believe that it violates equality to deny any citizen the right to participate in critical primaries. There is a regular and serious fight within the parties about the power of party leaders within mixed systems of nomination: In 2016, early in the primary season, Bernie Sanders supporters were upset that "superdelegates" would have the power to vote independently of party primaries. Later in the season, his supporters were upset that "superdelegates" did not exercise their independent power to vote for Sanders, contrary to the votes in the party primaries. And finally, there is the unavoidable and undeniable effect of primaries that I have already described when discussing gerrymandering—that given the low participation by citizens less interested in politics, primaries bend unmistakably to the extremes within either party. These are all grounds for serious skepticism about the advisability of using primaries to nominate candidates. They don't, however, constitute grounds to reject the primaries as inconsistent with our democratic principles.

Consider, however, three examples that do constitute grounds to reject a particular kind of tweedism. As I will argue, all of these examples share a common form. In all of them, the qualification that makes you a tweed arguably cannot be justified in the terms of the democratic principles within which it exercises its power. In these examples, in other words, tweedism cannot be justified.

White Tweeds

In 1870, America determined that the right to vote could not be denied on the basis of race. The Fifteenth Amendment was the last of the Civil War amendments. For a brief and noble period, it helped secure to African American males an equal right to vote.

Within a decade, that right was almost dead. White terrorists throughout America's South rallied white racists to use force to keep African Americans away from the polls. At first, the federal government defended the newly enfranchised ex-slaves. Over time, its resolve

weakened. By the end of the nineteenth century, southern states had hatched a gaggle of techniques to keep black men away from the polls. When the Supreme Court was asked to invalidate one particularly grotesque example of this exclusion—Alabama had completely nullified the Fifteenth Amendment by refusing to register African Americans—Justice Oliver Wendell Holmes practically laughed at the absurdity of the idea that the Court would intervene.

One of the racist techniques used was the "white primary." Adopted by a number of states indirectly in 1923, the white primary was embraced quite explicitly and directly by the state of Texas. By law, beginning with the election of 1924, only whites could vote in the Democratic primary. Black men were free to vote in the Republican primary (if they could register). They were free to vote in the general election (again, if they could register). But they were barred from the choice among the Democratic candidates to become *the* Democratic candidate, in a state that was overwhelmingly Democratic. In 1924, not a single Republican won any federal office, and in the House, in all but one district, the Democrats won by at least a factor of 5. The Democrat won the Senate by a factor of 6. Only the Republican running for governor, George C. Butte, dean of the University of Texas Law School, did relatively well, winning more votes as a Republican than any since the Civil War. Yet Miriam "Ma" Ferguson beat Butte 59 percent to 41 percent.[106]

The white primary may seem puzzling, given the Fifteenth Amendment. How could it be that denying someone the right to vote on the basis of race in a primary isn't "denying or abridging" the "right of citizens of the United States to vote" "on account of race, color, or previous condition of servitude"?

The answer is pretty straightforward, even if hard for us to accept. The "right . . . to vote" that the Fifteenth Amendment was speaking of was the "right . . . to vote" in an election. Obviously, not every "vote" is a vote within an "election." No one in 1870, for example, believed

that the elections of a private club were "elections" for purposes of the Fifteenth Amendment. The Union League was free to exclude African Americans—or not—without fear of violating the Fifteenth Amendment. So the critical question was whether "a primary" was "an election" for purposes of the Fifteenth Amendment.

As bizarre as this idea is to us today, the argument that it wasn't "an election" for purposes of the Fifteenth Amendment has a pretty compelling logical structure. "An election" selects the elected officials of a government—either legislators, or executives, or in some states, and stupidly, judges. "A primary" does not select anyone to government. The winner of a primary is not a government official. The winner of a primary is a candidate to become a government official. Thus, when Texas banned African Americans from voting in the Democratic primary, it wasn't, it claimed, excluding them from "voting in an election." It was simply excluding them from the choice among Democrats about who would be the Democrats' candidate in "an election."

Amazingly, this crazy logic survived in American law for more than a generation. It was explicitly endorsed by the Supreme Court in *Newberry v. United States* (1921). And while its demise is interesting, the details of its decline are beyond our scope here.

Instead, what's important is to recognize the tweedist effect of Texas's all-white primary. For most of the twentieth century, the only party that mattered in Texas was the Democratic Party. That meant that the only primary that mattered was the Democratic primary. If only whites could vote in the Democratic primary, then in this sense, whites were the tweeds of the Texas democracy. They did the nominating, regardless of who did the electing. And every elected official in Texas knew that if he (and it was primarily "he") wanted to keep his job, then he had to keep whites in Texas happy.

Texas had thus produced a democracy that was responsive to whites—that is, first within the primary, and then because of the significance of the Democratic Party, in the general election as well. And

whether its structure violates the Fifteenth Amendment or not (and today it clearly would), the question that we must focus on here is whether the inequality it created can be justified. Can a democracy justify a system that weights the power of a vote on the basis of race differently?

Of all the easy questions in constitutional law, this ought to be the easiest. The race of a citizen should not matter to the power of that citizen's vote. Of all the qualifications, race, in our history, should be the most obviously not allowed. So the white primary is a clearly tweedist structure that could not be justified.

Okay, but what about the filter of simply being a Democrat in Texas (in 1940 at least). Imagine there was no filter of race. Imagine anyone—white or black—could vote in the Democratic primary. But imagine (because this was true) that the only party that mattered in Texas was the Democratic Party. So the Democrats didn't need to worry about who did the electing, as long as they did the nominating. That, too, is a kind of tweedism. And if the tweedism of a white primary is invalid, why is the tweedism of a Democratic primary not also invalid?

