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# **VOLUME 5 (2026)**



# EDITORIAL FOREWORD

Chloe Ebert

In publishing the fifth edition of *The Philosophy, Politics, and Economics Review*, I find it inspiring to see the passion shared by undergraduate students globally on the subject of PPE. Given its topicality, I sincerely hope the field continues to gain traction in an increasingly complex world, both among this generation and for the benefit of generations to come.

As you read the articles selected for this edition, you will see a general theme developing, which may be best described as the functionality of governance in the contemporary United States. The shift in the trajectory of governance of the recent executive administration has left many people curious about how exactly the United States, as a representative democracy, does function and should function. I observed similar sentiments throughout many other submissions we received for this publication cycle. The articles in this volume are presented in a gradually narrowing scope.

The first article details the function of democratic governance in state-building outside of the United States. By examining the imposition of democracy on countries outside of the United States, it primes us to understand the functionality of democracy inside the United States. The second article delves into sortition as an alternative to our representative democracy, and how a lottocratic system can effectively function while keeping with principles of democracy and justice.

The third article narrows to focus on the role of corporate speech in American politics and its consequences in affecting perceptions of American democracy after the 2020 election. The fourth article provides a case study of the 2023 regional banking crisis, addressing how recent changes in federal banking regulation have exacerbated the lack of banking access for many American communities. This article concludes the edition by examining discontentment with governance in the United States through the lens of individual citizens.

Along with the insightful contributions of the authors, I am grateful for the passion of the undergraduate associate editors in bringing this publication to fruition. I would like to thank Dan Gibbs, Faculty Editor, and Michael Moehler, Director of the Kellogg Center, for their immense support throughout the selection, editing, and publication processes. Their appreciation for the field of PPE is clear, and I value their guidance.

Disenchantment with modern governance systems makes itself clear through the voices of these undergraduate students. Please take their analyses into consideration as we strive to adopt a more dynamic view of the future of American political governance.

**Chloe Ebert**

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# TOCQUEVILLIAN LESSONS ON THE FAILURE OF DEMOCRATIC STATE-BUILDING

Adrienne Sanza

*Alexis de Tocqueville argues that democracy is inevitable for all nations. However, for a successful democracy to emerge, it must be compatible with the people's existing social state, history, and mores. Thus, a democracy established by external forces will not stabilize until met by an internal social state compatible with democracy. Democratic state-building is not inherently problematic – rather, it is the imposition of democracy in places where existing laws, habits, and traditions do not align with democratic governance. Utilizing Tocqueville's theories and an examination of case studies, this article will show that when democracy is imposed on a nation whose unique experiences have not already prepared them to develop democracy independently, democratic state-building efforts are unlikely to succeed. U.S. policymakers should consider a foreign policy combining cosmopolitanism and confidence in self-determination, which would allow for the independent development of democracy in a way that best suits local conditions.*

## 1. Democratic State-Building as Foreign Policy

Over the last century, the United States government has, along with international organizations, repeatedly attempted to impose democratic governments in places with little to no democratic history, backing it with the resources of the largest military in the world. French political philosopher Alexis de Tocqueville's *Democracy in America* may explain why these modern democratic state-building efforts have failed. Through his monolithic tome, Tocqueville infers why American democracy is distinctly unique to the country where it was developed and cannot be replicated, fabricated, or exported abroad. His analysis of American democracy indicates why a democratic government cannot be imposed on a previously non-democratic society and the consequences of doing so. Tocqueville writes that democracy is formed over time by a particular people who share similar political opinions, mores, and experiences in a geographical locality that supports democracy. Each new democracy requires specific environmental conditions to thrive – conditions that cannot be manufactured by any external force. In turn, exportation of democratic systems and institutions fails because democratic ideals cannot be sustainably forced onto a people unwilling or unready to support them. Any imposed political order that is opposed to a people's traditional or historical forms of government, or their preferences, will be unstable and highly unlikely to take root. External efforts to establish a democratic government without the necessary internal conditions are likely to result in backsliding and chaos.

In Section 2, this article explains key terms that will be utilized throughout the text in refer-

ence to Tocqueville's theories. In Section 3, it will examine the development of American democracy through Tocqueville's lens to show why the American democratic formula is unique and demonstrate the challenges that come with developing a new democracy. This will provide context as to why each democracy functions uniquely in the state within which it was developed. Then, in Section 4, this article will analyze Tocqueville's theory on the inevitability of democracy and offer key exceptions to his prediction. Sections 5 and 6 will discuss why democracy cannot be exported and an imposed democratic system is unlikely to succeed through the contemporary examples of democratic state-building failures in Afghanistan and Iraq. Focusing on key issues, including the consideration of existing social and governmental structures and the importance of allowing democracy to develop over time, will demonstrate how local conditions and the inflexibility of the social state can render democratic state-building ineffective. Finally, in Sections 7 and 8, this article will examine nations that are commonly listed as examples of democratic state-building success but actually represent democratic reconstruction and suggest a new path forward for the United States in its efforts to support democracy around the world.

## **2. Tocqueville's Social State, Equality of Conditions, and the Mores of the People**

First published in 1835, Tocqueville's *Democracy in America* explains why the American form of democracy has remained successful for so long. During his stay in the United States (1831-1832), Tocqueville observed 'the American' as a political entity and sought to understand how democracy functioned in a space as large and unique as North America.

To understand Tocqueville's observations, a discussion of terms is necessary. First, and most important, is the 'social state.' According to Tocqueville, the social state is the "material and intellectual condition in which a people finds itself in a given period" (Tocqueville 2000, 74). For Tocqueville, this social state is commonly a result of fact or law, but it is usually a product of both. He adds: "Once [the social state] exists, it can itself be considered the first cause of most of the laws, customs and ideas that regulate the conduct of nations; what it does not produce, it modifies" (Tocqueville 2000, 74). The democratic social state means that there is no longer a noble class or landed, titled aristocrats who inherit their social positions and wealth as a result of their family's long historical standing. Under democratic conditions, everyone is an individual who must work for what they have. This universal need to work for the material and societal advantages one possesses is referred to as 'the equality of conditions.' Tocqueville also makes frequent use of the term 'mores' which he defines as "the whole moral and intellectual state of a people ... the diverse opinions that are current among them ... the whole range of ideas that shape habits of mind" (Tocqueville 2000, 331). The mores of the American people incline them to prefer democratic self-government. Each of these terms – the social state, equality of conditions, and mores – has a direct impact on the ability of a democracy to flourish and develop over a long period. These terms serve as the basis of Tocqueville's explanation of the key tenets of American democracy and can explain the failure and success of democratic systems in Afghanistan, Iraq, Japan, and Germany.

## **3. Development and Growth of American Democracy**

When Tocqueville began his examination of American democracy, he noted several important historical conditions that facilitated the natural birth of the democratic system in the United States. One of the key conditions that he explained was the equality of conditions. Although early emigrants to the New World were from the wealthier part of society, they all faced the same struggles upon their arrival. Wealth was no longer of great significance and suddenly each

individual had to fend for themselves and work to survive.<sup>1</sup> As a result, early settlers found themselves subject to the same material necessities and experienced little social stratification. According to Tocqueville, “Their gathering on American soil presented, from the origin, the singular phenomenon of a society in which there were neither great lords nor a people, and, so to speak, neither poor nor rich” (Tocqueville 2000, 32). Thus, when towns and villages began to develop, there was no noble class established to lead them. The people needed to find a way to govern themselves. And so, America built its democratic system from the ground up. Tocqueville compares the development of the United States to that of other nations, stating:

In most European nations, political existence began in the higher regions of society and was communicated little by little and always in an incomplete manner to the various parts of the social body. In America, on the contrary, one can say that the township has been organized before the county, the county before the state, the state before the Union. (Tocqueville 2000, 40)

This lengthy development allowed Americans to slowly learn how each part of the government ought to function and established a system which would permit local self-government even under a larger state and within a federal system. This is important, especially to the discussion of state-building, as when democracy is imposed, people do not have the opportunity to gradually establish their government, nor reorder their society in a way that best suits them and their new political system.

Yet another quality unique to American democracy during its development was the separation of church and state, as well as the benefits that such a system had for the Americans. While Christianity dominated political life in Europe, in America, there was no state religion: religion was primarily a private affair.<sup>2</sup> Instead, because the emigrants to America belonged to persecuted religions, they learned that it was crucial to protect the free exercise of rights for everyone, to ensure the free exercise of their own (Tocqueville 2000, 276). Americans learned to allow politics and religion to develop side by side, without one invading the sphere of the other. Within Anglo-American civilization as a whole, Tocqueville argues that “it is the product (and this point of departure ought constantly to be present in one’s thinking) of two perfectly distinct elements that elsewhere have often made war with each other, but which, in America, they have succeeded in incorporating somehow into one another and combining marvelously. I mean to speak of the *spirit of religion and the spirit of freedom*” (Tocqueville 2000, 43). In keeping that unique balance between the spirit of religion and the spirit of freedom, the church and the state each recognized that they should not interfere in the affairs of the other.

