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THREATS TO DEMOCRATIC STABILITY: COMPARING THE ELECTIONS OF 2016 AND 1860

STUART CHINN*

In the wake of Donald Trump's presidential victory this past November, many commentators discussed whether that electoral result could pose a fundamental threat to American democracy. Given the prominent role of identity politics in that election, given the particular attributes and liabilities of both presidential candidates, and given the surprising conclusion to the election, emotions unsurprisingly ran high in the immediate aftermath. At least in my own interactions with students in the constitutional law class that I taught in the Fall 2016 term, I was struck by two types of reactions that had not appeared as prominently in my recollection of other recent, prior presidential elections: first, there was a sense of deep *personal* loss, especially among those women who supported Hillary Clinton—the sense that this election was not just a verdict on the two candidates, but a verdict in some sense upon these particular women as well. Second, there was also a very personal and very concrete sense of threat among those students who fell within the constituencies that had garnered negative comments from Trump during the campaign.

Assessing how great a threat President Trump poses to American democracy is a thorny task. In the same manner as prior commentaries, however, I will undertake my own tentative examination of this question in this Essay. My analysis will be through a comparative-historical lens: namely, by comparing the election of 2016 to the election of Lincoln in 1860. The reference to the 1860 election for this inquiry is obvious enough: the victory by Lincoln did ultimately spark a fundamental challenge to the stability of American democracy in the form of southern secession and the Civil War. The basic aspiration of this comparative approach is to investigate whether some facets of the 1860 election may or may not find ready analogues in the present context and, accordingly, to draw implications from this comparison.

Three qualifying notes should be stated from the onset regarding this comparative exercise: first, given that the full policy consequences of a Trump presidency remain unclear, my analysis of the 1860 election will largely focus on events and perceptions at a somewhat comparable stage. Hence, many of the policy shifts of the broader Civil War era are largely

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* Associate Dean for Programs and Research, Associate Professor, Kenneth J. O'Connell Senior Fellow, James O. and Alfred T. Goodwin Senior Fellow, University of Oregon School of Law.

ignored here. Second, I have downplayed or largely bypassed examining or discussing those policy domains in the present time—such as the various concerns surrounding a Trump foreign policy approach—that have no ready analogue to events surrounding the 1860 election. This is not to minimize their importance; it simply reflects the fact that this comparative analysis has relatively little to say about those particular issues in the present. Third, and finally, much of the analysis below proceeds by categorizing various arguments and concerns present in both 1860 and 2016. I would offer then the usual caveats about this type of exercise: while the items discussed below should make for a conventional set of topics, one can easily imagine another writer choosing to emphasize, add, or bypass certain topics. Hopefully what I have compiled here will not strike many as far off-base.

Below, I proceed by briefly discussing the contemplated policy shifts in both electoral contests. I then discuss how the 2016 election may be seen to encompass the lesser threat to democratic stability when we focus on demographics and the possibility of policy reversals. However, I then note in the following section how there may be some tentative convergence between the 1860 and 2016 elections on a different dimension: the weakening or disappearance of structures of commonality in American society in both contexts. Finally, again prompted by the comparison with the 1860 election, I conclude by discussing how threats to American democracy might be minimized in the present-time by a redrawing or reshuffling of the major fault lines of societal difference.

I. POLICY SHIFTS

In the most obvious and basic sense, one might generally perceive a threat to the stability of American democracy from dramatic shifts in public policy toward undesirable ends. Certainly such charges were made by Southerners in the aftermath of the 1860 election and by anti-Trump voters in the weeks after the 2016 election. In order to set the context for the discussion to follow, let me briefly recount some of the major contemplated policy shifts perceived by the losing constituencies in the immediate aftermath of these two presidential elections. I acknowledge that it might seem rather perverse to compare Southerners in the Civil War era to progressive Democrats in the present-day. But the comparison is superficially invoked here simply due to the fact that both constituencies lost in their respective presidential elections.

With respect to the 1860 election, of course, the major policy shift in play was the elevation of anti-slavery principles in national political debate. The platform of the Republican Party ahead of the 1860 election, among other things, denounced secession and any efforts to restart the international slave trade. While it conceded the right of the southern states to perpetuate a system of slavery, the platform unambiguously opposed slavery in the territories,

and within its anti-slavery stance for the territories, the Platform encompassed an opposition to slavery based upon principle.¹ Lincoln himself had notably registered his desire for the eventual extinction of slavery in his “House Divided” speech in 1858. While he had also affirmed his disinclination to interfere with slavery in the southern states at that time, and while the scope of his desire for “ultimate extinction” was unclear then (and subsequently debated by scholars later on), Lincoln, like the Republican Party in the 1860 election, clearly endorsed a general principle of anti-slavery.²

With respect to Trump, the focus has been on potential policy shifts that might very briefly and very roughly be grouped into two general categories. The first category involves domestic policy shifts that already have or may have some exclusionary consequences for various constituencies including Muslims and Muslim-Americans, racial minorities, immigrants, women, and the LGBT community. Focusing in particular on immigrants³ and Muslims/Muslim-Americans—since they were central parts of his presidential campaign—Trump very notably made the following comment in announcing his bid for the Republican presidential nomination in June 2015:

When Mexico sends its people, they’re not sending their best. They’re not sending you. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.

But I speak to border guards and they tell us what we’re getting. And it only makes common sense. It only makes common sense. They’re sending us not the right people.⁴

A few months later, Trump released a statement “calling for a total and complete shutdown of Muslims entering the United States.”⁵ He stated the following in that press release:

Without looking at the various polling data, it is obvious to anybody the hatred is beyond comprehension. Where this hatred

1. *Republican Party Platform of 1860*, AM. PRESIDENCY PROJECT (May 17, 1860), <http://www.presidency.ucsb.edu/ws/?pid=29620>; see also DAVID M. POTTER, *THE IMPENDING CRISIS 1848–1861*, at 423 (Don E. Fehrenbacher ed., 1976).

