “social union”).

⁷⁴ Robert B. Cialdini et al., *Basking in Reflected Glory: Three (Football) Field Studies*, 34 *J. PERSONALITY & SOC. PSYCH.* 366, 374 (1976). A different set of researchers similarly found that, in sports, “the team's performance reflects directly upon the fan: Team success is personal success, and team failure is personal failure.” Edward R. Hirt et al., *Costs and Benefits of Allegiance: Changes in Fans' Self-Ascribed Competencies After Team Victory versus Defeat*, 63 *J. PERSONALITY & SOC. PSYCH.* 724, 725 (1992). Hirt and his coauthors argue that these phenomena are not a function simply of the mood that fans are in after their team wins or loses; rather, those wins and losses shape fans' self-esteem and their confidence in their own performance abilities. *See id.* at 735–36.

⁷⁵ Todd E. Pettys, *Sodom's Shadow: The Uncertain Line Between Public and Private Morality*, 61 *HASTINGS L.J.* 1161, 1164–65 (2010). *See generally* Steven J. Sherman & Elise J. Percy, *The Psychology of Collective Responsibility: When and Why Collective Entities Are Likely to Be Held Responsible for the Misdeeds of Individual Members*, 19 *J.L. & POL'Y* 137 (2010). Might some vestigial strain of this belief help explain why some voters punish

identifications, one can see how such a belief might take root: people's sense of moral responsibility may extend to the boundaries of the political communities with which they identify, even for conduct in which they have not personally participated.⁷⁶

Closely allied with this sense of common fate is a frequent desire to treat in-group members more favorably than others.⁷⁷ Researchers have found evidence of this desire even under highly artificial, "minimal group" conditions, in which individuals have been divided into groups by something as random as the flip of a coin (such that the outcome of a seemingly meaningless event is the only attribute that distinguishes the members of one group from another).⁷⁸ Even under these trivial circumstances, group members tend to treat one another more generously than they treat those belonging to different randomly assigned groups.⁷⁹

The second set of social-identification dynamics of special interest to us here concerns the powerful role that our social identities can play in shaping our beliefs and behaviors. We have already said that shared membership in a group disposes individuals to behave more favorably toward one another than they would if they lacked a common group identity. But the behavior- and belief-shaping power of social identifications runs deeper than that. When membership in a given group constitutes an important part of our identity, we are likely to carry in our minds at least a fuzzy prototype that defines the attributes of that group's members,⁸⁰ and we will try to maintain our status as members of

incumbents for natural disasters? See *supra* notes 62–64 and accompanying text.

⁷⁶ Cf. Michael Johns et al., *Ashamed to Be an American? The Role of Identification in Predicting Vicarious Shame for Anti-Arab Prejudice After 9-11*, 4 SELF & IDENTITY 331, 346 (2005) ("Those most likely to feel 'proud to be an American' because of their strong levels of group identification are also at risk of feeling shame in response to fellow group members who unambiguously act against core values of egalitarianism.").

⁷⁷ See Shayo, *supra* note 71, at 151 ("Loosely speaking, identification . . . implies making the 'group's interest' part of one's own interest [T]his means caring about the material payoffs of other ingroup members.").

⁷⁸ Ann Bettencourt, *Status Differences and In-Group Bias: A Meta-Analytic Examination of the Effects of Status Stability, Status Legitimacy, and Group Permeability*, 127 PSYCHOL. BULL. 520, 520 (2001).

⁷⁹ See, e.g., TAJFEL, *supra* note 69, at 234 (describing the results of experiments concerning financial generosity); Chen & Li, *supra* note 70, at 448 (reporting the results of experiments measuring generosity and envy); Henri Tajfel & John Turner, *An Integrative Theory of Intergroup Conflict*, in THE SOCIAL PSYCHOLOGY OF INTERGROUP RELATIONS 33, 38 (William G. Austin & Stephen Worchel eds., 1979) (noting that research subjects tend to favor the members of their own groups even when the basis for distinguishing between the relevant groups is trivial).

⁸⁰ See Hogg, *supra* note 69, at 207–08; Michael A. Hogg, *Intragroup Processes, Group Structure and Social Identity*, in SOCIAL GROUPS AND IDENTITIES: DEVELOPING THE LEGACY OF HENRI TAJFEL 65, 69 (W. Peter Robinson ed., 1996); Leonie Huddy, *From Social to*

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 319

that group by adopting (to some meaningful degree) any beliefs and behaviors that the prototype prescribes.⁸¹ As Michael Hogg has explained, “we experience ourselves and perceive, think, feel, and behave in terms of the attributes that define the group and its relations to other groups.”⁸²

2. *Partisan Identifications in the Political Realm*

One can readily point to a variety of social identifications—whether defined along lines of race, sex, religion, social class, geography, schooling, or some other boundary-marking attribute—that might activate many voters’ desire to cast ballots for members of their in-groups and to oppose candidates who hail from those voters’ out-groups. There is one species of social identification, however, that appears to eclipse all others when it comes to shaping voters’ electoral choices: identification with the members of a political party.⁸³

The conventional account of American democracy would suggest that voters’ partisan affiliations are primarily the product of voters’ efforts to identify the political party that best serves their own independently formed policy preferences.⁸⁴ Numerous scholars have persuasively argued, however, that our partisan affiliations often have less to do with public policy and more to do with affect-intensive social

Political Identity: A Critical Examination of Social Identity Theory, 22 *POL. PSYCH.* 127, 145–46 (2001); Yuki, *supra* note 72, at 167.

⁸¹ See Chen & Li, *supra* note 70, at 432.