At the time of his visit to America, Tocqueville observed that priests refrained from involving themselves in politics, lest the dislike of their political views undermine the place of religion (Tocqueville 2000, 284). Yet, religion crossed into politics unofficially, leading Tocqueville to write that, “Religion ... should therefore be considered as the first of their political institutions; for if it does not give them a taste for freedom, it singularly facilitates their use of it” (Tocqueville

1. Estate laws prevent the emergence of aristocratic families and overly powerful landowners by dividing up the estate rather than allowing it to be passed down as a whole. This could be a contributing factor to the failure of democracy in other countries as they may allow for the direct inheritance of the entire estate, especially tribal leaders and warlords. In these cases, when the estate is passed down, because it is not split into parts for each inheritor, there may be conflict over territory that destabilizes the surrounding area. Without estate laws to break apart large plots of land, it becomes difficult for the average citizen to purchase land and therefore inhibits the development of democracy by postponing the development of each citizen into a shareholder of the country (Tocqueville 2000, 48-49).
2. On the point of religious freedom in America, Tocqueville writes, “The greatest part of English America has been peopled by men who, having escaped the authority of the pope, did not submit to any religious supremacy; they therefore brought to the New World a Christianity that I cannot depict better than to call it democratic and republican: this singularity favors the establishment of a republic and of democracy in affairs” (Tocqueville 2000, 275).

2000, 280). In other words, what law does not prohibit, religion prevents.<sup>3</sup> In America, religious figures stayed out of politics, politics protected religion from persecution, and religion ensured that people would abide by the laws of democracy through its morals and tenets. While the ideal combination of religion and politics may differ for each country or peoples, this form was found suitable to the American political order.<sup>4</sup> Through this secular political system, religion and civil freedom came to support each other while remaining separate entities. Tocqueville includes this argument in his 'Point of Departure' which underscores how unique the American experience is. It is important to note that Tocqueville focuses on the religion of Christianity as an example for the state of the Americans, but this does not deny the possibility of other religions developing their own system of relations between church and state in the course of their own democracy.

Without the rule of an aristocracy or direct religious influence in the government, the Americans relied on intellectual influences to guide their political decisions.<sup>5</sup> In Tocqueville's assessment, because all people shared an equality of conditions, each had the same general window of time during which they received an education or were interested in receiving one rather than going to work. Therefore, a level of common knowledge emerged amongst the general American population (Tocqueville 2000, 51). When a large group of people share the same level of knowledge and are influenced only by the thoughts and ideas of those inside the group, they tend to create a system of shared beliefs. Consequently, "One therefore encounters an immense multitude of individuals who have nearly the same number of notions in matters of religion, of history, of science, of political economy, of legislation, of government" (Tocqueville 2000, 51). For Tocqueville, this seemed to mean that Americans were "more equally strong than they are in any country in the world and than they have been in any century of which history keeps a memory" (Tocqueville 2000, 52). If equality was generally met in terms of education and wealth, then it follows that the same equality should be met by politics.

As a result of the length of time during which major aspects of American society (socio-economic status, level of education, social rank, and religious values) remained relatively unchanged, American democracy was able to develop over an extended period of time, in a way that was most beneficial for the majority of the people.<sup>6</sup> However, this does not mean that the American system, or even democracy, will work for everyone. Recreating the conditions for American democracy is impossible because they are unique to a particular people at a particular time, in a particular country. And yet, Tocqueville believes that the entire world will eventu-

3. On this point Tocqueville writes:

Religion sees in civil freedom a noble exercise of the faculties of man; in the political world, a field left by the Creator to the efforts of intelligence ... Freedom sees in religion the companion of its struggles and its triumphs, the cradle of its infancy, the divine source of its rights. It considers religion as the safeguard of mores; and mores as the guarantee of laws and the pledge of its own duration. (Tocqueville 2000, 43-44)

Later he adds, "... at the same time that the law permits the American people to do everything, religion prevents them from even conceiving everything and forbids them to dare everything" (Tocqueville 2000, 280).

4. There is a government that allows a social state featuring the combination of church and state to flourish. This government may not be a democracy, as evidenced by the failure of American state-building efforts, but there is something else that works with their social state.
5. Tocqueville observes: "Not even the seed of aristocracy was ever deposited in this part of the Union [New England]. One could never find any but intellectual influences here" (Tocqueville 2000, 46).
6. Other factors played into this success, including the fertility of American soil, a lack of persistent enemies against which to wage war, natural resources, etc.

ally turn democratic.<sup>7</sup> Therefore, Tocqueville must acknowledge the plausibility of other forms of democracy and different pathways to reach democracy.

#### 4. Tocqueville's Inevitability Thesis: Reservations

As Tocqueville reads the history of western Europe, every action and every movement furthers the emergence of democracy (Tocqueville 2000, 3-4). He perceives a global revolution which will turn the world toward a general equality of conditions and, inevitably, democracy. Tocqueville writes:

Everywhere the various incidents in the lives of peoples are seen to turn to the profit of democracy; all men have aided it by their efforts: those who had in view cooperating for its success and those who did not dream of serving it; those who fought for it and even those who declared themselves its enemies; all have been driven pell-mell on the same track, and all have worked in common, some despite themselves, others without knowing it, as blind instruments in the hands of God. The gradual development of equality of conditions is therefore a providential fact, and it has the principal characteristics of one: it is universal, it is enduring, each day it escapes human power; all events, like all men, serve its development. (Tocqueville 2000, 6)

Tocqueville, in effect, posits his 'inevitability thesis' which states that all nations will eventually achieve an equality of conditions and identifies democracy as the final form of government.<sup>8</sup> However, while Tocqueville is confident in the inevitability of democracy, he does not identify any single path by which an equality of conditions or democracy will be achieved – nor is Tocqueville certain on the exact form each new democracy will take.

While Tocqueville praises American democracy, he cautions that what has occurred in the United States does not delineate what is possible or not possible for other countries.<sup>9</sup> Tocqueville was, after all, "very far from believing that [Americans] have found the only form of government that democracy can give itself" (Tocqueville 2000, 12). Of course, if other nations were to develop or impose the same social state, laws, and mores of the United States, there is no reason their democratic development should fail. However, such a feat would require a very specific formula across great lengths of time that is not replicable. Instead of telling his audience that every country should imitate the American democratic form, Tocqueville explains:

My goal has been to show, by example of America, that laws and above all mores can permit a democratic people to remain free. I am, for the rest, very far from believing that we ought to follow the example that American democracy has given and to imitate the means it has used to attain that goal by its efforts. (Tocqueville 2000, 302)

In other words, achieving democracy does not require that another nation duplicate American

#### 7. According to Tocqueville:

A great democratic revolution is taking place among us: all see it, but all do not judge it in the same manner. Some consider it is a new thing, and taking it for an accident, they still hope to be able to stop it; whereas others judge it irresistible because to them it seems the most continuous, the oldest, and the most permanent fact known in history. (Tocqueville 2000, 3)

8. Elaborating on his belief that resistance against the spread of democracy is futile, Tocqueville adds, "To wish to stop democracy would then appear to be to struggle against God himself, and it would only remain for nations to accommodate themselves to the social state that Providence imposes on them" (Tocqueville 2000, 7).

9. Expanding on his 'inevitability thesis': "It appears to me beyond doubt that sooner or later we shall arrive, like the Americans, at an almost complete equality of conditions. I do not conclude from this that we are destined one day necessarily to draw the political consequences that Americans have drawn from a similar social state. I am very far from believing that they have found the only form of government that democracy can give itself..." (Tocqueville 2000, 12).

political forms or its process of democratization. Tocqueville's inevitability thesis is therefore compatible with the possibility of alternative forms of democracy (Tocqueville 2000, 12). This qualification raises questions as to the veracity of the inevitability thesis in which, although an equality of conditions is an eventuality, there could be multiple democratic forms – or no democracy at all. Tocqueville goes so far as to admit that the equality of conditions could be compatible with democratic liberty or equality under despotism.<sup>10</sup> Therefore, the so-called inevitability thesis not only points to varieties of democracy, but to the emergence of tyranny.<sup>11</sup> This is why Tocqueville's concept of the social state is crucial. The social states of different peoples in different places support a variety of democratic forms, but it does not rule out the possibility that some people may come to democracy much later or possibly never at all.<sup>12</sup>

### 5. The Social State and Limits of Democratic State-Building

For the United States to effectively assist nations in their political development, it is important to understand the limitations of democratic state-building.<sup>13</sup> As Tocqueville explains, the American form of democracy is appropriate for Americans, but it may not be suitable for other peoples. Therefore, American democracy cannot be exported as a blueprint for state-building in nations with different backgrounds, cultural traditions, history, and mores. However, the 'American form' is not what is failing in these new democracies.

While the United States spreads democratic policies and institutions throughout the world, it does not seem to impose duplicates of American political institutions. And yet, American-established democracies continue to fail to reach their goal of political stability. It is not just the American form of democracy that cannot be exported, but the idea of democracy itself.