Both are instances of tweedism for sure. The difference is in the nature of the discrimination. There's a good reason for a political system to filter on the basis of a political party—so long as individuals within the system all still have an equal vote. But there's no good reason to filter on the basis of race. With respect to race, we ought to be equal. My vote should count as much as yours, regardless of the colors of our skins. But with respect to ideas, all bets are off. Your crazy ideas have no claim in justice to having the same weight in every part of our political system as mine (thank heavens!). The only equality question is whether it has an equal weight within the election.

The white primary is thus a clear example of tweedism gone bad: we can clearly understand the effect of this tweedism, and we can understand why it should be invalidated.

Consider now a second example, more contemporary if politically more remote.

Red Tweeds

In October 2014, the province of Hong Kong was brought to a halt. Hundreds of thousands of citizens joined the "umbrella protests," challenging a proposed law for selecting Hong Kong's chief executive.

Hong Kong had been a British colony—leased from China in 1898 for a term of ninety-nine years. Throughout the twentieth century, China made it clear that when the lease was up, it wanted Hong Kong back. As 1997 approached, the citizens of Hong Kong grew more and more anxious as they contemplated being absorbed by a nation that, let's say, was less convinced of democratic virtues.

To allay these concerns, China promised that the citizens would be free to elect their own chief executive. The law that brought Hong Kong to a standstill in 2014 was the law that described the process for selecting that chief executive.

That process had a familiar (at least for readers of this book) form. The citizens of Hong Kong were guaranteed the right to vote for the chief executive. But to become a candidate for chief executive, you had to get the approval of a "nominating committee." That nominating committee was to be composed of some 1,200 citizens. That means for a population of 7 million, .02 percent had the power to select the candidates that the rest of Hong Kong got to vote among.

That fact triggered the protests. For the 1,200 were not randomly selected citizens. Instead, while chosen through an immensely complex process, the protesters believed the 1,200 would represent "the business and political elite." This was not "a democracy," as Martin Lee, chairman of the Hong Kong Democratic Party, objected. It was "democracy with Chinese characteristics."[107]

Yet of course, those "Chinese characteristics" were not just Chinese. They were tweedist. The structure China wanted to impose on Hong Kong was precisely the structure Boss Tweed imposed on democracy in New York. Sure, the people could vote. Have at it. But they could only vote among the candidates that China selected. This, as Western

observers were quick to note, was thus not a democracy. As Chris Patten, the last British governor of Hong Kong before the handover, wrote in a *Washington Post* op-ed,

> **No one told the people of Hong Kong when they were assured of universal suffrage that it would not mean being able to choose for whom they could vote. No one said Iran was the democratic model that China's Communist bureaucracy had in mind, with the Chinese government authorized to exercise an effective veto over candidates.**

The Hong Kong model is not troubling because of the relatively small number who are doing the nominating. It is troubling because of the bias in the small number who are doing the nominating. If Hong Kong convened a convention with 1,200 citizens, randomly selected and representative of Hong Kong, there'd be nothing (from this perspective, at least) wrong with that system. The nominations would be done by a "few," but those "few" would be representative.

But could the proposed Chinese system be justified nonetheless? No doubt, it isn't representative of the people of Hong Kong. But why would that make it corrupt?

The answer, of course, depends on your conception of Hong Kong's democracy. If you read the deal that was struck as a promise for self-determination, then obviously, China choosing the candidates that Hong Kong gets to choose among violates this principle of self-determination.

But if you read the deal as a kind of kludge—a way of preserving some aspects of "democracy," while ensuring China some control—then the argument for the protesters becomes more difficult. Yes, the bias burdens the people of Hong Kong. But the bias was a compromise with the nation that now rules Hong Kong. It's like each state getting two senators within a constitution that otherwise respects political equality.

My point here is not to resolve that question (though my own biases are with the people of Hong Kong). My point instead is simply to identify

what needs to be justified if indeed one wants to justify the obviously tweedist structure of Hong Kong's democracy. There are tweeds in that system. Does their power cohere with the constitution of that system or does it not?

Green(back) Tweeds

We take it for granted in America that campaigns for federal office will be privately financed. For many years, there was public funding for presidential candidates. Obama put the kibosh on that, when he became the first candidate for president since Nixon to turn down public funding. But most people didn't seem to notice, and most politicians didn't seem to care. Since 2008, every major candidate for federal public office has relied on private funds to fund his or her campaigns.

At the presidential level, this might not matter much. Candidates like Bernie Sanders have found it possible to raise ungodly amounts of money in small contributions. Yet no one thinks Sanders is beholden to anyone—except maybe to the millions who contributed to him, which, in a democracy, isn't a terrible thing. And while Donald Trump certainly exaggerated his reliance on his own money obscenely, it is also true that the SuperPACs—political action committees that can accept unlimited donations—didn't get him to where he got.

But we should neither exaggerate the insignificance of losing presidential public funding nor, and more important for our purposes here, imagine that the economy of influence for funding presidential campaigns is anything like the economy of influence for funding campaigns for Congress.

First, presidents may well be able to fund their own campaigns privately—but only by turning the office into a permanent fundraising operation. When Ronald Reagan ran for reelection in 1984, he attended eight fundraisers. When Barack Obama ran for reelection twenty-eight years later, he attended 228 fundraisers![108] How does the leader of the free world do his job while attending 228 fundraisers?

But, second, and more important, we cannot confuse the business model of fundraising for (at least populist) presidential candidates with the business model of fundraising for the vast majority of members of Congress. Bernie Sanders may have been able to crowd fund a presidential race. And a handful of candidates for Congress—Michele Bachman or Alexandria Ocasio-Cortez—may be able to raise the funds they need in small contributions only. But the ordinary candidate for Congress cannot rely on small contributions alone. That is why the ordinary member of Congress spends anywhere between 30 percent and 70 percent of his or her time raising money for his or her campaign from big funders primarily.[109] And what do we know about these funders? As law professor Nicholas Stephanopoulos put it, summarizing the research, "If there is one thing that political scientists have learned about the small slice of Americans who give money to candidates, it is that they are nothing like their peers who do not give money."[110]

Just think about that fact for a second: Imagine the life. Imagine you had to spend even just half your time sucking up to powerful people to get the money you need to run your campaign or the campaigns of others from your party.