2. DON E. FEHRENBACHER, *PRELUDE TO GREATNESS: LINCOLN IN THE 1850’S 74–78* (1962); see also POTTER, *supra* note 1, at 445.

3. For an in-depth discussion of the parallels between Trump’s campaign rhetoric on immigration and immigration policy debates surrounding Chinese Exclusion, see Stuart Chinn, *Trump and Chinese Exclusion: Contemporary Parallels with Legislative Debates over the Chinese Exclusion Act of 1882* (unpublished manuscript) (on file with author).

4. *Full Text: Donald Trump Announces a Presidential Bid*, WASH. POST (June 16, 2015), <https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/>.

5. Press Release, Donald J. Trump, Statement on Preventing Muslim Immigration (Dec. 7, 2015), <http://www.presidency.ucsb.edu/ws/index.php?pid=113841>.

comes from and why we will have to determine. Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life. If I win the election for President, we are going to Make America Great Again.⁶

Within days of the beginning of his term, Trump followed up on this campaign promise to a significant degree in suspending the entry of immigrants and nonimmigrants from seven majority-Muslim nations for at least ninety days, through executive order.⁷

These comments, among many others, energized portions of the white electorate both within the Republican Party, and at the fringe of mainstream politics.⁸ Trump's flirtation with racist and nativist themes was further highlighted by his association with Steve Bannon, of *Breitbart*, who assumed a role as advisor and strategist for Trump until his departure as Trump's chief strategist in August 2017.⁹ President Trump's nomination of Senator Jeff Sessions for Attorney General has fed into this theme.¹⁰ And beyond Trump's own actions, fears of heightened societal discrimination during his

6. *Id.*; see also Russell Berman, *Donald Trump's Call to Ban Muslim Immigrants*, ATLANTIC (Dec. 7, 2015), <http://www.theatlantic.com/politics/archive/2015/12/donald-trumps-call-to-ban-muslim-immigrants/419298/>; Jonathan Martin & Alexander Burns, *Blaming Muslims After Attack, Donald Trump Tosses Pluralism Aside*, N.Y. TIMES (June 13, 2016), http://www.nytimes.com/2016/06/14/us/politics/donald-trump-hillary-clinton-speeches.html?_r=0; Dominic Tierney, *Trump's Unspeakable Strategy to Erase His Past*, ATLANTIC (Feb. 10, 2016), <http://www.theatlantic.com/politics/archive/2016/02/trumps-unspeakable-strategy-to-erase-his-past/458748/>.

7. *Trump's Executive Order On Immigration, Annotated*, NPR (Jan. 31, 2017, 10:46 AM), <http://www.npr.org/2017/01/31/512439121/trumps-executive-order-on-immigration-annotated>; see also Amanda Taub & Max Fisher, *Trump's Immigration Order Tests Limits of Law and Executive Power*, N.Y. TIMES (Jan. 30, 2017), <https://www.nytimes.com/2017/01/30/us/politics/trump-immigration-muslim-ban.html>.

8. Mark Leibovich, *Donald Trump Is Not Going Anywhere*, N.Y. TIMES MAG. (Sept. 29, 2015), <http://www.nytimes.com/2015/10/04/magazine/donald-trump-is-not-going-anywhere.html> ("Trump's war on political correctness is especially pleasing to many of the white voters of the G.O.P. who feel usurped by newcomers and silenced by the progressive gains that women, Hispanics and gays have enjoyed."); Evan Osnos, *The Fearful and the Frustrated*, NEW YORKER (Aug. 31 2015), <https://www.newyorker.com/magazine/2015/08/31/the-fearful-and-the-frustrated>; Robert L. Tsai, *What Aryans See in Donald Trump*, SLATE (May 26, 2016), http://www.slate.com/articles/news_and_politics/politics/2016/05/what_aryans_see_in_donald_trump.html.

9. Eric Lipton et al., *Donald Trump's Team Shows Few Signs of Post-Election Moderation*, N.Y. TIMES (Nov. 18, 2016), http://www.nytimes.com/2016/11/18/us/politics/donald-trump-transition.html?_r=0; Maggie Haberman, Michael D. Shear & Glenn Thrush, *Stephen Bannon Out at the White House After Turbulent Run*, N.Y. TIMES (Aug. 18, 2017), https://www.nytimes.com/2017/08/18/us/politics/steve-bannon-trump-white-house.html?_r=0.

10. Matt Apuzzo, *Specter of Race Shadows Jeff Sessions, Potential Trump Nominee for Cabinet*, N.Y. TIMES (Nov. 16, 2016), <https://www.nytimes.com/2016/11/17/us/politics/specter-of-race-shadows-jeff-sessions-potential-trump-nominee-for-cabinet.html?action=click&contentCollection=Politics&module=RelatedCoverage®ion=EndOfArticle&pgtype=article>.

presidency were crystallized by media attention on incidents of racism reported on college campuses and beyond in the election's aftermath.¹¹ In this vein, the most notable incident thus far was the white nationalist and alt-right protests in Charlottesville, Virginia, in August 2017, that resulted in a number of clashes with counterprotesters and the death of one individual.¹²