Democracy requires a symbiotic relationship with the people it supports: the people drive the democracy so that the democracy can best support the people. If the people are not able or inclined to participate, democracy may not be suitable. If a nation and its people are not at least somewhat prepared, either by previous democratic experiences or a strong, united, willingness to settle communal questions and disputes democratically, an imposed democracy is far more likely to fail than to succeed. Wherever a democracy is established, it must be supported by compatible mores, habits, and conditions, which form the basis of a democratic social state.

Moreover, if a nation does not introduce democratic institutions at a pace which permits the

10. On this point Tocqueville adds:

Now I know only two manners of making equality reign in the political world: rights must be given to each citizen or to no one. For people who have reached the same social state as the Anglo-Americans it is therefore very difficult to perceive a middle term between the sovereignty of all and the absolute power of one alone. One must not dissimulate the fact that the social state I have just described lends itself almost as readily to the one as to the other of its consequences. (Tocqueville 2000, 52)

11. In his essay titled "The Frontier Between Aristocracy and Democracy," political historian Ran Halévi writes, "Very early on, then, Tocqueville had acquired the certitude, as he confides in a letter during his trip to the United States, that democracy was an outstanding force that can be either a blessing or a curse wherever it proceeds: it could be tamed, but it could not be halted, let alone reversed" (Halévi 2013, 64).

12. Halévi elaborates on this point and writes, "The idea that human nature can be remodeled, regenerated by absolute will, or by the power of reason, or by the authority of principles appears to Tocqueville both presumptuous and illusory" (Halévi 2013, 55).

13. In her essay "Tocqueville and the Unsettled Global Village," political scientist Susan McWilliams states:

The modern nation-state almost inevitably falls in thrall to universalizing and internationalizing political movements, movements that enervate even the thin political linkages that accompany modern statehood. This enervation only aggravates the individual's experience of political disconnection and the accompanying threat of a turn to tyranny. (McWilliams 2013, 155)

people to gradually adapt to the new political forms, a majority tutored in democratic principles may not emerge. Any imposed democracy has little time to establish roots politically, socially, or culturally and is ripe to be twisted into an authoritarian regime because there are few opportunities for the people to develop the necessary democratic mores. New voters may struggle to understand their power or have absolutely no faith in it, leading to low voter participation and a government which operates according to the will of the few rather than the many.

Writing one month before the departure of the United States from Afghanistan, Middle East Institute researcher Anna Larson notes that relatively high voter participation, a history of public participation in the selection of representatives, and a somewhat free media are perhaps indicators that “democracy is the right system for Afghanistan, but Afghan democracy needs to develop on its own terms without heavy-handed international intervention” (Larson 2021, 15). Certainly, the involvement of the United States in the Afghan political process left citizens feeling little connection to their new government. Larson explains:

This is not least because the supposedly simple, negotiated political compact between the Afghan people and their government has been complicated by the influence of the United States, which has had a strong impact on the outcome of elections. This influence has not only been felt in the general terms of the ongoing military occupation, but has also taken more specific forms, such as pressuring Karzai to run for president in 2004, having US ambassadors visit opposition candidates ahead of the presidential election in 2009 in an effort to dissuade Karzai from running, brokering the negotiations that led to the National Unity Government in 2014, and downplaying the significance of the 2019 elections because of simultaneous peace talks with the Taliban that excluded the Afghan administration. (Larson 2021, 14)

A lack of connection with their own elections, representatives, and institutions and little support from Kabul likely left those in the outer reaches of the country dissatisfied, disaffected, and disenfranchised by their new government. As a result, the Afghan social state, which is characterized by loyalty to ethnic and tribal groups, patriarchal family structures, and the predominance of Sharia law, endured despite the democratic change.

In Iraq, where an American-established democracy remains the recognized government, citizens face a more obvious disconnect with their representatives, and the parliament struggles to maintain the integrity of its borders. In 2003, American efforts to ensure equality among the many different Iraqi groups led to the creation of the Muhasasa system, which set a precedent that seats in parliament must be evenly distributed among ethnic, religious, and sectarian groups in Iraq based on demographic weight. Commenting on the impacts of this system, Wilson Center Middle East Fellow, Marina Ottaway, writes:

The election-based political process the United States imposed on Iraq after the occupation has not resulted in democracy. It has not resulted in governments that reflect the choices made by voters. It has not led to the formation of governments capable of even beginning to tackle the problems the country faces. I am not talking about the truly daunting, perhaps intractable problem of building some sense of common identity and purpose in the deeply divided country. I am talking of something much more banal, like restoring reliable electricity in a country rich in energy sources and with rapidly growing revenue from its oil exports. The system is too bogged down in the politics of balancing the factions to address policies that would improve the lives of Iraqis. (Ottaway 2023)

The disconnect between the decisions of voters and the Iraqi government was made clear after the 2021 election when, “Negotiations among the parties stretched for almost a year until October 2022, and the parliament that finally voted for the prime minister was not the one elected

a year earlier” (Ottaway 2023).<sup>14</sup> Part of what made negotiations so tedious and complicated is the deep ethnic and sectarian divisions within the Republic of Iraq. However, American influence in the construction of the parliamentary system played a large part in drawing out the electoral process.

Ottaway further suggests that people should “question the wisdom of imposing the system on countries where political conditions appear totally unsuitable. The experience of Iraq suggests that efforts to promote democracy can badly misfire, intensify divisions, and make countries practically ungovernable” (Ottaway 2023).<sup>15</sup> Straight out of Saddam Hussein’s dictatorial regime, it is unlikely that the people of Iraq would have been prepared to embrace the drastic democratic change the United States sought.

In Tocquevillian terms, the people were not given the time or opportunity to develop the social state, traditions, and mores which Tocqueville perceives to be conducive to democracy. Neither Afghanistan nor Iraq currently possesses a government that can be considered a participatory democracy.<sup>16</sup> Despite the efforts of external forces and a degree of internal cooperation, neither Afghanistan nor Iraq’s social state was prepared to support the democratic system that the United States intended to found.

## 6. Afghanistan: Centralized Democracy Over an Ingrained System

As much as the United States had hoped it would be, the democratic government of Afghanistan was not self-sustaining. Despite American efforts to train the Afghan military in preparation for their eventual departure, the Afghan government had grown dependent on the support of the U.S. military to remain in power. Left without that support and the appropriate gradual preparation for an independent centralized democracy, Afghanistan quickly re-oriented itself toward the way it was before the establishment of the 2001 interim administration.<sup>17</sup> In Tocqueville’s terms, Afghanistan returned to its underlying social state. This is due in part to the tendency of nations to adopt the style of government most favored by their history, experience, and culture. A nation with a strong relationship to a particular political structure will continue

14. Explaining the impact of the long election process, Ottaway writes:

By that time, the Sadrist movement, which had won the plurality of the vote in 2021, had withdrawn all its representatives from the parliament, Moqtada al-Sadr had declared, not for the first time, that he was withdrawing from politics, and the vacancies left by the anti-Iran Sadrists were filled by members of a pro-Iranian Shia alliance called the Coordination Framework. The parliament that approved the new cabinet, in other words, was quite different from the one elected one year earlier. (Ottaway 2023)

15. Political development specialist Stein Sundstøl Eriksen reached a similar conclusion regarding international involvement in the Democratic Republic of the Congo (DRC):

Their practices [other states, international organisations] have been aimed at facilitating the emergence of a state that corresponds to this [liberal] idea, by supporting institution-building, good governance, elections, and so on, and by setting up formal institutions based on the liberal model. On the other hand, these practices have, in the absence of credible local allies with both an interest in and ability to pursue the creation of an effective state, contributed to the reproduction of state weakness. Thus, while the idea that the state in the DRC should persist and be built on liberal principles has been reinforced, an effect of external engagement has been to contribute to the reproduction of weakness and undermine the possibility for creating the type of state that donors seek to establish. (Eriksen 2015, 214)

16. The democratic system in Iraq, while still standing, is the 31st most fragile nation in the world according to the 2024 Fragile States Index.

17. From December 2001 to June 2002, Afghanistan had an interim administration, which was followed by the Afghan Transitional Authority. The transitional government was dissolved December 7th, 2004, to make way for the first cabinet of President Hamid Karzai of the Islamic Republic of Afghanistan.

to return to that system until, in Tocqueville's words, the social state changes and justifies a different political system.