⁸² See Hogg, *supra* note 69, at 208. When a group member strays too far from the prototypical norms and thereby poses a threat to the group’s identity (and a corresponding threat to the individual identities of those who claim the group as their own), the group’s other members may find themselves treating the “black sheep” even more damningly for his or her behavior than they would if the person had not been a fellow group member in the first place. See Scott Eidelman & Monica Biernat, *Derogating Black Sheep: Individual or Group Protection?*, 39 *J. EXPERIMENTAL SOC. PSYCH.* 602, 602 (2003); see also Johns et al., *supra* note 76, at 344 (suggesting that feelings of shame might be a primary driver of the “black sheep effect”).

⁸³ Leonie Huddy et al., *Expressive Partisanship: Campaign Involvement, Political Emotion, and Partisan Identity*, 109 *AM. POL. SCI. REV.* 1, 1 (2015) (stating, with respect to party identification, that “[n]o other single variable comes close to accounting as well or as consistently for American political behavior”); cf. Alexander George Theodoridis, *The Hyper-Polarization of America*, *SCI. AM.* (Nov. 7, 2016), <https://blogs.scientificamerican.com/guest-blog/the-hyper-polarization-of-america/> (“[P]artisanship for many Americans today takes the form of a visceral, even subconscious, attachment to a party group. Our party becomes a part of our self-concept in deep and meaningful ways.”). Race often has strong vote-predicting value, but that may be “largely traceable to the fact that since the early 1960s, a preponderance of African Americans have identified themselves as Democrats.” DONALD GREEN ET AL., *PARTISAN HEARTS AND MINDS: POLITICAL PARTIES AND SOCIAL IDENTITIES OF VOTERS* 3 (2002); see also *id.* (“Tellingly, groups with less sharply defined partisan proclivities, such as Chinese Americans, are less prone to vote in distinctive ways.”).

⁸⁴ See *supra* notes 1–11 and accompanying text (describing that account).

identities.⁸⁵ In their 2002 book *Partisan Hearts and Minds*, for example, Donald Green and his coauthors find that, “[a]s people reflect on whether they are Democrats or Republicans (or neither), they call to mind some mental image, or stereotype, of what these sorts of people are like and square these images with their own self-conceptions.”⁸⁶ Randall Berelson and his coauthors made a similar point more than half a century ago, concluding that voters’ political-party affiliations often have little to do with their “reasoned preferences” about public policy and much to do with the same kind of “sense of fitness” that shapes people’s preferences in music, literature, dress, and other cultural matters.⁸⁷ Achen and Bartels point in the same direction, finding that individuals tend to align themselves with the political parties that represent “their kind” of people, whether those people be defined along lines of race, ethnicity, sex, religion, employment, finances, education, or some other attribute or attributes.⁸⁸ They argue that a primary reason why so many white southerners realigned themselves with the Republican party during the mid-1900s, for example, was not because they broadly favored Republican politicians’ positions on questions of public policy, but rather because African-Americans’ increasing prominence within the Democratic party prompted them no longer to see that partisan group “as their natural home.”⁸⁹

Once we feel we have found “our people” within a given partisan group, elections provide us with opportunities to aid our in-groups in the battles they wage against those from whom they differentiate themselves.

⁸⁵ Cf. Shanto Iyengar & Gaurav Sood, *All in the Eye of the Beholder: Asymmetry in Ideological Accountability*, STAN. UNIV. POL. COMM’N LAB, 4 (Mar. 11, 2017), <https://pcl.stanford.edu/research/2017/iyengar-asymmetry.pdf> (“The claim that the bond between voters and parties is primarily affective is buttressed by extensive evidence showing that partisans know little about the policy positions of party elites.” (citations omitted)).

⁸⁶ GREEN ET AL., *supra* note 83, at 8. Scholars have reached somewhat conflicting conclusions on the degree to which partisan affiliations are passed down within families. Compare *id.* at 82 (“Although teenagers are strongly influenced by their parents’ party affinities, this imprint fades over time as young adults are exposed to other influences and develop their own views.”), with BERNARD R. BERELSON ET AL., *VOTING: A STUDY OF OPINION FORMATION IN A PRESIDENTIAL CAMPAIGN* 89 (1954) (“The parental family, and the constellation of social and psychological forces expressed through and around it, initiates a political disposition that with proper reinforcement carries through life.”), and CAMPBELL ET AL., *supra* note 49, at 553 (stating that “partisan identifications typically extend far into an individual’s past—if not into the past of his forebears as well”).

⁸⁷ BERELSON ET AL., *supra* note 86, at 311.

⁸⁸ ACHEN & BARTELS, *supra* note 12, at 307.; see also *id.* at 266 (“For most people, partisanship is not a carrier of ideology but a reflection of judgments about where ‘people like me’ belong.”).

⁸⁹ *Id.* at 252–54.