A second set of policy concerns that has garnered a great deal of commentary, especially in the aftermath of the election, focuses on the fear that a Trump presidency will move the American polity to an undemocratic or even a fascist state. Stated in brief, these concerns speak to the general anxiety or fear that President Trump may undermine core values, norms, or legal principles that constitute the foundation of American constitutional democracy.¹³ More specific concerns emphasize the absence of sufficient respect by President Trump, up to this time, for norms of fair play and legitimate political opposition,¹⁴ his allegation of massive voter fraud in the general election,¹⁵ and his flouting of established and conventional norms with respect to the press,¹⁶ financial conflicts of interest,¹⁷ and foreign relations¹⁸—especially with respect to Russia and the hacking of Hillary Clinton's emails.¹⁹

11. Caitlin Dickerson & Stephanie Saul, *Campuses Confront Hostile Acts Against Minorities After Donald Trump's Election*, N.Y. TIMES (Nov. 10, 2016), <http://www.nytimes.com/2016/11/11/us/police-investigate-attacks-on-muslim-students-at-universities.html>; Caitlin Dickerson, *Reports of Bias-Based Attacks Tick Upward After Election*, N.Y. TIMES (Nov. 11, 2016), <http://www.nytimes.com/2016/11/12/us/reports-of-bias-based-attacks-tick-upward-after-election.html>.

12. Joe Heim, *Recounting a Day of Rage, Hate, Violence and Death*, WASH. POST (Aug. 14, 2017), https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/?utm_term=.4ec90e19bff0.

13. Turkuler Isiksel, *Prepare For Regime Change, Not Policy Change*, DISSENT (Nov. 13, 2016), <https://www.dissentmagazine.org/blog/trump-victory-regime-change-lessons-autocrats-erdogan-putin>.

14. John Cassidy, *Trump's Challenge to American Democracy*, NEW YORKER (Nov. 29, 2016), <http://www.newyorker.com/news/john-cassidy/trumps-challenge-to-american-democracy>; Amy Davidson, Comment, *Transitions*, NEW YORKER, Dec. 5, 2016, at 21; Steven Levitsky & Daniel Ziblatt, *Is Donald Trump a Threat to Democracy?*, N.Y. TIMES (Dec. 12, 2016), <http://www.nytimes.com/2016/12/16/opinion/sunday/is-donald-trump-a-threat-to-democracy.html>; George Packer, Opinion, *A Democratic Opposition*, NEW YORKER, Nov. 21, 2016, at 48.

15. Levitsky & Ziblatt, *supra* note 14; Michael Wines, *All This Talk of Voter Fraud? Across U.S., Officials Found Next to None*, N.Y. TIMES (Dec. 18, 2016), <http://www.nytimes.com/2016/12/18/us/voter-fraud.html>.

16. Cassidy, *supra* note 14; Hadas Gold, *Journalists Fear for Their Profession Under Trump—and Some, for Their Safety*, POLITICO (Nov. 9, 2016, 3:55 PM), <http://www.politico.com/blogs/on-media/2016/11/the-media-fears-231138>.

17. Davidson, *supra* note 14.

18. Max Fisher, *Uncertainty over Donald Trump's Foreign Policy Risks Global Instability*, N.Y. TIMES (Nov. 9, 2016), <http://www.nytimes.com/2016/11/10/world/americas/donald-trump-foreign-policy.html>.

19. Paul Krugman, Opinion, *How Republics End*, N.Y. TIMES (Dec. 19, 2016), <http://www.nytimes.com/2016/12/19/opinion/how-republics-end.html>; Levitsky & Ziblatt, *supra* note 14; Ashley

II. ELECTORAL LOSERS AND DEMOCRATIC REVERSIBILITY

Is there an existential threat to American democracy that can be found in such policy shifts? We know that the answer was “yes” in the case of 1860 with the onset of the Civil War. In the case of 2016, however, where events are still playing out, one item worth considering on this point is the possibility for policy reversals in future elections. For example, Ian Shapiro offers the insight from the democratic theory literature that vigorous electoral competition can be crucial in aiding the stability of a democratic system: the possibility of reversible policy shifts, where losers may hold out hope of gaining the upper-hand in some future electoral competition, offers a strong incentive for them to stay invested in the democratic system even after suffering a crushing electoral loss.²⁰

Certainly, there is something within the focus on reversibility that provides some illumination on the calculation of southern secessionists in 1860. Carpenter has argued that southern regional angst surrounding its perceived status as an embattled numerical minority was a constant in the antebellum era and was not confined to just those years preceding the Civil War.²¹ Yet, there seems little question that this sense of threat or besiegement took on a much more dramatic and intense cast by 1860. By that point, it was apparent that the South was not just a minority, but a “permanent and dwindling” one.²² Demographic shifts allowed for the possibility of a purely northern sectional candidate, like Lincoln, to win the presidency without any electoral support from the South.²³

This demographic reality was coupled with the contemplated policy shifts previously discussed, as Southerners became increasingly conscious of the intensity of anti-slavery sentiment. That is, the sense of regional embattlement by the South was linked to the fact that, beyond its demographic liabilities, criticisms of slavery were increasingly made in moral—as opposed to pragmatic—terms in the decades leading up to the Civil War.²⁴ And finally, there was also a perception in the South that the system of slavery was

Parker & David E. Sanger, *Donald Trump Calls on Russia to Find Hillary Clinton's Missing Emails*, N.Y. TIMES (July 27, 2016), <http://www.nytimes.com/2016/07/28/us/politics/donald-trump-russia-clinton-emails.html>.

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

21. JESSE T. CARPENTER, *THE SOUTH AS A CONSCIOUS MINORITY 1789–1861: A STUDY IN POLITICAL THOUGHT* 24–29 (1930).

22. POTTER, *supra* note 1, at 475–76.

23. MAURY KLEIN, *DAYS OF DEFIANCE: SUMTER, SECESSION, AND THE COMING OF THE CIVIL WAR* 29 (1999); *see also* AVERY O. CRAVEN, *THE GROWTH OF SOUTHERN NATIONALISM 1848–1861*, at 6 (1953).