In Afghanistan, local councils of tribal elders served as a "critical foundation for public participation in governance" for their communities and composed an essential layer of the Afghan social state (Larson 2021, 17). In the same way that local leaders in the United States encourage people to participate in government and provide representation for their constituents, in Afghanistan, "Having one's community, subtribe, or wider family represented by locally accountable, recognizable leaders is a familiar means through which both to resolve disputes when the presence of the state is minimal (or its intervention is undesired) and to communicate needs and concerns to the government" (Larson 2021, 17). The existence of this structure at the local level is suggestive of the potential for a larger democratic system.<sup>18</sup> And yet, the central government of Afghanistan made few attempts to set any roots within local communities that are arguably the most important support system a successful democracy can have. Ignoring the significance of a crucial government structure, especially when trying to implement a system that uses the same structure, is not only counterintuitive, but it separates loyalties between local and central systems. Larson notes the tension between the new government and traditional structures:

Any attempt to secure more robust representation at the local level would also likely increase the intensity of opposition to the central government and increase pressure to devolve some of the powers of the presidency. Thus, Afghan presidents have, unsurprisingly, shown little interest in pursuing a path to strengthening local representation. (Larson 2021, 17)

Lack of interaction with the new central government, especially in more remote areas of Afghanistan, meant that loyalties naturally returned to the local level. Rather than encouraging the transformation to a centralized, democratic social state, attempts to monopolize power at the top levels of government actively pushed citizens to continue in their traditional social state and eventually contributed to the Afghan army's failure to defend Kabul.<sup>19</sup>

If the central government had made efforts to include the local tribal councils or adapt them to the new government, Afghanistan may have been more successful in bridging the gap between the existing social state and the emerging democracy. However, as co-director of the Centre on Armed Groups, Florian Weigand explains:

With the state focusing on protecting itself and so physically distancing itself from the people, it increasingly removed itself from the lives of most people. Research in rural areas of Afghanistan in 2014/15 found a commonly held view to be that the state was just a distant phenomenon, a project for largely corrupt elites and foreigners, something located somewhere in the district or provincial capital.

18. Larson also points out the significance of public participation to the traditional structures of Afghanistan. She writes:

Although the English-language term "democracy" came to be associated, after 2001, by some Afghans with a sort of secular anarchy in which any kind of immoral behavior was permitted in the imposition (by the invading US forces) of un-Islamic cultural values, the principle of public participation in choosing leaders was never rejected or disdained. Indeed, community selection of leaders was wholeheartedly understood and welcomed as long as it was implemented within a *charchaokat-e Islam*—an Islamic framework. (Larson 2021, 15)

Larson implies that democracy stood a chance, but perhaps modern liberal principles were the main reason that people were uncomfortable with the democratic form. It is also true, as noted above, that the political ambitions of leaders in Kabul led to the poor treatment of local representatives, making it not sufficiently representative.

19. Journalist Shamil Shams notes: "Another reason behind the Afghan army's downfall was a lack of purpose, as loyalties to tribes or regions outweighed a sense of loyalty to a central government in Kabul. The Taliban, on the other hand, are united by a militant Islamist ideology" (Shams 2021).

Instead of engaging with the state, people relied on community authorities for issues such as conflict resolution as well as, increasingly over the years, the Taliban. (Weigand 2022)

The central government allowed a divide to grow between Kabul and the Afghan people, leading citizens outside the capital to become disaffected.<sup>20</sup> As a result, many tribes turned to the Taliban for the support they should have found in the central government. The drastic change in the government of Afghanistan without a corresponding change in the Afghan social state created a situation in which people felt no connection to their leadership and believed the system was illegitimate while the government made little attempt to include the local population in the decision-making process. As a result, the democratic government faltered and returned to the previous political order.

The collapse of Afghanistan's unitary presidential republic indicates that the centralized democratic structure implemented by the United States did not match the social state or other realities of Afghanistan. As a result, the government was forcefully returned to its previous social state. According to Tocqueville, the social state is a critical element in the formation of a democracy. Tocqueville recognizes that a variety of conditions affect the social state, but he does not discuss the inflexibility of the social state. A social state corresponds to a particular form of government and seems to resist external pressure to change. Transformation of the social state and therefore, the government, appears to depend on internal changes. This insight would serve as a moderating influence on Tocqueville's own inevitability thesis and U.S. foreign policy. The imposition of democracy on an undemocratic social state leads to the return of an appropriate form of government that better matches the true social state of the people. However, such a dramatic shift may lead to the destabilization of any pre-existing political institutions and the nation as a whole.

## 7. Examples of State-Building Success

Proponents of democratic state-building often cite the success of the United States' rebuilding of Germany and Japan and the Marshall Plan to support its effectiveness. These claims overlook that those countries were arguably 'ready' for democracy. In Tocqueville's terms, they had social states amenable to democratic governance, a history of centralized government, and established political parties dedicated to democratic liberalism. Shlomo Ben-Ami, co-founder of the Toledo International Center for Peace, argues these state-building efforts were "undertaken in countries with histories of state capacity, functioning market economies and traditions of national cohesion" (Ben-Ami 2021). When the United States implemented the Marshall Plan after World War II, its major role was the reconstruction of the countries destroyed by the war (to varying degrees). Countries such as Belgium, Denmark, France, Luxembourg, the Netherlands, Norway, and the United Kingdom had already achieved democratic governance on their own terms, which made it far easier for a stable democratic government to be revived. Therefore, the United States was not engaged in exporting democracy, as they did in Afghanistan and Iraq. Instead, they were rebuilding on democratic foundations that were already present through economic and secu-

20. Weigand elaborates on the full extent of the failure of the Kabul government:

What further enabled the Taliban's victory in 2021 was the distance of the Afghan state and its international partners from the Afghan people. Given that it was externally led, the international intervention lacked local ownership and local accountability. But, even worse, the deteriorating security situation over the years resulted in a growing gap between a state and government trying to protect itself and a population largely left to fend for itself; while this growing gap also limited the ability of the state to understand and connect with its own population. (Weigand 2022)

rity-oriented support (Ben-Ami 2021). Jonathan Monten, professor at University College London writes:

The United States has been more successful when preserving existing state capacity than when attempting to build state strength where it did not previously exist. In Japan, the US occupation preserved the strength of Japanese national institutions, and channeled this capacity toward supporting a series of liberalizing reforms. In Iraq, by contrast, the United States made decisions that substantially undermined the scope and strength of the Iraqi state, and struggled to fill the ensuing vacuum of political authority. (Monten 2014, 175)

However, the success of American state-building and the places they chose to attempt it changed drastically after the Cold War and generally failed. Since the Cold War, as Ben-Ami points out: “In a range of countries—including, in Africa alone, Burundi, the Democratic Republic of the Congo, Somalia and South Sudan— [the United States] launched protracted and expensive state-building initiatives that utterly ignored historical legacies and sociopolitical contexts. Today, these states remain highly fragile” (Ben-Ami 2021). It goes without saying that Ben-Ami makes a Tocquevilian conclusion about a continent that Tocqueville himself never considered.

According to the 2024 Fragile States Index, Somalia remains the most fragile state in the world, with the Democratic Republic of the Congo closely behind in fifth place. Afghanistan follows in seventh place and Iraq in the thirty-first. Countries that did not achieve a stable democracy shared three common elements: they were not on track to reach democracy on their own, they were pushed into democracy, and their historical and traditional styles of governance were ignored. Europe’s success concealed from American policymakers the limits of state-building.

## 8. Considerations for the Future

Despite numerous attempts, the repeated failure of democratic systems established by the United States suggests that policies of external democratic state-building concerning states with recent histories of non-democratic governance histories will have limited success. While *Democracy in America* was written almost 200 years ago, Tocqueville’s assessments remain accurate and significant, and his insights can be seen in modern examples such as Afghanistan and Iraq. In order to preserve the possibility of a natural transition to democracy, foreign nations should refrain from attempting to establish democratic systems in countries that are not historically or socially prepared for such a transition. In Tocqueville’s assessment, every nation has the potential to become a democracy. International intervention, however, seems to have only hindered this process. It is unfortunate that in attempting to speed up democratic progress around the world, interference in the historic political structures of other nations has caused, in some cases, significant setbacks.

The U.S. continues to try to force countries to accept democratic policies through international institutions like the International Monetary Fund and direct interference in governments. However, as Tocqueville explains, democracy must come about through the will of the people and with the support of a number of other local factors, such as history, culture, and even geography in order for it to succeed.<sup>21</sup> Perhaps if Tocqueville’s definition of the American democratic process and the perfect conditions required for its development were better understood, the United States would not try so hard to force a democratic transformation and unintentionally make the situation worse. Lawmakers, strategists, and politicians must understand that democracy cannot

21. Tocqueville also references geography as a factor in terms of soil quality, natural resources, natural disasters, and geographic neighbors.

be imposed onto a nation against the will of its people and that there are many conditions that all worked together in America's case to make democracy viable.

In Tocqueville's words, there is a government that corresponds to every country's social state, which is composed of laws, traditions, mores, habits, geography, and religion, and allows it to flourish. For each nation in which democracy has failed, there is another government that will succeed. Eventually, each nation will establish a government that best suits its social state, even if it is not a democracy. The United States and democratic governments around the world must recognize that democracy may not be the solution for all and that the choice to establish a democracy is essential for its long-term stability and success.

What is needed is a more cosmopolitan view of politics where any democratic prejudice can be put aside in favor of an openness to other political possibilities. Going forward, U.S. policymakers should remain open to the possibility that conditions may not support democratic governance and that different systems of government might work for different people with different social states, mores, and histories. A foreign policy combining cosmopolitanism and confidence in self-determination would leave enough space for people around the world to eventually develop democracy on their own, should their social state and local conditions support the transition.