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 321

This does not mean, of course, that those who identify with Democrats will invariably vote for Democrats, or that those who identify with Republicans will invariably vote for Republicans. Countervailing group identities, an opposing party's recently successful handling of especially salient public problems, repellent personalities at the top of one's own party's ticket, or other forces can sometimes prompt voters to cast ballots for candidates from a political team other than their own.⁹⁰ In a highly publicized special election held in December 2017, for example, a small number of Republicans abandoned scandal-plagued Judge Roy Moore in his unsuccessful bid for one of Alabama's seats in the United States Senate.⁹¹ Under ordinary circumstances, however, our partisan identifications have a profound influence upon the electoral choices that we make. Green and his coauthors explain:

Identification with parties imbues electoral choice with special significance. Elections affirm and empower the social groups that comprise the winning party. Even if Democratic policy objectives appeal to a Republican, he or she may still sense that when a Democrat wins an election it is a victory for minorities, liberals, union members, and Democratic partisans in general. To those who define themselves in partisan terms, elections represent more than simply a competition between candidates and rival platforms. Elections are also forums for *intergroup* competition. Individuals who identify with these groups are drawn into this competition. . . . Although not irresistible, the desire to see one's team prevail powerfully influences the probability of casting a vote for the candidate of one's party.⁹²

Like the football fans who take personally the wins and losses of their favorite teams,⁹³ partisan voters thus may take personally the electoral wins and losses of their partisan groups and those groups' constituent members.⁹⁴ The anticipation of those personal reactions may be part of what drives many individuals to vote in the first place.⁹⁵ Many voters

⁹⁰ Cf. GREEN ET AL., *supra* note 83, at 3–4 (describing this flexibility).

⁹¹ *Exit Poll Results: How Different Groups Voted in Alabama*, WASH. POST (Dec. 13, 2017), https://www.washingtonpost.com/graphics/2017/politics/alabama-exit-polls/?hpid=hp_hp-visual-stories-desktop_no-name%3Ahomepage%2Fstory&utm_term=.131b7ad3e138.

⁹² GREEN ET AL., *supra* note 83, at 206; cf. KINDER & KALMOE, *supra* note 58, at 137 (“American elections are, first and foremost, affirmations of loyalty to party, and campaigns are, first and foremost, efforts on the part of parties to reinforce and activate their supporters.”).

⁹³ See Cialdini, *supra* note 74, at 374 and accompanying text (noting studies of fans' reactions to football teams' wins and losses).

⁹⁴ See Huddy et al., *supra* note 83, at 3 (“Partisans take action precisely because they wish to defend or elevate the party's political position. Their internalized sense of partisan identity means that the group's failures and victories become personal.”).

⁹⁵ Cf. *supra* notes 47–48 and accompanying text (noting the possible irrationality

might not understand the public-policy issues at stake in a given election, or care much about how those issues are resolved, or even share the political ideologies of the candidates for whom they vote.⁹⁶ But they might very well covet the exhilaration and sense of personal triumph they will experience on election night if their partisan team prevails, and they might correspondingly dread the despair and sense of personal defeat they will feel if it is their out-group rivals who are celebrating when election night concludes.

As this talk of football fans, triumph, and despair suggests, emotions commonly play powerful roles in the behaviors that individuals' partisan identifications elicit. Leonie Huddy and her coauthors explain that "[e]motions are a major facet of group life, including partisan politics, and are often most intense among the strongest group identifiers, who feel angrier than weak identifiers in response to a collective threat."⁹⁷ They argue that anger, in particular, goes a long way toward explaining the us-against-them political climate with which Americans today are so familiar. Once their anger at the opposing political team has been stimulated, "partisans are less influenced by information and more likely to act; they minimize the risk associated with action, take riskier actions, and in general drive politics in an extreme direction."⁹⁸ Alexander Theodoridis recently described the toxic result:

[We are] a nation overwhelmed by dislike and distrust of the other side and, consequently, [we often have] a political process incapable of compromise and mired in gridlock. It is easy to see how this sort of distrust and dysfunction manifests itself in assumptions about the motivations (malice, greed, bigotry, moral bankruptcy, or most charitably, naiveté) of those on the other partisan team. Those on the other side no longer just disagree about the issues, they are bad people with dangerous ideas. This paves the way for efforts to delegitimize electoral outcomes and the leaders they produce by way of conspiracy theories and claims of fraud and rigging. Perhaps most dangerously, it also can be used to justify nearly any effort to thwart the opposition.⁹⁹

of devoting significant time to studying complex governmental issues if the purpose of the studying is to help move public policy in a desirable direction with one's lone vote).

⁹⁶ See Iyengar & Sood, *supra* note 85, at 4 (stating that only "scant" empirical evidence supports the admittedly "appealing" theory that "most people attach themselves to political parties for policy-based reasons"); cf. KINDER & KALMOE, *supra* note 58, at 138 (positing that the positions voters take on the desirability of a given governmental program depend heavily upon whether the program principally benefits individuals within one's in-groups or out-groups).

⁹⁷ Huddy et al., *supra* note 83, at 4 (citation omitted).

⁹⁸ *Id.* at 15.

⁹⁹ Theodoridis, *supra* note 83 (citation omitted).

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 323

What we have said so far might be taken to suggest that, for a great many voters, there are no strong causal links between their policy preferences and their partisan identifications. Studies indicate, however, that there often *are* causal connections between people's policy positions and their partisan affiliations—but the nature of those causal connections is not what the folk theory of democracy would lead one to expect. Many voters embed dimensions of their identities in partisan groups for reasons having little to do with their independently formed public-policy judgments, but, once those partisan identifications have been formed, the partisan groups can play a powerful role in shaping the public-policy beliefs that the voters hold. When asked to explain their positions on a given question of governmental policy, in other words, many voters' responses may be little more than post-adoption rationalizations of the beliefs that their partisan groups claim as their own.¹⁰⁰

Numerous researchers have reached that conclusion.¹⁰¹ Thomas Carsey and Geoffrey Layman took a look, for example, at voters' preferences concerning "government spending and provision of services, government responsibility to help African Americans, and abortion."¹⁰² They found that, if voters are unaware of partisan groups' differing positions on a given issue, then their partisan affiliations play no role in shaping their beliefs.¹⁰³ When voters *are* aware of partisan groups' differing views, however, then a great deal turns on whether the given issue is already salient in voters' minds: if it is not, voters often will change their beliefs—even on issues as large as abortion, race, and government spending—in order to bring themselves into line with the partisan group with which they identify.¹⁰⁴ In his 2012 book *Follow the Leader?*, Gabriel Lenz similarly concludes that

¹⁰⁰ See ACHEN & BARTELS, *supra* note 12, at 310 ("The reasoned explanations [voters] provide for their own beliefs and behavior are often just post hoc justifications of their social or partisan loyalties."); *cf.* notes 44–45 and accompanying text (noting Lodge and Taber's findings regarding motivated reasoning).