Is that a discipline likely to produce leaders? Is that the way to produce representatives keen to represent us?

This was a point that Donald Trump made repeatedly—at least early in his campaign. It was a good point. When he was still keen to attack Jeb Bush, Trump repeatedly emphasized this human dimension to this fundraising nightmare. How could Jeb Bush think about the public interest, when he knew the decision he was going to make might affect someone who had just given his SuperPAC $1 million? The politicians, Trump insisted, were beholden to their funders. "Everybody that puts up that money wants something for it. It's not good for the United States. It's not good for the country."[111] He knew that. He had been a funder. The politicians could not, Trump insisted, act for the public good without constantly worrying about whether that act would be, for a funder, a private bad. They were thus compromised by

this private dependence. That compromise makes it, Trump insisted, "a corrupt system."[112] "SuperPACs are a disaster," Trump declared.[113] "Very corrupt." They "are controlling your Senators, they're controlling every candidate, they'll only do what's right for those people that gave them money."[114]

What is right about this perspective is that it focuses us on how the funding affects the representative, not how the funding affects the voter. Too often, reformers tell us that campaign money is bad because it distorts "the speech market" and therefore distorts us. Even the Supreme Court has sometimes fallen into this trap. In *Austin v. Michigan Chamber of Commerce* (1990), for example, the Court allowed the state to regulate corporate speech because of "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas."[115] Here the problem was not simply wealth; it was wealth accumulated through the indirect help of the state, with no "actual public support for the political ideas espoused." Yet the idea that one's freedom of speech depends upon public support for the idea spoken is the negation of free speech, not its defense.

But in a constitutional republic that protects free speech, it can't be the government that decides which speech to allow or disallow based upon its view about whether that speech "distorts" us. Obviously. In this respect, "We, the citizens" have to take care of ourselves. And while I'd be the first to agree that the effect of SuperPAC spending is not more, but less, understanding in the public, I don't believe it's the government's job to pick sides in a political debate. Some tasks are just too dangerous for people or institutions with a monopoly on legitimate violence.

That's why Trump's perspective is so helpful here. The point isn't that this dependence on big funders corrupts *us*. The point instead is that it corrupts *our representatives*. Or as Stephanopoulos puts it, the "distortion of *voters* is different from the distortion of *representatives*."[116] A constant discipline of sucking up to money makes representatives sensitive to the views of those with money—and convinced that the public is more conservative than it is.[117] And that sensitivity gives those with money much greater influence within our government than their numbers would allow. As Stephanopoulos puts it, "politicians' [policy] positions reflect the preferences of their donors to an uncanny extent."[118] And in "combination, donors' abundant resources, policy extremism, and ideological giving contribute to severe misalignment in their favor."[119]

This is the democracy that Tom Perkins was begging for: the funders get as many votes as they give, and the big funders are getting a lot of votes in the money primary. They control the money primary, even if the extremists control the actual primary. They don't represent us, any more than the extremists represent us.

This is true for Democrats as much as for Republicans. The clash between the "establishment" Democrats and the progressive or Bernie Sanders Democrats is almost exclusively, in its essence, a fight about money. Establishment Democrats recognize they need to keep certain interests happy, if they are to fund their candidates' campaigns. Those interests aren't political; they are financial. Democrats are against Wall Street, but they can't be too much against Wall Street. They are in favor of lower-price drugs, but they can't actually press for more competition in drug pricing.

In none of these examples do we have to believe that anyone has been "bought off." That's not how politics—or life—works. To offer someone a bribe is to insult that person. Insults, it turns out, are not the most effective mode of persuasion. Instead, this bending in Washington comes through the subtle nudge of perpetual fundraising, tied to the cuddling and collaboration with lobbyists. Persuasion is through favor, not bribe. It comes through obliging someone, not from purchasing them.[120]

This point should be obvious, yet lawyers and judges just can't stop looking for corruption in all the wrong places. Think about your own

life, and where you use money to get what you want, versus favors or relationships. The bargain is the tool we use when that's all we have, at a store or at a gas station. But when we develop a rich and robust relationship with someone, it's not bargains that get us what we want. It's friendship. I do this for you, knowing that someday, you'll do something for me. As the great modern theorist of the gift economy Lewis Hyde describes it,

> **It is the cardinal difference between gift and commodity exchange that a gift establishes a feeling-bond between two people, while the sale of a commodity leaves no necessary connection. I go into a hardware store, pay the man for a hacksaw blade and walk out. I may never see him again. The disconnectedness is, in fact, a virtue of the commodity mode. We don't want to be bothered. If the clerk always wants to chat about the family, I'll shop elsewhere. I just want a hacksaw blade.[121]**

And that is ultimately and precisely the dynamic that works in Washington, too. No one need bribe anyone, for everyone to become responsive to the needs of Congress. And as responsiveness begets responsiveness, Congress bends to the needs of those with the money.[122]

So let's recap a bit, to link all this back to the point about representativeness.

If the funding of campaigns is private, then funding is its own contest. We could say the funding is its own primary. It takes time. It has an effect. It has a qualifying effect—the only people who can run are those who do well in this funding primary. It makes members dependent on those who fund their campaigns, just as candidates for chief executive in Hong Kong are dependent on China, or candidates for office in Texas (circa 1923) were dependent on whites.

This dependence is thus a kind of tweedism. Like every tweedism, it gives the tweeds a special power within the democracy.

In our democracy, this tweedism means the rich have that power. Their views are worth more than those of the rest of us, because we've

allowed a system for funding campaigns to develop in which the candidates are dependent on them. They are the nominators, in Boss Tweed's sense, while we are the electors.[123]

Of all the inequalities that mangle *them*, this is the most corrupt, because in a real sense, it is the most invisible. We all have a sense that the politicians' focus is elsewhere. But focus is a hard thing to track. Who knows why they do what they do, really? All we can say for sure is they don't seem to be attentive to what most Americans want. Yet when you account for the money, you can account for the (lack of) attention.