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# ENSURING FAIR VALUE: A RAWLSIAN JUSTIFICATION FOR LOTTOCRATIC SELECTION

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*Based on Rawlsian 'justice as fairness,' this article outlines a novel justification for sortition that uses Guerrero's lottocracy as a model. I argue that elections allow for undue influence based on what 'justice as fairness' determines to be arbitrary characteristics, and by failing to be justifiable to members of minority groups in society. Lottocracy, by contrast, satisfies both of these criteria and better protects the legislature from capture, which prevents the legislature from being used to undermine political justice.*

## 1. Introduction

Is sortition selection for members of legislatures to be preferred over elected representatives, and if so, on what grounds? When designing democratic political systems, one of the most consequential decisions is the nature of the legislature. Typically, elections play the role of selecting representatives, who make decisions on behalf of constituents. However, the electoral approach to designing the primary legislative body of government often presents problems, such as vulnerability to elite capture, poor responsiveness, sometimes questionable governance quality, and crucially lack of fairness in the selection process (Guerrero 2014; Guerrero 2024; Landa and Pevnick 2021).

Recently, sortition, or lottocratic bodies, in which legislatures are made up of a body of randomly selected citizens who represent society at large, have begun to make a resurgence. Though sortition was used in ancient Greece and the Italian Republics, it had typically been passed over by democratic theorists until relatively recently. Particularly of note is Alexander Guerrero's framework for the selection of legislative assembly members outlined in *Lottocracy: Democracy Without Elections* (2024), which I will rely on in this article, with some modification in response to key criticisms.

The lottocratic system outlined by Guerrero calls for the use of a network of single-issue legislatures (SILL) made by randomly selecting citizens from geographic districts of equal population to serve for three years, with a third of each body being selected every year. Following John Rawls, I will consider sortition democratic on the grounds that it is compatible with the idea of a democratic society. A democratic society refers to a society characterized by conditions of equality, rather than a specific political regime (Cohen 2002; Michelman 2002, 397).

Arguments for sortition legislatures have, for the most part, focused on the potential benefits they would have in terms of governance, such as better responsiveness when compared with

elected legislatures (Bartels 2008, 261; Guerrero 2014). Proponents of sortition legislatures have also claimed that they help to address one of mass electoral democracies' major weaknesses: rational voter ignorance, by essentially creating a snapshot of the ideal informed opinions of the electorate (Guerrero 2014, 141; Landa and Pevnick 2021, 52). However, these arguments have been made almost exclusively from a broadly consequentialist conception of democratic institutions (Guerrero 2014). This lack of other arguments has left the case for sortition on shaky ground, given that it is a relatively unproven concept, with only a handful of contemporary examples. The standard consequentialist perspective has also failed to address many of the in-principle concerns of those who oppose sortition, who often focus on the potential lack of accountability, authorization, and suffrage (Lever 2023, 103). This lack of clear non-instrumental normative justification is a significant weakness in the sortition argument, especially as it remains relatively untested. Without such support, there can be little reason to support such an untested system over traditional electoral democracy, and sortition is unlikely to gain any traction.

In this article, I will argue that sortition, as typified by Guerrero's system of lottocracy, is usually superior in securing the fair value of political liberties concerning the selection of legislative assembly members under Rawls's framework of 'justice as fairness.' Fair value of political liberties is the requirement that, relative to others, one has an equivalent real value of those rights. That is, the equivalent ability to affect the outcome by vote, or by holding office. It is a requirement of substantive rather than formal equality. The normative principles of 'justice as fairness,' outlined by Rawls, provide a promising and clear normative justification for lottocratic selection and favor a lottocratic legislature over electoral ones in particular, because lottocracy promises to better secure the fair value of political liberties. While Rawls outlines a system of representative democracy, I believe that lottocracy serves the purposes of 'justice as fairness' far better (Rawls 2005). Fair value is better secured by lottocratic legislatures because they are better equipped to resist interference by background injustice in the legislative process and more equitably distribute access to political power, both of which are integral to ensuring the continuation of justice (Rawls 1995, 7-10).

In this article, we will be concerned with the basic structure of a well-ordered society under Rawls's principles of justice as he defined them in "Justice as Fairness," and how they evaluate the system outlined for constituting the legislature by Guerrero in his book, making modifications only as necessary to address objections. I begin by outlining the original position and the nature of the inquiry regarding fair value in Section 2. In Section 3, I argue why elections fail to secure the fair value of political liberties, while lottocracy would succeed in doing so in a variety of situations. I address some key objections to this line of argument in Section 4, and make some adjustments to the lottocratic position in Section 5.

## 2. The Original Position

The original position is a thought experiment of how an agreement could be reached by free and equal citizens for ensuring fair cooperation for the advantage of all (Rawls 1995, 15). Rawls's (1995) argument from the original position consists of a few fundamental ideas:

1. The idea of society as a fair system of cooperation where everyone has an equal chance at advancement and access to primary goods for developing their two moral powers.
2. A society wherein everyone recognizes and follows a political conception of justice.

3. The idea of a basic structure of society, which includes the fundamental institutions of society.
4. Citizens as free and equal persons.
5. The rationalization of the legitimacy of institutions by members of society.

The citizens are placed behind the veil of ignorance and do not know the following: “race and ethnic group, sex, native endowments, social position, or their comprehensive doctrines.” The veil of ignorance in the original position prevents the citizens’ views from being distorted by the familiar. Under the second step—the “constitutional phase”—however, they are allowed to know the basic structure, history, and social order of their society (Rawls 1995, 15). It is in this constitutional phase that this argument takes place, regarding the institutions implemented to establish and maintain equal liberty as proscribed by justice as fairness (Rawls 1995, 133-134).

Rawls (1995, 18-19) bases justice as fairness upon what he calls the two moral powers:

1. The capacity for a sense of justice- ability to understand, apply, and act from the principles of political justice.
2. The capacity for a conception of one’s rational good- an “ordered family of final ends.”

Rawls suggests that citizens are endowed equally with the capacity to make reasoned judgements of value based on their conceptions of the good, and society’s conception of political justice (Rawls 1995, 20). This capacity for developing and acting on a conception of political justice is important in justifying lottocracy on Rawlsian grounds, and when properly trained, it is what is necessary for working in the legislature (Guerrero 2024). Essentially, our regard for one another as sufficiently capable of assessing the justice of society suggests that we would regard one another as minimally capable legislators (Cohen 2002, 109). Rawls does not necessarily refer to a political order of electoral democracy. Rather, Rawls refers to a society characterized by conditions of equality, as in a condition where society is conceived of as being made up of equal persons (Cohen 2002; Michelman 2002, 397). Equal treatment of persons is a condition lottocracy satisfies by its conception of everyone as legitimately qualified for public office. All people within the polity are treated as equal citizens in virtue of the capacity for a sense of justice.

### 3. Fair Value and Elections

With regards to the decision of a political system under the second phase of the original position, Rawls argues, “The justice of a procedure always depends on the justice of its likely outcome” (Rawls 1995, 169). The political system’s creation takes into account, it would seem, the general nature of society, which is information available to the parties at the second phase of the original position in order to render a probabilistic judgment (Rawls 1995, 169). It is not enough then that a system be merely capable of satisfying the demands of justice as fairness. It must include a substantively fair procedure and be the one most likely to result in just and effective legislation over an extended period of time (Rawls 2005, 194). The primary values by which these procedures are to be assessed are: “impartiality and equality, openness (no one and no relevant information is excluded), lack of coercion, and unanimity” (Rawls 1995, 172). These values come from the objective of basic institutions: “Basic institutions must be from the outset put in the hands of citizens generally, and not only of a few, the productive means to be fully cooperating members of a society” (Rawls 2005, xv). These functions are to ensure society is likely to sustain the ideal of a fair system of cooperation among free and equal persons. As a part of the require-

ments for a system under ‘justice as fairness,’ institutions must support the fair value of political liberties and be resistant to capture. That is, institutions must “not be subject to political bargaining or a calculus of social interests” (Rawls 2005, 4). In this section, I argue that elections fail to support the fair value of political liberties under prevailing circumstances of socio-political inequality and the existence of persistent political minorities (Bagg 2024; Rawls 2005, xv). I will then go on to argue that a system of sortition legislatures, or lottocracy, does support the fair value of political liberties in such a way that it is liable to weakly dominate elections, being as good or better in all relevant respects.

### 3.1 Fair Value

The fair value of political liberties means that the worth of political liberties must be equal for all, ensuring a fair equality of opportunity to hold office regardless of social or economic standing (Rawls 1995, 149; Rawls 2005, 215). The fair value of political liberties requires substantive rather than merely formal equality in the ability of all to take part in the political process, not just in terms of their ability to influence legislators but to become a legislator themselves: “those similarly endowed and motivated should have roughly the same chance of attaining positions of political authority irrespective of their economic and social class” (Rawls 2005, 197). For an electoral system, fair value would mean that one needs to both have a vote equivalent to all others, but also have a substantively fair chance at election to office – universal suffrage alone then is clearly insufficient. It is insufficient for two reasons. First, universal suffrage only secures the formal equality of political influence but does not by itself manage to secure fair value. Institutional practices such as unequal population districts or gerrymandering can undermine the fair value of the vote in this context. Second, universal suffrage makes no move to secure equality of opportunity for political office (Rawls 2011, 267).