¹⁰¹ In addition to the sources cited in the ensuing discussion, see, for example, Paul Goren, *Party Identification and Core Political Values*, 49 AM. J. POL. SCI. 881, 881 (2005) ("Put simply, party identification shapes a number of abstract beliefs about the good and just society.").

¹⁰² Thomas M. Carsey & Geoffrey C. Layman, *Changing Sides or Changing Minds? Party Identification and Policy Preferences in the American Electorate*, 50 AM. J. POL. SCI. 464, 465 (2006).

¹⁰³ *Id.* at 472.

¹⁰⁴ See *id.* at 474. In a separate study, Carsey and Layman point out that this tendency fuels partisan polarization: when leaders of the country's political parties stake out differing views on a given issue, many of those parties' members will adopt their leaders' views as their own, thus leading to greater partisan polarization within the electorate. See Geoffrey C. Layman & Thomas M. Carsey, *Party Polarization and "Conflict Extension" in the American Electorate*, 46 AM. J. POL. SCI. 786, 799 (2002).

[voters] rarely shift their votes to politicians who agree with them—even when a policy issue has just become highly prominent, even when politicians take clear and distinct stances on the issue, and even when voters know these stances. Instead, I usually find the reverse: voters first decide they like a politician for other reasons, then adopt his or her policy views.¹⁰⁵

Lenz found, for example, that when voters who supported George W. Bush “learned that he opposed expanding a health-care-coverage program for children (CHIP),” they adopted his position as their own.¹⁰⁶

After examining a range of data from numerous different eras and contexts, Achen and Bartels similarly found that voters commonly “let their party tell them what to think about the issues of the day.”¹⁰⁷ They concluded, for example, that after moving to the Republican Party primarily for racial reasons in the mid-twentieth century, many white southerners “gradually adopted policy views consistent with their new partisan identity.”¹⁰⁸ On the question of abortion, Achen and Bartels found that, while partisan identity has not done much to shape women’s positions (perhaps because other dimensions of their individual and social identities bear heavily upon their views), many men have been remarkably inclined to change their views about abortion when doing so is necessary to bring themselves into step with their partisan groups.¹⁰⁹

This belief-shaping power of partisan identifications helps to explain why we find that Democrats and Republicans frequently band together around differing clusters of beliefs—beliefs that, outside any partisan context, may have little, if anything, to do with one another. Philosopher and political scientist Jason Brennan writes:

Consider the following topics: gun control, global warming, how to handle the Islamic State of Iraq and Syria, mandatory paid maternity leave for women, the minimum wage, gay marriage, the Common Core curriculum, and flag burning. If I know your stance on any one of these issues, I can predict with a high degree of reliability what your stance is on all the others.¹¹⁰

In a partisanship-free world, one probably would not expect to find strong correlations between the positions that people take on each of those issues. The world in which we actually live, however, is a different matter.

¹⁰⁵ GABRIEL S. LENZ, FOLLOW THE LEADER? HOW VOTERS RESPOND TO POLITICIANS’ POLICIES AND PERFORMANCE 3 (2012).

¹⁰⁶ *Id.* at 216.

¹⁰⁷ ACHEN & BARTELS, *supra* note 12, at 266.

¹⁰⁸ *Id.* at 254.

¹⁰⁹ *Id.* at 264.

¹¹⁰ BRENNAN, *supra* note 46, at 41.

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 325

All of this leaves elected officials with “considerable leeway to stake out positions at odds with the preferences of their supporters.”¹¹¹ Of course, this poses yet another difficulty for the conventional understanding of American democracy that we described at the outset,¹¹² because it complicates the claim that voters try to get the governmental arrangements they desire by forming policy preferences and then choosing politicians who will carry those preferences into law. Political scientist Matt Grossman reaches a comparable conclusion in his 2014 book *Artists of the Possible*. After examining postwar policymaking in more than a dozen different domains, he finds that

there is little evidence that the most important outcomes of the policy process follow uniformly from the opinions of the American public or their expression in elections. Instead, these inputs matter for policymaking only alongside factors like research and interest group lobbying, each under a limited set of circumstances. Policymakers can and do collectively ignore public opinion and the direction of election results, sometimes by enacting contrary policy but most often by making no change at all. The results of the policy process are determined by the interactions among policymakers themselves, and the public appears to have quite limited impact.¹¹³

Once partisan elites have settled upon the positions they wish to take on a set of issues, they and likeminded media outlets can trumpet those positions and a set of rationales to their supporters. As individuals seize upon those positions and justifications, evidence pointing in other directions is commonly either discounted or ignored altogether.¹¹⁴ Achen and Bartels contend that voters are then left needing to do little or no thinking of their own:

Once inside the conceptual framework [of a partisan group and its elite-shaped agenda], the voter finds herself inhabiting a relatively coherent universe. Her preferred candidates, her political opinions, and even her view of the facts will all tend to go together nicely.