The tweeds of our democracy are not just white. We are not Texas, 1923. Nor are they red. We are not Hong Kong, 2014. The tweeds in this democracy are green—as in the color of money. The people who don't care about who does the electing, so long as they get to do the nominating, are the holders of great wealth in America. They benefit from a system in which they have more political power, because that system helps them preserve their endless economic power, too.

CONSEQUENCES

> **Such extreme inequality not only threatens our economic well-being; it undermines our democracy. Since the Supreme Court's disastrous *Citizens United* decision in 2010, billionaires have poured huge amounts of money into the political process. In return, they are getting policies that serve their interests at the expense of working families, the environment, and our national security.**
>
> **—SENATOR BERNIE SANDERS, 2018[124]**

There's a common view that the problem with our democracy is that it benefits rich people. That this system is designed to support "the billionaires." That the core corruption of the idea of our democracy now is that it benefits the elite alone.

This view is too simple—and indeed, too hopeful. If the system can't be representative, then would that it were a system that benefited the elite. Then at least it would be a system that had a rational end, even if it wasn't an end that was supported by a democratic majority.

Yet our actual system is actually less hopeful or rational than even this. Our actual system doesn't benefit the elite (on balance); it benefits no one. Our actual system is not an oligarchy leveraging its power to steer government to the wealthy's ends. Our system is vultures feeding on the carcass of a dead water buffalo.

For work through precisely who is benefited by each of these inequalities:

No doubt the inequality in votes—because of private funding of public elections—benefits the rich. Funders must be rich to afford the level of funding that now matters. The consequence of that funding is to bend policy in a direction that benefits them (especially the crony capitalists[125]). One could well argue that even the funders of campaigns are not representative of the rich. Funders are typically those who have something special to gain from government. Certain industries—telecom, IP—are keen to engage. Others are not. So while the rich, as Benjamin Page, Jason Seawright, and Matthew Lacombe demonstrate, are already more conservative, regardless of their politics, it is the especially interested who spend the most to drive the politics of rent-seeking, the practice of manipulating public policy to increase individual profit.[126]

But the inequality from gerrymandering does not benefit the rich. Safe-seat gerrymandering skews to the extremes and the extremes are not necessarily the rich. On the left, the most progressive push policies not favored by the rich (higher taxes). On the right, the Tea Party types push policies that benefit the rich though not necessarily the cronies. No doubt there is overlap between a politics sensitive to the extremes and a politics sensitive to wealth (especially when, as happened, the wealthy work to capture one of those extremes—the Tea Party[127]); but there is no

necessary connection between the two, and no guarantee to the rich at least that the populism of the extremes will inure to its benefit.

Likewise, with the Senate: No doubt expensive campaigns benefit the rich. But small-state senators are not necessarily captured by the rich. The people in small states are not wealthier than the people in large states.[128]

Likewise with the Electoral College: winner-take-all benefits battleground states, not the rich. The battleground states are the most purple states. The interest of those states has no obvious connection to the interests of the wealthy. The support for tariffs to benefit steelworkers does not benefit the rich (or anyone for that matter). The support for farm subsidies benefits only a slice of rich—agribusiness. No doubt the mix of policies necessary to win the support of battleground states is eclectic and shifting. But it is not a mix designed to make "the billionaires" happy. It is a mix designed to attract the most purple votes.

And finally, with endless efforts to suppress the vote: While there is some evidence to suggest that both parties play games like this, it is clear the Republican Party has embraced voter suppression as a fundamental strategy. The primary beneficiary of such suppression is political, not economic. If it means Republicans win, then maybe that means the rich do better. But if the technique of suppressing the vote of your opponent were open and notorious, the beneficiaries would turn on local political control, and not the economic interests of the most wealthy.

What these five differently distorting inequalities do together is not easy to predict. Along some vectors—tax cuts—they may be additive. But along a wide range of issues, they conflict. Tea Party Republicans hate crony capitalism. The rich don't. Swing-state Democrats turn a blind eye to steel tariffs. Democrats generally don't. Rather than a bias that runs in an obvious direction, the sum of these different inequalities bends consistently in no particular direction. This is not the physics of a plutocracy. It is the dynamic of a vetocracy—a "veto-ocracy," as Francis

Fukuyama puts it.[129] As Fukuyama describes, the American Constitution already embeds many veto points for any substantial legislation. A law can be stopped in either house. A law can be slowed by the president. A law can be struck down by the courts. A president can refuse to enforce a law. All of these constitute the ways in which the constitutional system makes change difficult. This much (small-*c*) conservatism is built into the plan.

Yet when you add the dimensions of inequality described in this chapter together, you multiply the points of veto. The rich get special power because of the way we fund campaigns. The extremists get special power because of gerrymandering (just ask Paul Ryan or John Boehner, each of whom found it impossible to govern because of the extremism of the Freedom Caucus). The small states get special power because of the Senate. The battleground states get special power because of the Electoral College. The dominant parties in the states get special power because of the corruption we've allowed to come to voting. Each of these "special powers" gives someone a way to stop something. Each is another veto point in an already veto-rich republic.

The consequence together is thus not a democracy that always bends to the rich. It is a democracy that cannot bend, or function. Regardless of the issue, there are interests who want nothing (rather than something) to happen. Because of multiplied veto points, those interests can practically always succeed. As author and historian David Van Reybrouck observes, "Whilst the US government's plans to overhaul its infrastructure have been stuck in Congress for almost a decade, China has built the Three Gorges Dam and thousands of miles of new railways and roads."[130] A similar comparison could be made with many countries and many projects many times over.