A core challenge that Rawls identifies as an impediment to substantive political equality is: “The inability to take advantage of one’s rights and opportunities as a result of poverty and ignorance... I shall think of these things as affecting the worth of liberty, the value to individuals of the rights that the first principle defines” (Rawls 2005, 179). He claims that when background inequality, but not necessarily injustice, is able to influence politics to give some people unequal influence, it can give them the ability to capture the political system. Unequal influence in politics violates the principles of justice as it violates the equal nature of all citizens (Rawls 2005, 198).

### 3.2 The Failure of Elections

Elections under the current conditions of society in countries like the United States are broadly unequal, and Rawls uses the state of public financing in U.S. elections as an example of a failure to secure the fair value of political liberties by allowing undue influence from background inequality (Rawls 1995, 158). This results in elected representatives, as it stands, being manifestly unrepresentative in terms of their demographic characteristics, which brings into question the equality of the election process. In the U.S., elected representatives are disproportionately white, male, educated, and likely to be lawyers or businesspeople (Guerrero 2024, 264). Consequently, the U.S. seems to fail to secure equality of opportunity with regard to political office (Guerrero 2024, 105). Only those with significant resources can have a realistic chance of gaining office, or of influencing those in office (Bartels 2008).

Guerrero argues that unequal influence is not simply the result of historical contingencies but rather an unavoidable part of electoral democracy: the capacity of an electoral representative

system “is limited by features that are endemic to the form of government, not peripheral or incidental to it “ (Guerrero 2024, 3). Capture in electoral systems plays out in three primary ways: the first is by reducing the accountability of those in power to constituents, the second by controlling the pool of viable candidates, and the third by actually incentivizing representatives to change behavior (Guerrero 2024, 62). When elections are not well structured and have low accountability, representatives turn into agents for those in power. But capture of electoral institutions is liable to occur regardless, as widespread voter ignorance and structural differences between voters and representatives will ensure low accountability (Landa and Pevnick 2021). Low accountability will allow entrenched influence to erode the background justice of the election because citizens do not have the resources to adequately monitor their representatives and their campaigns: “the suggestion so far on this horn of the dilemma is that ignorance results in an absence of meaningful accountability, and in the absence of meaningful accountability, we should expect to see high levels of political capture” (Guerrero 2024, 64).

Rawls claims that the accumulation of resources in the hands of a few is a serious concern in a society, even when the individual transactions are perfectly in line with justice (Rawls 2011, 266). This problem is not merely an unfortunate current condition, but an inevitable result of the asymmetric time available between individual citizens and their representatives (Landa and Pevnick 2021). Another avenue of capture is the ability to groom candidates for office, something that would be difficult to prevent and could undermine an electoral system even with fair equality of opportunity (Guerrero 2024, 63). Differential access to those in office and resources to influence elections is a very real reason to think that the powerful can manipulate the selection of officials to ensure this happens even when background conditions are otherwise fair (Guerrero 2024, 289).

A third concern has to do with the difficulty of distributing natural endowments and social standing. Even with the equal social basis of self-respect secured, relative social position could still play a significant role in elections. Factors such as endorsement by existing politicians or administration officials, as well as private persons of high standing, allow the influence of the powerful to be greater than it should be. Elections hinge very clearly on capital of all kinds. Access to that capital will not be evenly distributed even in an ideal society, absent abhorrent levels of social control which are liable to be antithetical to the concept of justice as fairness. Candidates from persistent minorities are liable to be especially vulnerable to this problem of lower levels of social capital. Under elections, we will always have to worry about those with high social capital influencing elections or running for office themselves. Many elements that play a huge role in political equality, such as the distribution of wealth, the influence of money in politics, and truly equal education, could go a long way to improving political equality under elections by improving the distribution of different types of relevant capital. However, these would be insufficient to ensure adequate fair value. Social standing, the media, and natural capacities would still potentially play a significant role in elections, undermining the fair value of political liberties.

Capture by the powerful is inherently problematic in a system designed to care for the interests of the worse off, and therefore inherently problematic in any system of Rawlsian design. Officials captured by the elite may have distorted motivations and have incentives to engage in rent seeking or broader forms of exploitation of their political position. Capture and corruption of officials is a clear danger to the background conditions. As a significant portion of the process of determining the constitution of a just society is to determine what is likely to perform the best, the fact that so many clear avenues of capture exist in electoral systems is concerning. Elections are, in contemporary circumstances, liable to be effectively a tool of the political elite for choosing representatives they favor.

There may well be conditions under which elections are substantially less unfair, but they are not in modern conditions and real modern states, which are relevant to the determination of a constitution in accordance with the principles of justice. That elections ensure representatives so often serve the interests of those in power is alarming (Bartels 2008; Guerrero 2024). Poor representation is an inherent structural problem in an electoral system caused by elections (Guerrero 2024, 113). So many of the channels by which capture occurs, and thus background injustice rears its head, occur within the bounds of free speech and association, such as endorsements and publicity. Even extensive public finance reform would not address elements such as media presentation of candidates (Guerrero 2024, 122). Rawls limits restrictions on free speech to the procedural, not interfering with content (Rawls 1995, 149). Regulating media influence would therefore be almost impossible without infringing on rights to free speech in ways not allowed by the principles of justice. The principles of justice as fairness are explicitly designed to prevent “the use of natural endowments and the contingencies of social circumstance as counters in a quest for political and economic advantage,” and yet this is exactly what elections allow for (Rawls 2005, 14).

Under ‘justice as fairness,’ disparities in the value of political liberties can be established, but this can only be done when it increases the value of the liberties of those whose liberties will be, in the end, lesser (Rawls 2005, 200). Rawls argues that the curtailing of fair value must be justified to those who would possess lesser political liberty. For Rawls, the basic liberties—to the maximal extent possible—are a core part of what actors in the original position desire because these ensure their ability to pursue the production of their various life plans (Rawls 2005, 203). However, any reduction in the fair value of political liberties cannot be on account of some nebulous advantage to the common good, or the interests of society’s members; trading equality for more competent rules, for example, is not permissible.

### 3.3 Elections, Minorities, and Public Reasons

I see no way in which those on the losing end of electoral democracies’ inequalities in political liberties could be compensated with greater liberties in other respects in ways not also compatible with lottocracy. In an electoral democracy, anyone who is positioned as a part of a permanent minority effectively has no sense of control or influence over who is elected, especially if no political actors are sympathetic to their interests. Guerrero (2024, 380-381) outlines conditions that would potentially prevent a permanent political minority from consenting to a political system:

1. The views of the minority can always be ignored without the majority incurring political costs.
2. The views of the minority will be given little to no consideration.
3. The minority will lose all conflicts with the majority.
4. The members of the minority have basically no political power.
5. The members of the minority have even weaker power than they would with respect to their proportion in the population.
6. The interests of the minority will not be advanced/realized, and their preferences will not be satisfied.

Not all of these problems will occur in all circumstances in electoral democracies – countervailing systems can be put in place (but these often prove objectionable to the majority), and it is not uncommon for permanent political minorities to be decisive when the margins of victory are slim. The combative nature of elections, however, encourages partisanship due to the regular political skirmishes between clearly outlined segments of society (Guerrero 2024). In such circumstances, especially if the margins of victory are slim or one lives in jurisdictions where one’s views are significantly outnumbered, majoritarian electoral institutions will fundamentally disempower members of the minority, effectively reducing the value of their political rights by ensuring they will never be able to hold office (Guerrero 2024, 382). It seems that no justification can be given for anyone in a minority community like this to consent to such an institutional arrangement.

In the original position, given the characteristics of the parties and the precepts of ‘justice as fairness,’ people would not consent to a system of government where they could not fairly exercise their right to hold office and whereby the preferences, values, and incentives of their officials were systematically unlikely to be aligned with their own, especially as majoritarian electoral systems threaten to seriously jeopardize the ability of some groups to participate in politics as officials. Elections furthermore curtail the fair value of political liberties so long as the common historical conditions of inequality and social stratification stand where the parties in the original position are attempting to establish a just society. Elections allow the undue influence of contingent factors like natural endowments and background inequality, either through social standing, the influence of the media, or economic means. These problems are endemic to electoral democracies as we know them and cannot all simply be swept aside by modest reform without causing other significant concerns, such as curtailing free speech.

### 3.4 Fair Value and Lottocracy

Having argued that elections fail to adequately secure the fair value of the ability to hold office, as well as failing to be justifiable to all parties in the second stage of the original position, we move on to establishing the virtue of lottocracy in these areas. Despite democracies’ deficiency in these areas, it is not immediately clear that lottocracy would be superior. Guerrero’s lottocratic system assumes conditions roughly akin to those of the contemporary United States or other Western democracies (Guerrero 2024, 149). I follow in assuming that this is the historical condition of society that the actors in the original position, considering the core institutions of their society, are faced with.