¹¹¹ Iyengar & Sood, *supra* note 85, at 25; see also LENZ, *supra* note 105, at 219 (observing that if, as many studies suggest, “voters rarely vote on policy, politicians may feel little constraint on the policies they pursue”).

¹¹² See *supra* notes 1–11 and accompanying text.

¹¹³ MATT GROSSMAN, *ARTISTS OF THE POSSIBLE: GOVERNING NETWORKS AND AMERICAN POLICY CHANGE SINCE 1945*, at 9 (2014); see also *id.* at 187 (“The institutionalized entrepreneurs that guide policymaking”—principally, elected officials and the leaders of interest groups—“see themselves as trustees; they often ignore public opinion to pursue their own view of the public interest.”).

¹¹⁴ Iyengar & Sood, *supra* note 85, at 5 (“The tendency to reject uncongenial information—where congeniality is defined on the basis of group affiliation—is well established.” (citations omitted)); Theodoridis, *supra* note 83 (stating that researchers have “measured profound, nearly blinding, application of motivated reasoning on the part of voters when evaluating the actions of politicians and partisans from the two sides”).

The arguments of the “other side,” if they get any attention at all, will seem obviously dismissible. The fact that none of the opinions propping up her party loyalty are really hers will be quite invisible to her. It will feel like she’s thinking.¹¹⁵

It is not difficult to imagine illustrative hypotheticals. Suppose it had been Republican leaders, for example, who insisted that individuals pay a tax penalty if they refuse to purchase health insurance and suppose it had been Democratic leaders who insisted that the federal government has no business imposing financially burdensome mandates of that sort on hard-working Americans.¹¹⁶ (Interestingly, it is not terribly difficult to imagine that scenario.) Would the mass electorate have roundly rejected their own party leaders’ respective positions? If the presidential-election year in which Justice Antonin Scalia died had been a year when a Republican was in the White House and Democrats controlled the Senate, would rank-and-file Democrats and Republicans have held the same beliefs we saw them profess in 2016 about whether the most democratic way to proceed would be to keep the seat vacant until the American people had been given an opportunity to choose the next president?¹¹⁷ If President Donald Trump were to tweet that he had re-crunched the numbers and that building a physical wall along the U.S.-Mexico border actually would not make economic sense, would polls of Trump’s ardent supporters show that they long persisted in holding the contrary view?¹¹⁸ Hypotheticals like these call for speculation, of course, but studies indicate where smart bettors’ money would go.

III. REFLECTIONS

Well, then—so what now? One approach, of course, would be to try to salvage the conventional account of American democracy by questioning the methodological integrity of the many studies that—

¹¹⁵ ACHEN & BARTELS, *supra* note 12, at 268.

¹¹⁶ See generally Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012) (evaluating the individual mandate in the Patient Protection and Affordable Care Act of 2010).

¹¹⁷ See generally Lincoln Caplan, *G.O.P. Obstructionism and the Supreme Court*, NEW YORKER (Feb. 25, 2016), <https://www.newyorker.com/news/news-desk/g-o-p-obstructionism-and-the-supreme-court> (reporting on the Senate Republicans’ plan and on the Senate Democrats’ opposition). Nearly a year after Justice Scalia’s death, President Trump nominated Neil Gorsuch to fill the seat. See Amy Howe, *Trump Nominates Gorsuch to Fill Scalia Vacancy*, SCOTUSBLOG (Jan. 31, 2017), <http://www.scotusblog.com/2017/01/trump-nominates-gorsuch-fill-scalia-vacancy/>.

¹¹⁸ See generally Ron Nixon, *Border Wall Prototypes Unveiled, but Obstacles Remain for Trump’s Plan*, N.Y. TIMES (Oct. 26, 2017), <https://www.nytimes.com/2017/10/26/us/politics/border-wall-prototypes-unveiled.html> (reporting on developments regarding one of President Trump’s prominent campaign pledges).

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 327

directly or indirectly—purport to call that account into question, or by emphasizing those studies' limitations.¹¹⁹ No one contends, for example, that *all* voters are politically ignorant, or that *all* voters cast their ballots under the dispositive sway of their partisan identifications. Perhaps the analytic and decision-making power of the American electorate, taken as a whole, is greater than the studies described in Part II would lead one to believe. Even if that is true, my own intuition is that those studies find their mark too often to be ignored, and I suspect that this is an intuition many readers will share. Spend just a week contrasting how CNN and Fox News select and cover each day's top stories, and spend another week perusing the comments that readers post on news media's websites, and you will be burdened with anecdotes.¹²⁰ Let's thus assume for the balance of this Article that the studies described in Part II get things right with sufficient frequency to concern us, in the sense that the phenomena those studies describe have meaningful effects on the way our democracy functions. For those of us who write and teach about the law, what might our responses be?

We could usefully begin by asking ourselves why we individually take some of the positions that we do in our scholarship and teaching. With respect to immigration, for example, imagine that the partisan groups with which we respectively identify embraced positions different from what they have actually embraced in recent years. (Imagine, for example, that Republicans had been more pro-immigration in the name of advancing Biblical values, while Democrats had been more anti-immigration in the name of protecting American workers.) How sure are we that, in our professional writing and speaking, we would have taken the same positions that we take today? What about federalism—do our convictions about federal-state relations persist no matter whether we are talking about Democrats' efforts to force local officials to conduct background checks on prospective gun purchasers¹²¹ or Republicans' efforts to force local officials to help round up people who are in the country illegally?¹²² Or do we find, instead, that our scholarly take on federalism is colored by who holds sway in Washington, D.C.? What about presidential powers—have our views remained stable as the nation has shifted from the Obama Administration to the Trump Administration? Beyond the realm of our professional activities, is it easy or difficult to

¹¹⁹ See *supra* notes 1–11 and accompanying text (describing the conventional account).