So the question in the end becomes, How much do we suffer because we have a government that cannot govern?

There may have been a time when it wouldn't have mattered much. America in the antebellum period was a nation governed by its states. If the federal government failed, or had been rendered inoperative, no

doubt on the margin things would have been worse. But the world would have puttered along just fine. Nothing critical required critical thinking or smart governance, at least at the national level.

But even if there was such a time once, that is not our time now.

Only the most committed partisan could continue to believe that climate change is not real or serious. Yet our vetocracy will not allow us to address climate change sensibly, and it will not, until that corruption is repaired.[131]

America continues to spend almost $700 billion a year on "defense," including more than $80 billion for the growing military-intelligence-industrial state.[132] We are the largest arms exporter in the world—by far. Those exports are extraordinarily destabilizing. Yet they will never end, so long as so many in Congress depend upon the millions in support, direct and indirect, provided by these industries.[133]

The American economy has become fat and huge; markets are highly concentrated, and, when accounting for institutional investors, highly coordinated. That fatness is a consequence of antitrust law in hibernation. Yet the law hibernates because its application is so effectively vetoed.[134]

The Internet in America is slow and expensive—compared to other nations, and not just Korea or Japan. That is the consequence of a regulatory system bent to benefit incumbents. The Federal Communications Commission (FCC) is easy to capture. Under the Trump administration, it was obviously captured by FCC commissioners keen to do the telecoms' bidding. Their demand was to continue to weaken competition among broadband providers. The consequence of weakened competition is always higher prices and lower quality. Congress will never respond to this obviously absurd policy choice because the power of the telecoms, even among the Democrats, ensures that a reversal of FCC policy will not happen.

And twenty years after the Columbine massacre, we *still* to this day have no comprehensive regulation to keep dangerous weapons from deranged men—again, and obviously, because of this vetocracy.

The list is endless—and too depressing to continue. You get the point: Other nations can govern themselves. Their policies might be flawed; their insights might be incomplete. But at least they can move. They can make strategic judgments, and get their people turned in a different direction. They can manage, given an increasingly foreign future. They can adjust.

We cannot. Like a battleship that cannot steer itself, we float listlessly, or we barrel along without regard. Either way, it's the same consequence. We as a nation—we as a democracy—will fail if we cannot fix "them." The government's inability to govern is the first step to that death.

The high costs of that incapacity are increasingly recognized, even, and maybe especially, in centers not traditionally focused on politics. By far the most influential recent entry in this debate was a devastating report from the Harvard Business School, authored by Katherine Gehl and Michael Porter. "Why Competition in the Politics Industry Is Failing America" analyzed the functioning of our government the way any business school professor would analyze the functioning of any business or industry. Not surprisingly, Gehl and Porter conclude that our government is failing our nation. And not just in some modest, or marginal sense. To the contrary, in their view, the political system is *the most prominent* "weak and deteriorating factor" in the American economic environment. Our Congress faces increasing gridlock; there is declining cross-partisan support for landmark legislation; and not surprisingly, given those two factors, confidence in our Congress has never been lower. "Our political system has become the major barrier to solving nearly every important challenge our nation needs to address," Gehl and Porter write.[135]

Great nations always fail. That is the history of humanity. The constant struggle of any people is to fight against this inevitability. Our only question then is whether we will fight or whether our time is up. If we cannot govern ourselves, then we have given up.

Have we given up?

CHAPTER 2

The Unrepresentative Us

AS AMERICA APPROACHED ITS 1936 ELECTIONS, MOST AMERICANS, OR AT least most reading Americans, had a pretty clear sense of what was going to happen. The president, Franklin Delano Roosevelt, had been elected in 1932. Already three years into the Great Depression at the start of his first term, his administration had not made America great again. Ordinary Americans were not significantly better off. Roosevelt was attacked by many, especially on the right, both for his "fascist" and "communistic" policies.[1] The elite was not happy. Many wanted him gone.

And most thought he would be gone. In 1936, the then-dominant method for measuring the public's view about a national question—such as, who would be elected president—was quite certain about the answer. In each election since 1916, the *Literary Digest* had run a presidential straw poll. As professor and author Jill Lepore describes, while the *Digest* "regularly miscalculated the popular vote . . . for a long time it got the Electoral College winner right."[2] In 1932, the magazine mailed more than 20 million ballots. It had come within 1 point of the final result. As it pressed on to the 1936 election, the *Literary Digest* increased its spread and depth. By October, 2.3 million ballots had already been returned.[3] Those ballots spoke loudly and clearly: Roosevelt would be defeated; Alf Landon would become the thirty-third president of the United States.

If you don't know the name "Alf Landon," then you know the *Literary Digest* was wrong. Not only did Landon not win, but Roosevelt won in the biggest landslide in a contested presidential election in American history. All but two states went with Roosevelt, and even in those two states the vote was close. The *Digest* had blown it, predicting Landon, 55 percent, and FDR, 41 percent, versus the actual: Landon, 36 percent, FDR, 61 percent. Within six months, the *Literary Digest* was shuttered.

In the months leading up to the election, there had been at least one person who had insisted that the *Literary Digest*'s prediction would be wrong. A PhD in applied psychology, and a professor of journalism at Northwestern University, George Gallup had predicted not only that the *Digest* was going to be proven wrong; he also predicted the percentage for Landon that the *Digest* would predict.[4] The problem, as Gallup diagnosed it, was that the population that the *Digest* had surveyed was skewed. The *Literary Digest* got its list from registration records for telephone subscribers and automobile owners. Obviously, the people who owned cars and leased phones in the 1930s were not a random or representative sample of America. They (the relatively rich) may not have liked FDR. But they were not the only people who were going to vote. Gallup saw that, and with that vision, Gallup struck gold.