24. CRAVEN, *supra* note 23, at 19–20, 394–95; POTTER, *supra* note 1, at 400, 469, 476–78; CHARLES S. SYDNOR, *THE DEVELOPMENT OF SOUTHERN SECTIONALISM 1819–1848*, at 332, 335–39 (1948).

fragile and incapable of weathering major disruptions. All of these concerns only grew with the election of Lincoln, and gave rise to a perception among many Southerners that an existential threat to slavery was at hand.²⁵ As David Potter stated,

If the government of the United States should pass into the control of opponents of slavery, as it seemed about to do in 1860, the South had realistic reason to fear the consequences, not so much because of legislation which the dominant party might adopt, but because the monolithic, closed system of social and intellectual arrangements upon which the South relied for the perpetuation of slavery might be disrupted. Once Lincoln was in office, he could appoint Republican judges, marshals, customs collectors, and postmasters in the South. This would strike a heavy blow at the mystique of planter control which had been vital to the maintenance of the southern system. . . . Lincoln might appoint abolitionists or even free Negroes to public office in the South. And even if he did not do this, the new Republican postmasters would refuse to censor the mails or to burn abolitionist papers. . . . For a slave system vitally dependent upon the solidarity of the whites, this loomed as a frightful menace.²⁶

If our focus were on the interplay between the potential for democratic reversibility and democratic stability, how might we estimate the potential for reversing the policy consequences of a Trump presidency? If the threats of autocracy and fascism that commentators have raised come to fruition, this would certainly indicate an irreversibility to President Trump's policy choices—and make this an easy question to answer since by definition this would pose an existential threat to American democracy. The answer would be similar if we contemplated other obviously irreversible presidential actions such as, say, the initiation of massive, global nuclear conflict by Trump. But let us consider the tougher question of whether threats to American democracy may reside in either transformative changes in discrete policy areas like immigration or within some of President Trump's problematic character traits (that do not necessarily culminate in his becoming a dictator).

Ultimately, demographic trends in the United States do not suggest a clear and easy path for indefinite dominance by a Trump coalition. To be sure, he performed extraordinarily well in 2016 by cobbling together a coalition of voters that many did not anticipate. Nate Cohn notes that there was a systemic overestimation in post-2012 election polling of the number of well-

25. CLEMENT EATON, *A HISTORY OF THE SOUTHERN CONFEDERACY* 20 (1954); CRAVEN, *supra* note 23, at 359, 391; GEORGE C. RABLE, *THE CONFEDERATE REPUBLIC: A REVOLUTION AGAINST POLITICS* 27 (1994).

26. POTTER, *supra* note 1, at 477–78.

educated and nonwhite voters, while there was also an underestimation of the number of white, working-class voters over the age of forty-five.²⁷ And with respect to the 2016 election itself, a great deal of commentary has focused on the importance of rural and/or white working-class voters for Trump's victory, due to economic anxieties among these constituencies.²⁸

Still, this hardly implies that the Democrats of 2016 are in the same hopeless posture that Southern Democrats contemplated in 1860. The demographic realities of the present day do not favor the interests of a Republican coalition based upon appealing to white voters and alienating minority voters, even if this has proven to be a more powerful and durable coalition than many anticipated.²⁹ Far from having to contemplate the possibility of irreversible policies entrenched by inescapable demographic trends, time is on the side of present-day progressives. Indeed, although President Obama is hardly a neutral observer or commentator on the topic, the sensibility that Democratic Party policy gains may yet be maintained during a Trump presidency, and advanced after a Trump presidency, was present within the public statements of Obama in the aftermath of the 2016 election.³⁰ With this in mind, perhaps the better analogue for the 1860 Democrats in the present-day—at least with respect to this reversibility question—are *not* the 2016 Democrats, but rather the 2016 Republicans.

In sum, at least on this dimension of reversibility and democratic stability, the implications of the 2016 election and the 1860 election run in different directions for the losers in those respective contests. In 2016, we had a presidential election where the besieged minority pulled out a surprising victory, and the perceived demographic winner of the future suffered a setback. One might argue that the type of election we saw in 2016 is precisely the kind of thing that might be stabilizing, rather than destabilizing, for a polity that has to continue to grapple with deep pluralism.

27. Nate Cohn, *Why Trump Won: Working-Class Whites*, N.Y. TIMES (Nov. 9, 2016), <http://www.nytimes.com/2016/11/10/upshot/why-trump-won-working-class-whites.html>.

28. *Id.*; Nate Cohn & Toni Monkovic, *How Did Donald Trump Win Over So Many Obama Voters?*, N.Y. TIMES (Nov. 14, 2016), <http://www.nytimes.com/2016/11/15/upshot/how-did-trump-win-over-so-many-obama-voters.html>; Danielle Kurtzleben, *Rural Voters Played a Big Part in Helping Trump Defeat Clinton*, NPR (Nov. 14, 2016, 10:32 AM), <http://www.npr.org/2016/11/14/501737150/rural-voters-played-a-big-part-in-helping-trump-defeat-clinton>; Rich Morin, *Behind Trump's Win in Rural White America: Women Joined Men in Backing Him*, PEW RES. CTR. (Nov. 17, 2016), <http://www.pewresearch.org/fact-tank/2016/11/17/behind-trumps-win-in-rural-white-america-women-joined-men-in-backing-him/>.

29. David Leonhardt, Opinion, *Clinton's Substantial Popular-Vote Win*, N.Y. TIMES (Nov. 11, 2016), <http://www.nytimes.com/2016/11/11/opinion/clintons-substantial-popular-vote-win.html>.