¹²⁰ For an apropos story that appeared the same day I wrote that sentence, see Fred Barbash, *Fox News's Shepard Smith Debunks His Network's Favorite Hillary Clinton 'Scandal,' Infuriates Viewers*, WASH. POST (Nov. 15, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/11/15/fox-news-shepherd-smith-debunks-his-networks-hillary-clinton-scandal-story-infuriates-viewers/?utm_term=.07b7c250eca9.

¹²¹ See generally *Printz v. United States*, 521 U.S. 898 (1997).

¹²² See *supra* note 11 and accompanying text.

find partisan bias in our own responses to political events? Think, for example, about the allegations of sexual misconduct that were leveled against President Bill Clinton 20 years ago and against President Trump in the more recent past—were our assessments of the appropriate political consequences influenced by the accused individuals' partisan affiliations? Outside academia, partisan identifications seem to play powerful roles in shaping people's views about such matters.¹²³ Are things any different on law school faculties?

There is no reason to believe that university professors (law trained or not) are uniquely immune to the forces of social identification.¹²⁴ In a thought-provoking 2014 paper, for example, David Hyman argues that many constitutional law scholars' identification with the Democratic Party (as signaled by those scholars' campaign donations) prompted them to be far too confident in their perception that the Commerce Clause provided plenty of authority for the individual mandate that rested at the heart of the Patient Protection and Affordable Care Act of 2010, the Obama Administration's signature legislative achievement.¹²⁵ Deploying a species of Commerce Clause analysis that those scholars did not see coming, the Court's five Republican appointees found that, in fact, the federal government's Commerce Clause arguments came up short.¹²⁶ (A separate majority formed by Chief Justice Roberts and the Court's four Democratic appointees nevertheless upheld the mandate on Taxing Power grounds.¹²⁷) One might respond by accusing the Court's conservatives of evaluating the Commerce Clause with the same kind of partisan bias that Hyman attributes to the scholars. But before rushing to that defense, one ought to pause and ask oneself some tough questions. Are we indeed confident that our and our colleagues' scholarly arguments are never *ad hoc* justifications of positions we hold largely by virtue of our social identifications? How can we tell? And how do our answers to those questions bear upon the merits of claims we might wish

¹²³ See, e.g., Lynn Vavreck, *Bill Clinton, Roy Moore and the Power of Social Identity*, N.Y. TIMES (Nov. 17, 2017), <https://www.nytimes.com/2017/11/17/upshot/bill-clinton-roy-moore-and-the-power-of-social-identity.html> (discussing people's responses to sexual-misconduct allegations against men in politics and in Hollywood).

¹²⁴ As an exercise in self-assessment, we can ask ourselves, for example, whether we have responded differently when Democrats and Republicans seeking or holding national office have been accused of sexual harassment.

¹²⁵ David A. Hyman, *Why Did Law Professors Misunderestimate the Lawsuits against PPACA?*, 2014 U. ILL. L. REV. 805, 824–28. For an analysis of prominent professors' possible biases in an entirely different setting, see Todd E. Pettys, *Free Expression, In-Group Bias, and the Court's Conservatives: A Critique of the Epstein-Parker-Segal Study*, 63 BUFF. L. REV. 1 (2015).

¹²⁶ Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 546–61 (2012) (opinion of Roberts, C.J.); *id.* at 650–60 (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting).

¹²⁷ See *id.* at 570.

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 329

to make regarding such things as faculty hiring, tenure, and legislative appropriations for public higher education?

Studies of the sort described in Part II can also prod us to think anew about the work we do with our students. The study of law brings students through terrain that is perennially the focus of the nation's partisan battles. With respect to all of that territory, one of our chief professed objectives is to train our students to think clearly and independently. If the belief-shaping power of social identifications is as powerful as the empirical evidence suggests, should we complement our current methods with strategies more explicitly designed to push students to examine the formative power of those identifications in their own lives?

Because we aim to deepen our students' understanding of contested issues, we might also think about how best to help our students avoid traps that await the unwary on that path. Milton Lodge and Charles Taber have argued, for example, that when people feel strongly about an issue and also become knowledgeable about it, the combination of conviction and knowledge can make them even *more* "prone to confirmation and disconfirmation biases" than they would be in the absence of that knowledge, and can make them even *less* likely "to integrate new, contrary information into their thinking."¹²⁸ Lodge and Taber hypothesize that this is because "sophisticates are the most likely to have repeatedly connected their beliefs to feelings to intentions, and then their rich, highly interconnected knowledge structure provides them the facts, figures, and cognitive wherewithal to rationalize away disconfirming evidence and better defend their prior attitudes."¹²⁹ Is it possible to train our students in ways that help ensure that their added knowledge *increases* their openness to the implications of "new, contrary information"?

While tackling that challenge, we also would want to keep our eye on a problem of a different sort—a problem that can arise when one comes more fully to appreciate the opposing views that people take on a given issue. Studies indicate that, the more one understands the views of people who espouse views that conflict with one's own, the more likely one is to curb one's own political activity in that domain. Exposure and understanding, in other words, can be politically paralyzing. In her 2006 book *Hearing the Other Side*, for example, Diana Mutz finds that there is "extremely robust" empirical support for the proposition that "[t]he greater the cross-cutting exposure [to differing political views] in the person's [social] network, the more likely he or she is to abstain from

¹²⁸ LODGE & TABER, *supra* note 44, at 209; *see also supra* notes 44–45 and accompanying text (noting Lodge and Taber's findings regarding motivated reasoning). Achen and Bartels cite an unpublished study by Danielle Shani, leading to a comparable conclusion. *See* ACHEN & BARTELS, *supra* note 12, at 278–79.