With a small—but representative—sample, America could be understood. That fact was enormously significant. If an accurate picture of America required millions of ballots, there were very few questions that could ever rise to a level of significance enough to produce millions of responses. But if a thousand people could be said to speak for America, a business model for listening to America was within the reach of many—in both politics and marketing. Gallup had proven his point; his point launched an industry.[5]

The idea of such a technology had been a fantasy of democratic theorists for many generations. Almost exactly fifty years before, the British academic Viscount James Bryce had written in his masterful *The American Commonwealth* that the final stage in the evolution of democracy "would be reached, if the will of the majority of the citizens

were to become ascertainable at all times, and without the need of its passing through a body of representatives, possibly even without the need of voting machinery at all."[6]

George Gallup had now delivered that final stage. No longer would democracies need to rely upon interpretation or guesswork. We could "know" the "will of the people" directly, through the magic of public opinion polls. That fact, Gallup insisted, had democratic significance. Four years after dethroning the *Literary Digest*, he published *The Pulse of Democracy*, and pressed a campaign proselytizing this new technology of democracy.[7] He had found a way "to monitor the pulse of America," and now America could hear from the people directly. As David Moore, author and former senior editor of the Gallup Poll describes, "When in the mid-1930s George Gallup, Elmo Roper, and Archibald Crossley unveiled their scientific method of conducting public opinion polls, they expected that the people's voices would now be heard not just at election time, but continuously."[8]

Gallup crisscrossed the country, selling the technology that he had helped birth. As he wrote,

> It is the fashion today in some circles to bemoan the lack of intelligence of the American electorate. Pessimistic critics of the social scene assert lugubriously that whatever may have been the condition in the past, the American voter today is incapable of self-government. We have all heard that "the majority is always wrong," and that "the average American has the intellectual ability of a child of 12." . . . But as far as I am concerned, I am willing to trust the people to make the correct decision when they have a chance to express themselves on one issue at a time.[9]

The combination of "populist democracy, scientific authority, and marketing know-how," writes academic Daniel Robinson, "coalesced to form an ideological defense of polling equating it with the public good."[10]

Of course, neither Bryce nor Gallup had invented the idea of the "will of the people." Something like that idea had been with democratic theory from the very beginning, though it was Rousseau who gave us the term "public opinion" in 1744 to identify the "customs and manners of all members of society (as opposed to some elite)."[11] Alexis de Tocqueville had described its role in the American mind forty years before Bryce. Politicians and writers had long insisted that they knew and hence spoke for the people. They knew, they told us, through their experience and exposure to ordinary souls, just what the people wanted. Indeed, though Bryce fantasized about Gallup's poll, he was nonetheless quite convinced, even in 1888, that there was a way to understand the public's will even without a scientific poll.[12] And of course there had been straw polls since the beginning of the republic.[13]

Yet these efforts at divining a will before Gallup's science were interpretations, not findings—a "mysterious vapor," as political scientist V. O. Key would put it, "that emanated from the undifferentiated citizenry."[14] They were experts reporting on the public's view, as a Catholic priest reading a Latin Bible might have reported on the divine's view. We had to trust the priest, just as we had to trust the politician, because "we" ordinary sorts had no other access to the truth that they interpreted. They were the experts. We had to yield to them. As de Tocqueville would put it, "in worshipping the deity, you learn to conciliate the priest."[15]

But then Martin Luther and George Gallup gave us access. Direct access. Access that (at least pretended to be) without interpretation. With a Bible translated into the "vulgar" languages, ordinary people could read God's word directly. And with a simple method to know what a representative sample of a public thought, ordinary people could read the "will of the people" directly. Democracy had been liberated from the politicians and the pundits, just as religion had been liberated from the priests and the pretenders. And while Gallup's revolution didn't trigger the wars that Luther's did, it was resisted, too, for

it too "threatened to topple one local priesthood and replace it with another."[16]

It is hard for us today to realize just how profound George Gallup's invention was. We live at a time when polls are ubiquitous—and when they have, as political scientist Philip Converse notes, "had a major impact not only on our understanding of . . . opinion, but also on the conceptions which all of us hold . . . as to what 'public opinion' is best taken to mean."[17] After a slow start, the news is now filled with gaggles of competing polls.[18] Anyone with a thousand dollars can get any question asked nationally. The website FiveThirtyEight.com aggregates "all the polls it can find," weighted according to method and accuracy, to measure, for example, the popularity of Donald Trump. It is as hard for us to imagine a time when policy could be guided without a constant signal directly from the people, just as it will be hard for our kids to imagine navigating on a highway without GPS. We take the public opinion poll for granted. It is part of the furniture of modern public life, as familiar as interstate highways or satellites. And it's almost unimaginable today that many had questioned even whether polls should be allowed—and some countries to this day forbid them.[19] Polls, one congressman insisted, are "in contradiction to representative government."[20] To save representative democracy, some thought they should be banned outright.

Yet we don't think enough about *who* these polls are polling. What do *they* know? Or, more important, how do they know what they know?

That changed dramatically across the arc of the twentieth century. And that change was the product of another technology: broadcasting.

BROADCASTING

In its most capacious sense, the concept of "broadcasting" had its birth long before radio or television. The broad-street or penny press made

it economically possible to convey the same information to, if not millions, then at least a huge slice of the reading public, at the same time. But that conveying was limited by the medium. It was people who read who were broadcast to by newspapers. Reading is a choice. It is something we opt in to.

The broadcasting I focus on here is the technology of transmitting electromagnetically the same content at the same time to a wide range of people. Radio did this first, after a slow and Internet-like start. In 1927, 3 percent of radio content was news—and that included weather reports and police alarms.[21] World War II changed that mix dramatically, and quickly made radio central to social and political life. In 1939, 60 percent of Americans got their news from the radio. By 1944, that number had grown to 74 percent.[22]

Yet there is a coincidence here that we should not overlook: broadcasting in the sense that I mean is born just at the moment that polling is growing up. Americans come to hear a common story and understand a common set of facts just as they get asked a common set of questions.