30. David Remnick, *It Happened Here*, NEW YORKER, Nov. 28, 2016, at 62, 64.

III. STRUCTURES OF COMMONALITY

If we move beyond the dimension of reversibility, where the 2016 election presents tamer implications for the possible destabilization of American democracy relative to conditions in 1860, there is a second dimension in which conditions in the present appear to overlap a little more with those in 1860: namely, the health and vitality of structures of commonality that bridge the fault lines between established and opposing constituencies. It seems relatively uncontroversial to assert that American democracy is aided, enhanced, and stabilized when there are institutional and social structures in existence that allow for engagement to occur between opposing social groups and constituencies. Deep pluralism is inevitable in a polity as large as the United States, but in order for differences to be contained *within* the American polity, this nation has undoubtedly been aided in its past by the presence of structures that could mediate these differences, or redirect them in such a way that other fault lines could emerge to facilitate cross-cutting cleavages. It is hard to see how the American democratic system could persist without the ability to periodically contain these conflicts, and allow opposing constituencies to engage outside or beyond the terms of deeply settled and potentially destabilizing societal fault lines.

Clement Eaton noted that by 1860, some of the most significant cross-sectional institutions in American life had been undermined—further accentuating the psychological and cultural distinctions between North and South. As he stated,

By 1860–1861 many invisible bonds, which held the Union together, had snapped—one by one. The division of the Methodist and Baptist churches in 1844–1845 over the slavery question was prophetic of a political split. The great Whig party which had upheld the national idea so strongly had disintegrated; Southern students attending Northern colleges had returned home; and Northern magazines and newspapers were being boycotted in the South. As Carl Russell Fish has observed, “The Democratic party, the Roman Catholic Church, the Episcopal Church, the American Medical Association, and the Constitution were among the few ties that had not snapped.”³¹

All of this culminated in the election of Lincoln, where David Potter notes, part of the surprise felt by the South upon his election was rooted in the fact that the nation’s political system had, to a significant extent, essentially split by that point:

31. EATON, *supra* note 25, at 11–12 (quoting CARL RUSSELL FISH, *THE AMERICAN CIVIL WAR: AN INTERPRETATION* 11 (1937)).

When Lincoln was elected, the result came to the South as a much greater shock than it would have if Republican speakers, or even Lincoln himself, had been ranging up and down and back and forth throughout the South, asking the voters to trust him. The Republicans would have had nothing to gain from such a campaign, and southerners would never have permitted it, but the point is that the voters of the South were naturally prepared to believe the worst of a candidate when most of them had never seen even one of his supporters, much less the man himself, and when his party did not even seek their support. In fact, the American party system had ceased to operate in a nationwide context.³²

It is difficult to claim that segmentation in the American polity of the present is anything remotely as extreme as these conditions in 1860. There is a not-insignificant degree of segmentation in 2016 premised upon geography and geographic identity, as evidenced by the state-by-state vote tallies. The distinctiveness of the West Coast was a point of discussion after the election, for example,³³ and (sometimes) tongue-in-cheek demands for state secession also appeared after the election.³⁴ Indeed, imaginings of multiple, separate, and more homogeneously liberal and conservative republics within the United States was hardly an exercise spawned by Trump's election. In 2009, while discussing the Tea Party, Hendrik Hertzberg offered just such a vision of a United States separated from the states that made up the old Confederacy (the "Federated States"):

For the old country [the remaining states of the United States], the benefits would be obvious. A more intimately sized Congress would briskly enact sensible gun control, universal health insurance, and ample support for the arts, the humanities, and the sciences. . . . The Federated States, meanwhile, could get on with the business of protecting the sanctity of marriage, mandating organized prayer sessions and the teaching of creationism in schools, and giving the theory that eliminating taxes increases government revenues a fair test. . . . But the greatest benefit would be psychological: freed from the condescension of metropolitan élites and

32. POTTER, *supra* note 1, at 439–40.

33. Thomas Fuller et al., *Amid Tide of Red on Electoral Map, West Coast Stays Defiantly Blue*, N.Y. TIMES (Nov. 11, 2016), <http://www.nytimes.com/2016/11/12/us/west-coast-trump.html?partner=bloomberg>.

34. Mike McPhate, *California Today: Secessionist Groups Seize the Moment*, N.Y. TIMES (Nov. 10, 2016), http://www.nytimes.com/2016/11/10/us/california-today-secession-trump.html?_r=0.

Hollywood degenerates, the new country could tap its dormant creativity and develop a truly distinctive Way of Life.³⁵

Still, it is hard to claim that this geographic segmentation is nearly as stark as what was present in 1860. Trump, after all, still won 31.5% of the votes in California, or 4,483,810 votes.³⁶ The differing regional segments of modern America are not as geographically uniform, and the significance of geographic segmentation is helpfully constrained by the fact that it is only one of several types of diversity that is prominent in the present-day.

And yet, even if it may be difficult to say that the forms of segmentation in the present-day are perfectly comparable to those in 1860, one facet of our national culture may provide a possible analogue for the break-down of cross-sectional institutions prior to the Civil War. In light of the growing prevalence of fake news, the echo-chamber nature of communities constructed by ideologically-influenced media, and the growing prominence of individually-tailored interactions on social media in our lives, there has been increasing public commentary upon the fact that pluralism and segmentation has seemingly come to affect even the very facts and terms that make up the foundation of a public discourse.

In his post-election interview with President Obama, David Remnick quotes the former in stating this on the nature of modern media:

The new media ecosystem “means everything is true and nothing is true,” Obama told me later. “An explanation of climate change from a Nobel Prize-winning physicist looks exactly the same on your Facebook page as the denial of climate change by somebody on the Koch brothers’ payroll. And the capacity to disseminate misinformation, wild conspiracy theories, to paint the opposition in wildly negative light without any rebuttal—that has accelerated in ways that much more sharply polarize the electorate and make it very difficult to have a common conversation.”