¹²⁹ LODGE & TABER, *supra* note 44, at 209.

voting.”¹³⁰ In contrast, those who are highly active in politics tend to “inhabit an information environment full of like-minded others who spur them on to additional political activity.”¹³¹ Why does exposure to conflicting views within one’s social network reduce the likelihood of political activity? The answer, Mutz contends, lies primarily in people’s desire “to avoid putting their social relationships at risk.”¹³² Indeed, those who are especially averse to interpersonal conflict are especially likely to reduce their own political activity when, at socially close range, they are exposed to views contrary to their own.¹³³

Surveying the empirical data gathered by Mutz and others, Bill Bishop similarly finds that “hearing both sides of an issue—and seeing the gray in most questions—is the ticket to [political] withdrawal.”¹³⁴ “Simply put,” he writes, “we want what doesn’t exist: reasonable citizens who are willing to listen to the other side but who are also excited about politics.”¹³⁵ Mutz sums up the problem:

We want the democratic citizen to be enthusiastically politically active and strongly partisan [because partisanship increases the likelihood of voting and other forms of political engagement], yet not to be surrounded by like-minded others. We want this citizen to be aware of all of the rationales for opposing sides of an issue, yet not to be paralyzed by all of this conflicting information and the cross-pressures it brings to bear. We want tight-knit, close networks of mutual trust, but we want them to be among people who frequently disagree. And we want frequent conversations involving political disagreement that have no repercussions for people’s personal relationships. At the very least this is a difficult bill to fill.¹³⁶

Given the politicized nature of many of the subjects we teach, and given the politics-savvy student populations we often attract, our law schools would seem well positioned to be laboratories for discovering whether greater headway can be made on those difficult fronts.

The studies described in Part II can also push us to take account of any relevant social-identification dynamics in the areas about which we write. Recent work in the area of federalism nicely illustrates the point. In a 2014 *Harvard Law Review* article, Jessica Bulman-Pozen contends that state leaders today frequently resist federal power, not because of any

¹³⁰ DIANA C. MUTZ, HEARING THE OTHER SIDE: DELIBERATIVE VERSUS PARTICIPATORY DEMOCRACY 112, 114 (2006).

¹³¹ *Id.* at 113.

¹³² *Id.* at 123.

¹³³ *See id.* at 117–18.

¹³⁴ BILL BISHOP, THE BIG SORT: WHY THE CLUSTERING OF LIKE-MINDED AMERICA IS TEARING US APART 291 (2008).

¹³⁵ *Id.* at 292.

¹³⁶ MUTZ, *supra* note 130, at 125–26.

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 331

state-federal tensions that are inherent within American federalism, or because of any nonpartisan beliefs about state prerogatives, but rather because those states “are governed by individuals who affiliate with a different political party than do those in charge at the national level.”¹³⁷ Through litigation campaigns, legislative initiatives, and strategic administration of state-federal programs, state leaders can fruitfully contest federal policy initiatives and priorities.¹³⁸ Particularly for those who identify with a party that is out of power in Washington, D.C., state attachments thus yield significant opportunities to remain engaged with national politics.¹³⁹

In a 2017 symposium contribution appearing in the *Fordham Urban Law Journal*, Kenneth Stahl argues in favor of stronger *intrastate* federalism.¹⁴⁰ He contends that state legislatures today are preempting local democracy on an unprecedented scale, in large part because state governments are run by Republicans who are hostile to the agendas of the Democrats who tend to hold power in urban municipal governments.¹⁴¹ If the American people are serious about the virtues of local democracy, Stahl concludes, they need to consider ways in which they can ensure that local communities retain their political vitality in the face of countervailing partisan pressures.¹⁴²

As those examples suggest, there are many scholarship-related questions we might usefully ask. In what ways do social identities shape the legal realms we study? When urging legal reform in the areas of immigration, health care, or elsewhere, would a deeper awareness of social-identification dynamics help us place a sharper edge on our proposals? Are there ways of casting one’s arguments that not only will elicit the enthusiasm of the political base most primed to favor them, but will appeal to some of the leading opinion-shapers on the other side?

Scholars (especially those with an appetite for public controversy) might also propose significant changes in our voting norms and procedures. Consider, for example, Jason Brennan’s aptly titled 2016 book, *Against Democracy*. Relying upon studies of the sort described in Part II, Brennan argues that most voters are either “hobbits” or “hooligans,” with hobbits being those who are “apathetic and ignorant about politics” and who lack knowledge and opinions about current political events, and hooligans being those who fiercely hold political opinions, who identify strongly with a partisan group, who pay no open-

¹³⁷ Jessica Bulman-Pozen, *Partisan Federalism*, 127 HARV. L. REV. 1077, 1080 (2014).

¹³⁸ See *id.* at 1096–108.

¹³⁹ See *id.* at 1123–24.

¹⁴⁰ Kenneth A. Stahl, *Preemption, Federalism, and Local Democracy*, 44 FORDHAM URB. L.J. 133 (2017).

¹⁴¹ See *id.* at 136–46.