This coincidence is critical, because whatever differences there may have been in the understanding of public issues and exposure to public debates, they get flattened as broadcasting increases. Walter Lippmann was a prominent skeptic about the public's capacity during the turn of the last century and into the two world wars. The public he came to see was one easily manipulated; he was therefore skeptical about "democracy's dependence on it."[23] It could well be that the public was as ignorant as Lippmann charged; yet that wouldn't negate a claim about what the public would eventually become—because of broadcasting.

Radio is important to this dynamic. Television is fundamental. Invented in 1927 and struggling for many years in a regulatory battle with the radio-protective FCC, it wasn't until after World War II that television began to have a significant audience. But once it truly launched, it took off like a rocket. In 1949, 2 percent of households had a television set. Fifteen years later, that number had climbed by 90 points.[24]

Television changed everything, not just because there were just a few stations that a huge population was exposed to, but also, and more important, because it was the most addictive technology in the house. People would turn the television on and leave it on. Its attractiveness trumped anything else. And thus what television ran became what America watched. Audiences that were literally unimaginable fifty years before became the ordinary pattern of prime-time TV.

This reality radically affected politics, argues Princeton political scientist Markus Prior.[25] TV changed the mix of people who were engaged in politics. Before television, information about politics was primarily conveyed through writing. When television became dominant, and television covered politics, information about politics became more equally distributed. This was not so much because people wanted to learn about politics, but rather because people wanted to watch TV, and the news was all that there was during certain times of the day. The general public thus became more generally informed because the technology of choice at the time was inefficient. Many who watched the news would have been happier watching something else. But between the news and the crickets out on the front porch, most picked the news.

The consequence was a wider range of informed voters. And the consequence of more informed voters was higher participation at the polling booth. Ignorance breeds passivity. Knowledge breeds engagement. During the 1960s and 1970s, Prior demonstrates, there was a marked increase in the participation of middle- and lower-class voters. The technology of TV had had the unintended consequence of making them more politically active. Broadcast television thus "narrowed the turnout gap" between upper- and lower-income voters; it also increased "the proportion of less partisan voters."[26]

As television broadcasting began to dominate American life, American understanding about everything—including matters of public import—changed. We saw things we hadn't seen before. We were forced to see things we could ignore before. We were brought into a

national conversation, curated by a small number of media executives, that radically affected how we understood the world. Central to every major issue that transformed over the second half of the twentieth century is a technology that taught the story to practically every American, everywhere.

This point is obvious as applied to culture. The attention share of broadcast media throughout the 1970s is unimaginable today. *Amos 'n' Andy* attracted 40 million listeners on radio "each and every evening—with some episodes reaching 50 million" in the 1930s. The total population in the 1930s was about 122 million.[27] This pattern only grew with television. Throughout the 1970s, the broadcasting networks would compete for the prize of an audience that could be 60 to 70 million people at one time. The peak attention in American history was on September 9, 1956, when Elvis Presley appeared on *The Ed Sullivan Show:* 82.6 percent of viewers watched that single episode on television. This was a technology that grabbed the attention of the whole nation. And if, as law professor Tim Wu remarks, this was the "decade of conformity," can one really exclude the most salient possible reason: "the historically anomalous scale of attention capture effected by television, together with the homogeneity of the stuff created to do the capturing"?[28]

This peak attention affected more than culture. Consider just one example that will suggest the more general pattern.

On March 7, 1965, beginning at 9 P.M. Eastern, America was watching *Judgment at Nuremberg.* Based on an episode of *Playhouse 90,* the film told the story of a kind of greatness that was America after World War II.[29] Based on principles of natural justice, America had prosecuted German Nazis after the war. The film was an account of the trial of those criminals. Almost 50 million Americans were watching that show—just about 25 percent of the population.[30]

About thirty minutes into the program, the broadcast was interrupted. News reports had just begun to tell the story of incredible violence in Selma, Alabama. For three years before that Sunday, the

Student Nonviolent Coordinating Committee (SNCC) had conducted voter registration campaigns in Selma and throughout the region. Their work was resisted forcefully by local election officials. Martin Luther King Jr., as well as the Southern Christian Leadership Conference (SCLC), agreed to help SNCC to get the officials to register black voters. In 1965, just 19.3 percent of African Americans were registered to vote in Alabama.[31]

So in January and February, King and the SCLC led a series of protests in Selma. On February 17, one of the protesters, Jimmy Lee Jackson, was shot and killed by a state trooper. In response, King announced a march from Selma to Montgomery, Alabama, on March 7, 1965, to protest the killing and demand an equal right to vote. Six hundred marchers assembled that morning, led by future congressman John Lewis. As they approached the Edmund Pettus Bridge, they saw on the other side state troopers mounted on horses. They were told to go back. They believed they were entitled to march. So they marched. The Alabama state troopers launched an attack. Using tear gas and billy clubs, the troopers tried to push the marchers back. Many, including Lewis, were beaten severely. More than fifty people were hospitalized.

Astonishingly, all this happened even though there were television cameras covering the march. And so, on the evening of "Bloody Sunday," *Judgment at Nuremberg* was interrupted, and 50 million Americans got to watch not just the story of German racism but of American racism as well. Right smack in the middle of their living rooms, white Americans were viciously attacking black Americans, simply because black Americans were exercising their constitutional right to peaceably protest for a constitutionally guaranteed right to vote free of racial discrimination.

One doesn't have to be a social psychologist to understand that this event would have affected the psychology of Americans profoundly. At one moment, we were at our best. At the next moment, we were at our worst. The hypocrisy alone, whether recognized or not, would have

moved people. The idea that this is who we were would be too much for many Americans to accept.

What is striking here is not that television covered this event and many others, but that practically everyone saw it. The public was saturated with information—and, critically, saturated from and by very few sources. Few could escape the news. And the news told these stories while adhering to journalistic principles that aspired to what they considered to be neutrality. Not neutral in some absolute sense, whatever that would mean, but neutral in the sense that the networks steered to avoid seeming partisan while reporting critically important stories of political struggle.