President Obama maintained that the new media ecosystem marked a decisive change from previous political eras. “Ideally, in a democracy, everybody would agree that climate change is the consequence of man-made behavior, because that’s what ninety-nine per cent of scientists tell us,” he said. Continuing, President Obama stated,

And then we would have a debate about how to fix it. That’s how, in the seventies, eighties, and nineties, you had Republicans supporting the Clean Air Act and you had a market-based fix for acid rain rather than a command-and-control approach. So you’d argue

35. Hendrik Hertzberg, Comment, *So Long, Pardner*, NEW YORKER (May 4, 2009), <http://www.newyorker.com/magazine/2009/05/04/so-long-pardner>.

36. *Election 2016: California Results*, N.Y. TIMES (Aug. 1, 2017, 11:22 AM), <http://www.nytimes.com/elections/results/california>.

about means, but there was a baseline of facts that we could all work off of. And now we just don't have that.³⁷

In a similar vein, in his commentary on both campus debates surrounding controversial speech and Donald Trump, Nathan Heller questioned what remains of societal consensus or convergence even with respect to simple statements of fact. As he mentioned with respect to Donald Trump:

In a climate where common language is not held accountable to common meaning, “taking a stand” becomes a mostly theatrical exercise. Trump, the candidate, is all about “taking a stand,” announcing values and setting trajectories. That little seems to be backed by fixed meaning or process isn't, as some observers claim, a quirk of his campaign. . . . Trumpism is successful because it leverages a disconnect among language, meaning, and process that's deep-set in our national life. He can say anything these days—because the rest of us can, too.³⁸

Thus, even if we may still have institutional and social structures within which the pluralism of American society could theoretically be channeled—whether they be local institutions like schools, national institutions like the Democratic and Republican parties, or web-based venues such as social media or chat forums—these structures would be incapable of bridging plurality if, at a more foundational level, the polity is bereft of the basic tools needed for such engagement. Such tools would include widespread agreement upon basic terminology or something approaching baseline “facts.” On this dimension then—the presence or absence of the structures and tools needed for engagement across lines of societal division—this form of hyper-pluralism in our public discourse in the present day could be analogized to the breakdown of cross-regional institutional structures in the years preceding the Civil War.

IV. REORIENTING THE TERMS OF CONFLICT

Within the preceding two Sections, I have proceeded with some underlying assumptions about the nature of threats to American democracy. I have assumed that deep lines of division existing in American society may be more or less a fact of life, and that threats to American democracy reside in the greater or lesser efficacy of political, institutional, and social mechanisms in managing pluralism. The existence of cross-cutting cleavages and mechanisms for engagement across lines of difference would seem to minimize

37. Remnick, *supra* note 30, at 57; *see also* Packer, *supra* note 14, at 48.

38. Nathan Heller, Comment, *Trump, the University of Chicago, and the Collapse of Public Language*, NEW YORKER (Sept. 1, 2016), <http://www.newyorker.com/culture/cultural-comment/trump-the-university-of-chicago-and-the-collapse-of-public-language>.

these threats, while the existence of permanent, entrenched (though still politically effective) minorities, irreversible and contentious policy shifts, and the absence of mechanisms for common engagement would seem to enhance those threats.

In this concluding Section, however, I approach these questions through a somewhat different lens and with a different set of starting presumptions: even if a state of pluralism may be inescapable in as large and diverse a society as ours, it is obviously not the case that the particular fault lines of difference at any moment in time will necessarily remain as they are. This is another lesson to be drawn from the 1860 election too, since both the abolition of slavery and the question of a state's right to secede are no longer deeply contested issues in present-day America. Similarly, one may look over the span of legal developments on race, gender, and sexual orientation in the last seventy years to see stable and seemingly permanent changes in legal principle, institutional development, and public opinion on certain issues within those areas—thereby leading to the terrain of major agreement and major points of disagreement changing, to varying degrees, over time. In other words, we do see cases of secular political developments in American history.³⁹

One may thus ponder the question of threats to American democracy with this slightly different focus in mind: might the threats of disinvested perpetual losers and hyper-pluralism be addressed not by better or worse *management* of existing plurality, but by the mitigation of threat through the *reorientation* of the major fault lines of difference—via inspired political leadership, a new wave of social movements, or a rejuvenated political party structure? That is, might the polity be saved by a reshuffling and replacement of the major policy issues that define the major divergences in American politics?

To be sure, if anything, President Trump's temperament and the absence of any evidence of his ability to mature into a great statesman suggest that no such solution is imminent during his presidency. If anything, President Trump seems more likely to exacerbate existing threats to America, while introducing significant new ones. But the question is worth pondering here for a few reasons. First, it is prompted by our focus on the 1860 election. At its core, what the Civil War encompassed was the clash of opposing values—slavery and anti-slavery—where no set of institutional arrangements and no type of compromise could have resolved the conflict in a painless way. As Avery O. Craven has stated,

39. On this topic of change in secular time, see STEPHEN SKOWRONEK, *THE POLITICS PRESIDENTS MAKE: LEADERSHIP FROM JOHN ADAMS TO BILL CLINTON* 30 (1997).

Neither the North nor the South could yield its position because *slavery had come to symbolize values in each of their social-economic structures for which men fight and die but which they do not give up or compromise*. These values had been emphasized and reinforced by two decades of emotional strife, name-calling, and self-justification. Right and wrong, justice and injustice were in conflict. The destiny of mankind was at stake.⁴⁰

One vision ultimately won out, however, and the polity then moved on to grapple with other political conflicts. Of course, economic and race issues persisted after the Civil War, so this is not to claim that there were no continuities from the antebellum era into the Reconstruction era. That said, it is also true that the antebellum universe, and the threat to American democracy present within it, did not live on past the Civil War.