¹⁴² See *id.* at 174–79.

minded regard to evidence or media that cut against their political convictions, and who regard those “with alternative worldviews [as] stupid, evil, selfish, or at best, deeply misguided.”¹⁴³ Buoyed by the additional premise that engagement with politics usually makes us worse, rather than better, as human beings, Brennan contends that we ought at least to consider shifting toward some form of an epistocracy. “A political system is epistocratic,” Brennan writes, “to the extent it distributes political power in proportion to knowledge or competence, as a matter of law or policy.”¹⁴⁴ He suggests, for example, that we think about whether society would be better served if we limited voting rights to those who demonstrably possess a basic level of political and social-scientific knowledge, if we granted additional votes to those deemed sufficiently knowledgeable to possess them, if we permitted all adults to vote but then subjected their decisions to review by some form of “epistocratic council,” or if we allowed all adults to vote but then weighted each vote in accordance with the voter’s performance on a contemporaneously administered test of relevant political and social-scientific knowledge.¹⁴⁵

Brennan does not offer a full-throated defense of any of those options, but his proposal is valuable nonetheless. Even if one reacts negatively to Brennan’s argument, that reaction is itself useful, because it forces one to think more clearly about one’s own commitments and about the merits and demerits of the status quo.

A scholarly response of a markedly different sort would entail reflecting on just how troubled we really ought to be by the theory-reality gap that the studies in Part II seem to reveal. In a 2008 book, philosopher David Estlund points out that, just as voters typically are ignorant about a host of matters pertaining to public policy, a great many parents would fail an exam aimed at testing what they know about child psychology, schooling, medicine, nutrition, finances, insurance, and a host of other matters that are relevant to raising healthy and capable children.¹⁴⁶ If parental ignorance does not impel us to sharply curtail parents’ freedom to raise their children as they see fit, Estlund asks, why should voters’ political and social-scientific ignorance prompt us to reform America’s core political practices and institutions? Estlund writes:

I will not pursue the facts about free parenting, but the example is meant to elicit the intuition that free parenting, despite the disturbing ignorance of parents on many important matters, is still pretty good for children. It might not be the best possible

¹⁴³ BRENNAN, *supra* note 46, at 4–5.

¹⁴⁴ *Id.* at 208.

¹⁴⁵ *See id.* at 211–22.

¹⁴⁶ *See* DAVID M. ESTLUND, DEMOCRATIC AUTHORITY: A PHILOSOPHIC FRAMEWORK 13, 261 (2008).

2018] PARTISANSHIP, SOCIAL IDENTITY, AND GOVERNMENT 333

arrangement, but good enough to support the kind of justification that is required. This would suggest that similar ignorance among voters is not automatically a severe indictment of the quality of democratic decisions.¹⁴⁷

When responding to discouraging realities that empirical data reveal about voters' knowledge, beliefs, and desires, Estlund thus urges us not to fall prey to "complacent realism" (the notion that we ought to scale down our theory of democracy in order to accommodate voters' widespread ignorance and non-optimal behaviors) or to "utopophobia" (the notion that we ought to shy away from any theory that entails high expectations for voters).¹⁴⁸ Instead, he argues, we should structure our thinking around an "aspirational theory" of democracy,¹⁴⁹ by which he means a virtue-seeking theory that uses "standards or ideals that are unlikely or even certain not to be met, even though they are not impossible and may not even be difficult."¹⁵⁰

Consider, in that light, social identifications' formative power. The empirical work described in Part II quite persuasively shows that people's social identities can strongly influence what they believe, what they desire, and how they vote. But the fact that our beliefs and desires are not the pure product of wholly autonomous analysis does not come as a surprise. When we probe beneath the surface of our beliefs and preferences in virtually any area of our lives, we commonly encounter an array of formative influences—some may be biological in origin, for example, while others may be cultural or arise from childhood experiences. No one contends that these influences are usually so indomitable that they make it impossible for people to make sound, evidence-based decisions.

Even though it makes assumptions that American voters often frustrate in practice, therefore, perhaps we would be wise to retain the folk account of democracy (or some close approximation thereof) as an aspirational matter. Rather than a theory of democracy that serves our descriptive and normative needs alike, in other words, perhaps what we most need are ways of talking about the reality-aspiration gap that can find traction even among the nation's staunchest partisans.

Which brings us back to our Election Day appearance in a fifth-grade classroom.¹⁵¹ Maybe what we should do is give remarks that fall roughly

¹⁴⁷ *Id.* at 262.

¹⁴⁸ *Id.* at 14, 259, 263–70.

¹⁴⁹ *Id.* at 259.

¹⁵⁰ *Id.* at 270; *cf. id.* at 275 ("A standard should not be removed from normative political theory just because it will not be met. That is not a moral consideration, after all. The question is whether it could be met, never mind whether or not it will or is at all likely to be.")

¹⁵¹ *See supra* notes 1–11 and accompanying text.

along the lines described in this paper's opening paragraphs, but then follow those remarks with a discussion prompt that goes something like this:

Imagine that two candidates are running for president, one Democrat and one Republican. The candidates have engaged in a lengthy debate about issues concerning immigration. The Republican candidate argues that the nation should expel all non-citizens who, as adults, entered the country illegally, and that the federal government should financially punish any state or city that refuses to help federal immigration authorities identify those individuals. The Democratic candidate insists that all of those adults should be permitted to stay if they have a clean criminal record, and that the federal government should not impose any financial consequences on states and cities that refuse to help bring those individuals to federal authorities' attention. On Election Day, two American adults respond as follows:

(1) Bob is a Republican. He receives almost all of his news from a conservative television network. He has never independently studied immigration, but he is certain that whatever Democrats say on the subject is an anti-American lie. He casts his vote for the Republican.

(2) Carla is a Democrat. She casts her vote for the Democratic candidate because, without regard to what the two candidates say about immigration or any other issue, she cannot bear the thought of losing to Republicans on election night.

Fifth graders, what do you think about those decisions?