In *Political Liberalism*, Rawls describes fair value as guaranteeing that the worth of the political liberties is approximately equal for all, providing them with a fair opportunity to hold office and to influence the outcome of political decisions (Rawls 2011, 327). In *A Theory of Justice*, he writes, “those similarly endowed and motivated should have roughly the same chance of attaining positions of political authority irrespective of their economic and social class,” and that citizens should have a fair chance to influence the political agenda (Rawls 2005, 197-198). So if lottocracy provides all with a fair opportunity to hold office, and to influence the outcomes of political decisions, it should secure the fair value of political liberties. It is important to be careful not to compare the idealized idea of a lottocratic system with the reality of electoral politics. Lottocracy provokes serious concerns, including the possibility of bureaucratic and expert capture. Regarding fair value specifically, though, by virtue of its formal structure, lottocracy is strictly equal between all citizens, as all have exactly the same chance to hold office, being selected by purely random means.

That citizens having a perfectly fair chance to influence the political agenda through the fair value of the ability to hold office best secures the fair value of one's political liberties, rather than a more participatory condition of being able to express one's views, is not immediately clear. Ultimately, it must be an exercise in determining what provides individuals with the greatest chance to exercise substantive influence over the political agenda, irrespective of factors like their social class. Even in a lottocratic system, the media, advocacy groups, and more could still give some groups an outsized means by which to influence the political process. Ultimately, on this dimension, the difference between elections and lottocracy is liable to be a matter of degree. There are a number of reasons, however, to think lottocracy will fare far better than the electoral system in reducing institutional capture. First, in a lottocracy, capture would likely be more difficult as the candidates are chosen randomly with no way to manipulate their selection, and there is historical evidence from ancient states to suggest it is efficacious in preventing capture in this way (Lever 2023, 101). Second, the lack of reelection campaigns will make corruption and contact monitoring of representatives easier with regard to influence and corruption (Guerrero 2014, 164). With regards to concerns about expert capture, Guerrero provides some options, including a database of relevant experts maintained in cooperation with professional associations from which experts would be randomly selected (Guerrero 2024, 186-211). A database like this may go some way towards preventing capture, but there are still major concerns regarding things like the capture of educational institutions or professional associations. Crucially, however, these problems are not unique to lottocracy, as elected officials heavily rely on such experts as well (Guerrero 2024). It may be supposed that perhaps elected officials, by virtue of greater competence, could better push back on captured experts. Perhaps this is true, but evidence from the British Columbia Citizens' Assembly showed that normal citizens could, when given access to relevant knowledge and expertise, conduct high-level and serious discussions of political issues, weighing expert testimony (Ferejohn 2008, 196).

The influence of the media is a problem that is shared between the two systems. It is no mark against lottocracy alone that one could use the media to inculcate opinions across the populace that would grant them undue influence – it would be that way in any society where something like that transpired. But if such a thing is even possible, it would be expensive, extremely difficult, and liable to be an extremely costly and precarious undertaking (Guerrero 2014, 164-165). It seems that in terms of these criteria, lottocracy, as described, is liable to perform as well or better than electoral democracy. Even in non-ideal conditions, whereby capture is attempted often and forcefully, the avenues of capture are substantially limited in scope, easier to monitor, and more expensive to access. The previously mentioned avenues of capture and influence are likely easier to exploit under elections that allow elite actors to manipulate elections. I believe that the more limited avenues of capture is enough to conclude that this system better embodies the values of the procedure needed to ensure that everyone has a substantively fair chance to input into political decision-making (Rawls 1995, 169-172).

Regarding the consent of the individual actors on account of minority political power, lottocracy significantly improves the chances of members of the minority controlling policy – that is, it significantly increases the chances for minorities of all kinds to attain office. In elections, the majority can simply dominate the minority perpetually. This is in contrast with lottocracy, where the minority has a proportional chance of being selected, and so their views have a considerably higher chance of effective consideration (Guerrero 2024, 290-291; 385). Guerrero also points out how elections create a combative mentality regarding politics, potentially causing the formation of distinct and repressed minorities. Without such regular combative contests, and given most people's relatively thin political commitments, it's unlikely disagreements would be so vehement

(Guerrero 2024, 393). Potentially, with lottocracy, the use of the minority as a political scapegoat would be reduced, while greater descriptive representation could bring their moral-political problems more sharply into focus (Guerrero 2024, 392). Over the long run, random selection and proportional representation may reduce political frictions while providing minorities with better opportunities for their interests to be represented. Public justification is a core requirement of justice as fairness, and it seems that lottocracy has the likelihood of being able to satisfy it in this capacity (Rawls 1995, 145).

#### 4. Objections

There are a number of objections to the use of lottocratic selection to replace elections in the literature (Rawls 2011, 294-295). However, to be effective against the fair value justification, objections must show that the implementation of lottocracy for the purposes of selecting members of the legislature must damage some other basic liberties, as appeals to the public good are insufficient (Rawls 2011, 295).

The first concern is that the kind of representation offered through lottocracy cannot bind the representative or hold them accountable. They argue that the lottocratic model expects citizens to defer to the assembly's decisions and takes away accountability. Elections, by contrast, do allow for a clear connection between representatives and the people (Lafont and Urbinati 2024; Landa and Pevnick 2021, 98; Rummens and Geenens 2023, 4). Guerrero's response is that accountability is not a factor in the democratic legitimacy of lottocracy on account of the lack of a principal-agent relationship between the parties (Guerrero 2024; Hurrelmann, Schneider, and Steffek 2007, 47). However, elections do not do well on accountability either – we have evidence that elections fail decisively to produce accountability and are unlikely to do so in most prevailing conditions (Bartels 2008; Landa and Pevnick 2021, 52). In particular, there are good reasons to think the epistemic task is too daunting for even the most informed citizens.

Furthermore, the accountability critique is based on a limited but familiar idea of accountability as sanction, common in modern representative democracies, but this is far from the only form of accountability. There are several systems, like regular public town halls with representatives, recall votes, and the more representative nature of the legislature, that make their ability to potentially give an account of and thus, in some sense, be accountable to the interests of those they represent potentially greater than current elected representatives (Guerrero 2024; Lee 2024, 4). Accountability need not necessarily take the form of a sanction by electoral outcome. Many of the aforementioned methods of accountability are explicit elements of lottocracy (Guerrero 2024, 164-165).

The lottocratic system does, however, lack any form of accountability by sanction. Guerrero considers the use of a recall vote, which I believe would address these accountability concerns (Guerrero 2024, 167). The inclusion of a recall vote institutes a form of accountability by sanction in the hands of the citizens and provides them with a mechanism for direct political action. Another option is for lottocratic assembly members to undergo an approval vote upon entering office and/or at certain points in their careers. This would introduce points of accountability for representatives who would then need to convince enough of their constituents that they ought to keep their jobs. This would encourage them to consider the views of their constituents, and justify any decisions made to them, in much the same way politicians are thought to be incentivized to do under elections.

The second primary objection to the use of the lottocratic system is the lack of authorization for the representatives. The charge is that authorization is vital to democratic governance, and lottocracy's failure to provide it is a real concern and strikes at the existence of certain forms of

political liberties. In *The Lottocratic Mentality*, the authors draw the distinction between voting as consent and voting as a true power (Lafont and Urbinati 2024, 127). The fundamental issue here is that representative elections do not authorize lawmaking except through representatives. With little meaningful accountability over those representatives, it is difficult to see how the citizens have the real power to authorize lawmaking. If Lafont and Urbinati are right, it may be that by removing voting, the people lose access to political liberties in some fundamental way, not merely a curtailing of these liberties along a specific dimension but a fundamental absence (Lafont and Urbinati 2024, 128). It seems, however, that both of these functions of elections can be disunited. One moment of authorization occurs when voting on representatives or policy through a direct method like a referendum (Guerrero 2024, 334). The authorization of policy, as in Landemore's view, is undesirable according to Guerrero due to the widespread voter ignorance that lottocracy hopes to offset. A better alternative would be to authorize the candidates in some way (Guerrero 2024; Lafont and Urbinati 2024, 100-101). A second moment of authorization could involve a form of approval voting, whereby candidates are required to be approved by their district in a vote. In a society with deep social divisions, this may be a poor solution. Entrenched discrimination against religious and ethnic minorities, as well as women, could cause these votes to be abused. In a society with a healthy political culture and a unifying sense of political justice that everyone follows, a formal procedure of consent-giving should be viable.

Another option would be to vote on the confirmation of policy priorities. For example, imagine every time the new legislature is sworn in, people go to the polls to select the priorities of the body. One could imagine a system where citizens were perhaps given a lengthy list of potential topics and asked to rank them. Institutional rules within the legislature would then incentivize or require addressing specifically these issues that were ranked highest. Deviations would likely have to be justified through public reasons to the wider public, especially if legislatures face being stripped of their office and the departure is substantial. Such a method of authorization may sidestep both the concerns about the mere authorization of candidates and the authorization of policy directly. Instead, by determining the priorities of the legislature and authorizing the focus of policymaking, we would both more directly determine policy, while leaving the particulars to the better epistemically positioned legislators.