As the public's understanding evolved on this issue, and many others, the public was quizzed on its views. The polls evinced the public's progress. That progress made sense. Or at least to a certain elite, against the background of what the world then understood, it made sense. The public was coming to understand these issues; its sensible response was driven by this understanding; that understanding in turn, as Converse put it, manifested a "growing acceptance in practicing political circles of the kind of populist measurement" of polls.[32] As Robinson describes it, the poll, "construed rhetorically as the voice of 'The People,' came to command both political and moral authority in a country whose progressive tradition embodied strong democratic and scientific currents."[33]

Yet the critical point to see is that the public's understanding was driven by one technology, broadcasting, and then measured by another technology, polling. Broadcasting brought the news to our living rooms; polling queried us at our phones. The public grew; its growth was recorded and reported. And as that growth seemed sensible—at least to a public grounded in these same views—that sensible public became normatively significant.

Reasonableness begat respect. The public seemed eminently reasonable.

This is the public described by Benjamin Page and Robert Shapiro

in their classic work, *The Rational Public: Fifty Years of Trends in Americans' Policy Preferences*. Surveying the period from the 1930s to the beginning of the 1990s, Page and Shapiro argue forcefully that American attitudes over this period were "rational"—meaning they were real (not random, nonattitudes), stable, coherent, and made sense. When these attitudes change, Page and Shapiro insist, they change in understandable and predictable ways—"sensible adjustments to the new conditions."[34] These conclusions are important, because, as Page and Shapiro remark, "Americans take for granted that citizens' preferences should be the chief determinant of policy-making." In countries like the United States, "citizens' policy preferences have a substantial impact on what governments do." "Our point," they write, "is that the public as a collective body is capable of holding sensible opinions and processing the information made available to it."[35]

Yet the critical point here is left unsaid—*how* is "the information made available to it"? Because the signal contribution of Prior is that the information ecology for much of the period that Page and Shapiro review was quite special. As Prior writes, describing the consequence of the rise of broadcast television, "it is difficult to imagine that differences as stark as these have no effect on politics."[36] Likewise, we could say that it is difficult to imagine that the ability of the public to "hold sensible opinions and process information made available to it" is *unrelated* to the character of the information environment. If broadcasting matters to politics, then broadcasting must matter to understanding more generally.

This is an age in which most of America saw the same thing, and that "same thing" exposure had an obvious effect. The point is not that we lived through a time of perfect information or perfect education. I don't mean to argue that the sources were not biased. The point instead is that we lived through a time of concentrated information and concentrated education. The technology of television tricked most Americans into a daily lesson about public issues. That lesson informed them. It set a baseline of understanding. And as they were informed, their views

evolved. That evolution was measured in the polls. It would be "gratuitous to refuse to believe," as Converse put it, that the evolution in actual public policy was unrelated to these polls.[37]

We don't have a similar record from a hundred years before the 1960s. Before broadcasting, of course, there was certain information that traveled broadly and completely. The *Congressional Record* (born as the first official publication of Congress recording its debates in 1873) was given away for free to newspapers. Many published the debates on the front page of their papers.[38] The Associated Press, founded in 1846, provided a critical service to help spread the news of the world across America.[39] And no doubt, American culture at the end of the nineteenth century reached out "for printed information which could take them beyond the bounds of their local community."[40]

But however impressive these efforts at national informational integration were, we can be confident that only a slice of America read and understood the most important stories of the nation. In the main, America was fragmented, culturally and epistemologically, and we could not see what America knew. There were no polls capturing everything America thought. What "America thought" was instead interpreted through the charitable eyes of America's politicians.

No doubt it was not always done charitably. When one reads how, during the Civil War and afterward, southerners spoke of Yankees and Yankees spoke of the South, it is hard to believe, Lincoln notwithstanding, that the nation held together. And when one reads how whites for most of this period characterized the understandings of African Americans, it is easy to understand how racism continued throughout the twentieth century and to the present day. The point is not that people are always generous. It is that when "we the people" are interpreted by politicians who mean to rally us to their cause, that interpretation of necessity takes on a rosy tint. You don't win supporters on the campaign trail by telling the audience, "You know you're all idiots; you know you don't know diddly squat; so stop pretending you have an informed view, and just let us get on with our work." Charity

is how we speak of those we're speaking to. And when interpretation is all that there is, charity gets a very long leash.

POST-BROADCAST DEMOCRACY

And then technology changed. Again.

Beginning in the 1980s, as cable began to spread, television in America fragmented. The choices increased faster than the market increased, so that market share fell. It did so slowly at first—the patterns of life are hard to change—but then extraordinarily quickly: in 1980, more than 90 percent of television viewers were tuned in to one of the three major networks during prime time. By 2005, that number had fallen to 32 percent.[41]

At first this competition seemed good. Broadcast news was limited, in time and depth. There were evening shows and then morning shows. When Iran took fifty-two Americans hostage in 1979, journalist Ted Koppel gave us the late evening news. But it took an extraordinary entrepreneur to tap the real potential for television news on cable. That potential, it turned out, required satellites. In 1980, just as cable was being born, Ted Turner launched the first twenty-four-hour news channel, CNN. The immediate effect was to make it seem as if the new technology—cable—would give us new and better access to news than the old technology of broadcast.

And in an important sense, it did. For anyone interested, there was more to consume. The "more" that was available was more international and more continuous. Stories could be covered as they unfolded. Unfolding stories were in their nature more compelling.

Yet still, there was a norm that governed this news. That norm was inherited. It came from the professional ethics of those who wanted to believe themselves journalists. It would take an extraordinary norm entrepreneur to explode that inherited norm. The absurd coverage of O. J. Simpson's car chase in 1994 may have surfaced the idea; Bill Clinton