Second, a similar aspiration to reorient the major terms of political debate has very notably been articulated by members of the Republican Party's "rejectionist wing," including the Freedom Caucus, in recent years: namely, that a shock to the system, posed by uncompromising position-taking, would help to address the fundamental threats and problems that they feel exist in present-day America.⁴¹ Presumably, those Republicans would view their actions as being driven by a desire to—on the other side of their efforts—helpfully redraw the terms of everyday or common-place political debate within a more conservative polity.

And finally, for those on the more progressive end of the political spectrum, one of our recent presidents has, in a sense, staked his own political identity around this question of reorienting present-day political conflicts, albeit in a complicated way. President Obama has been admirably (or frustratingly) insistent on a politics of compromise and accommodation for a substantial portion of his political career. One might plausibly see this aspiration as Obama's own vision of how the fault lines of American politics might be reoriented. Thus, in his dramatic introduction to a national political audience at the Democratic Party National Convention in 2004, he stated in his speech:

[T]here's not a liberal America and a conservative America; there's the United States of America. There's not a black America and white America and Latino America and Asian America; there's the United States of America. The pundits, the pundits like to slice and dice our country into red states and blue States: red states for Republicans, blue States for Democrats. But I've got news for them, too. We worship an awesome God in the blue

40. CRAVEN, *supra* note 23, at 397.

41. Ryan Lizza, *A House Divided*, NEW YORKER, Dec. 14, 2015, at 30–37.

states, and we don't like federal agents poking around our libraries in the red states.

....

We are one people, all of us pledging allegiance to the stars and stripes, all of us defending the United States of America. In the end, that's what this election is about. Do we participate in a politics of cynicism, or do we participate in a politics of hope?⁴²

As many commentators have noted, President Obama's strong inclination to search for agreement and compromise has been an enduring feature of his personality and political philosophy. David Remnick noted that Obama's inclination to consensus was well-noted among his law school classmates: "Everyone remembers Obama in much the same way: that he held generally progressive views on the political and racial controversies on campus, but never took the lead. He always used language of reconciliation rather than of insistence."⁴³ And indeed, as he wrote in *The Audacity of Hope*, President Obama extended this same sense of value-humility (to a degree) to his own general insistence on compromise and consensus-seeking.⁴⁴ As he wrote with respect to Lincoln:

That self-awareness, that humility, led Lincoln to advance his principles through the framework of our democracy, through speeches and debate, through the reasoned arguments that might appeal to the better angels of our nature. . . . The blood of slaves reminds us that our pragmatism can sometimes be moral cowardice. Lincoln, and those buried at Gettysburg, remind us that we should pursue our own absolute truths only if we acknowledge that there may be a terrible price to pay.⁴⁵

And yet, after two terms as president, it also seems abundantly clear that President Obama's aspirations to reorient the modern fault-lines of disagreement through a post-partisan politics has clearly failed. He stated as much in his State of the Union address in 2016.⁴⁶ Clearly then, if the divisions of present-day pluralism are to be redrawn or reoriented, this will have to be

42. Barack Obama, III, Senate Candidate, Speech at the National Convention of the Democratic Party (July 27, 2004), <http://www.washingtonpost.com/wp-dyn/articles/A19751-2004Jul27.html>.

43. DAVID REMNICK, *THE BRIDGE: THE LIFE AND RISE OF BARACK OBAMA* 214 (2010).

44. JAMES T. KLOPPENBERG, *READING OBAMA: DREAMS, HOPE, AND THE AMERICAN POLITICAL TRADITION* 232–35, 244 (2011).

45. BARACK OBAMA, *THE AUDACITY OF HOPE: THOUGHTS ON RECLAIMING THE AMERICAN DREAM* 98 (2006).

46. President Barack Obama, State of the Union Address (Jan. 13, 2016), <https://www.whitehouse.gov/the-press-office/2016/01/12/remarks-president-barack-obama-%E2%80%93-prepared-delivery-state-union-address> ("Too many Americans feel that way right now. It's one of the few regrets of my presidency—that the rancor and suspicion between the parties has gotten worse instead of better.") .

done through the articulation of a national vision that is more insistent than the vision articulated by Obama—at least for a significant portion of his presidency—on specific values, specific policies, and specific constituencies that must be prioritized over others. To the extent that such a reimagining, backed by broad democratic support, is plausible, any present-day threats to American democracy may be mitigated. To the extent that such a reimagining is simply out of reach, as it was in 1860, we may accordingly worry even more about these threats.

Is such a reimagining possible? If so, what are the likely alternatives? Trumpism, at least for the moment, seems unlikely to provide much hope. Regardless of one's political persuasion, it is not clear that a coherent Trump political philosophy will emerge anytime soon that is capable of generating a lasting cohesion across the constituencies encompassed within the Republican Party, much less across some constituencies outside the Republican Party.

With respect to the Democratic Party, there are no obvious answers either. Much post-election commentary focused on the Democrats has been consumed with the debate over whether that party would be better served to continue on with its emphasis on “identity liberalism,” or whether the focus on identity should be abandoned in favor of broad-based economic themes.⁴⁷ The appeal of the latter is supported by the prominent role that white working-class voters in the Midwest played as a crucial swing constituency for President Trump.⁴⁸

Though somewhat distinct, shades of this debate between identity liberalism and economic-based liberalism have carried over to evaluations of Hillary Clinton, who has been characterized as contrasting with President Obama's orientation toward consensus building and compromise. This point of distinction has been used to suggest that Clinton ran into problems precisely because she was less conciliatory to the rural, working-class white voters who proved to be an important part of the Trump coalition. About a month prior to the election, Larissa MacFarquhar wrote about the appeal of then-candidate Trump in a West Virginia County, and drew this comparison between Obama and Clinton:

[A]lthough Obama's and Clinton's immigration policies are pretty similar, the way they talk about the subject is quite different. In a speech at the end of last year, Clinton suggested that wariness of immigrants was a sign of bad character.

....

47. For a notable comment that was critical of the Democratic Party's emphasis on identity liberalism, see Mark Lilla, Opinion, *The End of Identity Liberalism*, N.Y. TIMES (Nov. 18, 2016), <https://www.nytimes.com/2016/11/20/opinion/sunday/the-end-of-identity-liberalism.html>.

48. *See id.*

When Obama gave a speech on immigration in the fall of 2014, he spoke first about America's border—how he had secured it, and how illegal crossings had been cut by more than half. When he spoke about people who opposed his policies, he said he understood them.

....

Of course, Obama doesn't have to prove his anti-racist bona fides in the same way that Clinton does. But it is also Obama's style to talk like this. He likes to reconcile, to draw people in, to minimize the differences between them. Clinton, on the other hand, always describes herself as a fighter, and it is her style to draw sharp lines between right and wrong—between the people who are being oppressed and the people doing the oppressing. This style can make it sound as though she thinks people who disagree with her on immigration are probably racists.⁴⁹

In a similar vein, Nate Cohn drew a similar comparison after the election:

One other thing: Both Trump and Obama made white working-class voters feel a little better about racial anxiety.

They obviously did it in very different ways.

But I'd say that Obama made a lot of voters feel good, even proud, about supporting an African-American.

Trump made them feel O.K. about their "politically incorrect" reservations about diversity, crime and immigration.

Clinton did something very bold that I don't think she got very much credit for: She challenged many white Americans to question implicit bias, and revived criminal justice as an issue. That may have been a bridge too far.⁵⁰

Not surprisingly, Hillary Clinton's approach has been subject to critique precisely because she lost the election. And the reality of a Democratic Party loss to as flawed a candidate as Donald Trump is certainly sufficient grounds for some self-evaluation about the merits and demerits of identity-based themes as part of the Party's vision.

Still, it seems problematic to me to call for a categorical de-emphasis of identity themes on both pragmatic and substantive grounds. With respect to the pragmatic, Hillary Clinton still won close to 2.9 million votes more than

49. Larissa MacFarquhar, *Trumptown*, NEW YORKER, Oct. 10, 2016, at 65.

50. Cohn & Monkovic, *supra* note 28.

Donald Trump nationwide,⁵¹ and the Democrats do have demographic advantages in their favor. With respect to the substantive, I am also inclined to believe that there are elements of structural inequality in American society that are going to be impossible to tackle and eventually address without an identity politics capable of at least naming them, and pressing for their inclusion in public discourse.⁵²

More to the point for my argument, however, as difficult as it may be to imagine right now what the right message would be for a reinvigorated and electorally successful Democratic coalition, I do think that the potential for a reimagining of fault lines in American politics are much more plausible in 2016 than they were in 1860. I would speculate that if a new governing regime from the left is ever able to emerge to decisively take hold of the federal government again, themes about structural equality and inequality will be a part of that regime's core commitments. I also suspect that these themes will have to be broad enough to encompass not just many of the established themes within present-day identity liberalism, but will also be capable of capturing the structural disadvantages faced by white-working class voters who responded to economic and cultural anxieties in 2016 by voting for Trump.⁵³

As to which sub-themes of equality will be the focus—whether racial, economic, gender, sexual orientation—and, more importantly, how those sub-themes will be reconciled or prioritized remains to be seen. But one could see that in 1860, the centrality of slavery to American democracy in its social, economic, and political consequences, combined with the nature of opposition to slavery in the non-slave states, ensured that there was almost no way the topic of conversation was going to change anytime soon. The possibilities for talented politicians to put forth compelling new national narratives, and for reenergized or reimagined political parties to emerge, seem much more expansive in 2016 relative to conditions in 1860. As such, present-day political conditions diverge in a more hopeful manner on this point from conditions after the 1860 election.

Ultimately, at least on the points discussed in this Essay, it is hard to see any kind of threat to American democracy within the 2016 election comparable to that present in 1860—though admittedly, I have set the bar pretty high by choosing the latter election as my point of comparison. Unlike the

51. Gregory Krieg, *It's Official: Clinton Swamps Trump in Popular Vote*, CNN (Dec. 22, 2016, 5:34 AM), <http://www.cnn.com/2016/12/21/politics/donald-trump-hillary-clinton-popular-vote-final-count/>.

52. See Khalil Gibran Muhammad, *No Racial Barrier Left to Break (Except All of Them)*, N.Y. TIMES (Jan. 14, 2017), <https://www.nytimes.com/2017/01/14/opinion/sunday/president-obama-martin-luther-king-racial-barrier.html>.

53. On the topic of how we might conceptualize the “victimhood” felt by white Tea Party supporters, see ARLIE RUSSELL HOCHSCHILD, STRANGERS IN THEIR OWN LAND 215–17, 232–33 (2016).

case of Southern Democrats in 1860, the electoral losers in 2016 are not weighed down with the fear of being a permanent and besieged minority. I have argued that one of the more troubling aspects of contemporary politics may be rooted in the potential for societal cleavages to become even more entrenched as our public discourse becomes increasingly fragmented over time. Still, as I noted in the last section, even this fear may ultimately be mitigated if new presidents, new social movements, and new political parties are able to reorient the major fault lines of difference in American politics. I don't know that this is likely to happen anytime soon, but compared to conditions in 1860, the conditions in 2016 appear much more favorable to the occurrence of such a shift.