A third objection to lottocracy is that the distribution of power is problematic, given that while the chances of being selected are equal, they are so low as to be negligible, ejecting suffrage in favor of mere descriptive representation (Lafont and Urbinati, 2024; Rummens and Geenens, 2023). The claim is that a lottery, while being a substantively fair procedure, fails to provide real equality because it disenfranchises most of the population, a concern Guerrero himself notes (Guerrero 2024, 315). The contention appears to be over some kind of 'actual say' in the running of government or selection of representatives (Guerrero 2024, 315). That 'actual say,' however, need not be with regard to who holds political office.

As we have established, elections substantially reduce the fair value of political liberties by restricting the ability of people to obtain public office fairly, especially those in a minority. As such, the best strategy in keeping with justice as fairness would be to provide another avenue for this 'actual say' in governance. One option following from my previous suggestion could be to have annual referendums regarding the agendas of the various SILLs. Voters with a list of agenda items rank them using some kind of ranked choice scheme which determines legislative priorities. This gives the people one of the most fundamental powers in politics, the power to control the agenda and the shape of political action. It seems as if this kind of approach, or one founded on referendums, would provide substantially more actual say in the shaping of policy by citizens. As it stands, citizens have little actual say in electoral politics, and policy is often made one or

more steps from their vote, by their candidates, electoral leadership, parties, or interest groups. That they lack any input is a potent criticism to be sure, but it by no means follows that the appropriate mechanism for providing that ‘actual say’ is elections.

Ultimately, the most forceful objections against the use of lottocratic institutions to select legislative assembly members are the lack of accountability, the lack of a clear moment of authorization by the people, and that the lack of active, equal political power for all citizens cannot be addressed within the lottocratic system. Through changes such as the introduction of town halls and recall votes, avenues of accountability to the people can be added to the system. Similarly, through the addition of a procedure of authorization by the people of a district for their representatives, we can provide a mechanism for acquiring consent from the people. Finally, by disaggregating the notion of voting from elections, we can identify new and better ways for citizens to exercise direct and equal collective control over the institutions of government. There need be no trade-offs between ensuring authorization, accountability, and suffrage and adopting a lottocratic system to select citizens for political office.

## 5. Conclusion

The exact nature of the system that emerges will have its own unique flavor in accordance with the moral-political problems that need solving in the society in which it exists. Lottocracy may not be optimal for all circumstances, but in the conditions that pertain in Western democracies (and elsewhere around the globe) it best satisfies the principles of justice with regard to the selection of citizens for public office (Guerrero 2024, 149). There are specific principled reasons from the Rawlsian tradition to adopt legislative institutions of lottocracy.

Elections are unable to effectively secure the fair value of political liberties under justice as fairness with regard to the selection of candidates for office. The fair value of political rights will only be substantively maintained if one has an equivalent real value of those rights – that is, the real equivalent ability to affect the outcome by vote, or by holding office. The influence of the powerful, of socioeconomic status, natural endowments, and the media, substantively alters the outcomes of elections and the value of political liberties. In addition, the sidelining of minority citizens of all kinds prevents their justification of the system, and invalidates it under the original position. By contrast, the use of sortition in Guerrero’s system of lottocracy can ensure the fair value of the right to hold public office. It cannot do so absolutely, but by removing elections and replacing them with random selection, many factors that make access to political office unequal and violate the principle of fair value are removed.

According to Lafont and Urbinati, “lottery is a fair procedure for distributing a good only when it is not possible to provide the good in question to everyone that has a proper claim to it” (Lafont and Urbinati 2024, 175). This is precisely what lottocracy does – the good of political office cannot be properly provided to all who have a claim. Public office is a good that everyone is owed equal access to by virtue of their role as citizens under justice as fairness, even if they have no desire to claim it. Since only a few can hold these offices and all have an equal entitlement, a lottery is a perfectly legitimate means for allocating them.

While lottocratic selection surely possesses some flaws, my arguments have shown that they are able to satisfy the requirements of a democratic regime under Rawlsian justice. With small changes such as the introduction of confirmation votes for representatives and recall votes, the main in-principle objections to the system can be swept aside. Ensuring that all citizens have access to real and equal power to influence the political process at all times surely deserves more consideration. However, unlike what many suppose, this need not come through elections, and by separating these ideas, we can come to a better solution.

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# **CORPORATE SPEECH AND ACTIVISM: AMERICA'S FRANKENSTEIN**

**Damiera Cruz**

*This article analyzes the political effects of corporate speech in the United States, using Patagonia's activism during the 2020 election as a case study. It shows that, while often framed as moral leadership, corporate speech can have tangible social and political costs. Corporate campaigns can encourage moral grandstanding – performative acts aimed at signaling virtue rather than addressing public needs. They can reinforce group identities and political loyalties in ways that deepen polarization, promote ideological segregation, and contribute to radicalization. These dynamics were evident in the unrest surrounding the 2020 election and the January 6th attack on the U.S. Capitol. The article concludes that democracy is better served not through corporate-led messaging but through citizen-led practices that foster trust, cooperation, and civic responsibility at the local and community levels.*

## **1. Introduction**

The year is 2020. Donald Trump and Joe Biden compete for the soul of the nation: the markets are down, unemployment is up, COVID-19 is overwhelming hospitals, wildfires engulf the West Coast, and people are at home, enraged. Amongst the chaos, one activist stands above the rest: Patagonia. The outdoor clothing and gear giant embossed “vote the a-holes out” on the tags of their shorts (Castronuovo 2020). Though bold, this is not their first attack on former President Trump. In 2017, Patagonia not only sued former President Trump for reducing the size of a Utah national park but also displayed the following message on their website's home page: “The President Stole Your Land” (Castronuovo 2020) (Gelles 2018). Patagonia's declaration stoked the flames of an already contentious political climate.

The polarization of American society poses a significant threat to democracy as it questions the legitimacy of the state itself. Although polarization appears to be contained within the private and public spheres, its influence extends to the markets. Companies have increasingly used their speech to shape politics and society. On several grounds, this article argues against companies using their speech for activist purposes. First, corporate speech is often a form of moral grandstanding, prioritizing public perception over genuine moral action. Second, corporate speech undermines the norms that allow a diverse populace to coexist peacefully. By examining these critiques, this article aims to highlight the social costs of this practice.

## **2. American Politics**

This article will begin by defining essential terms and concepts to ensure clarity throughout

the argument. First, the article will discuss the United States' political system. The United States is a liberal democracy: a political system that adheres to the principles of liberalism and democracy. To fully understand this term, one must evaluate the parts. Liberalism is a political system that prioritizes freedom. According to liberalism, freedom takes two distinctive forms: positive and negative (Courtland, Gaus, and Schmitz 2022). Positive freedom is the ability to live how one pleases, whereas negative freedom is the absence of coercion from another party, e.g., the ability to practice one's religion without persecution (Freeberg 2002).

To create a free society in which diverse individuals live together cohesively, liberalism posits that the values of pluralism, tolerance, and neutrality are necessary conditions. First, pluralism is the assertion that there should be diverse world views (Cohen 2018). The First Amendment to the Constitution exemplifies a form of pluralism, as it validates the legitimacy and practice of all religions. The next value of tolerance ensures that various life forms are respected. Toleration, as described by AJ Cohen, is "the presence of an agent, who intentionally, and on principle refrains from interfering with an opposed other (or their behavior, etc.) though she believes she has the power to interfere" (Cohen 2018). Jane may disagree with John, but the virtue of toleration allows both parties to pursue their distinct forms of life without conflict. Finally, governmental neutrality promotes plurality and tolerance by ensuring that the government is impartial in determining the notion of the good. This impartiality enables all ideas to exist in the public sphere, thus protecting the diversity that pluralism introduces and the non-interference that tolerance demands. Former President James Madison expanded on this point in Federalist Paper Number 10, arguing that political monism led to social and political instability. He wrote that aggrieved minority groups would fight to have their view of the common good become the endorsed governmental view (Madison 1787).

To reinforce liberalism's values, the United States also adopted a democratic system. At its core, democracy is a mechanism for free and fair decision-making (Christiano and Bajaj 2024). Through democracy, citizens can express their views on how society should function. Instead of resorting to physical violence, individuals have formal processes for resolving their differences, e.g., debate and voting. Democracy, moreover, plays an essential role in enshrining the equality of persons and their rights (Christiano and Bajaj 2024). Crucial to both liberalism and democracy is the equal treatment of persons. In liberalism, each person is viewed as capable of determining their own good, whereas democracy demonstrates the equality of persons in its processes and laws. The commitment to equality is embodied in democracy's one vote per person, which ensures equal representation of citizens' voices. Legal protections further reinforce these principles: the Fourteenth Amendment explicitly promises "equal protection under the law," while the Bill of Rights legally protects many of the freedoms that liberalism holds sacred. Together, these mechanisms demonstrate how liberal and democratic ideals converge in both theory and practice, linking personal autonomy with collective equality under the law.

In conclusion, the American political system aims to create a society where diverse individuals can coexist peacefully. Pluralism encourages diverse worldviews, tolerance allows for peaceful coexistence amongst those with differences, and neutrality ensures that the government supports the aforementioned virtues. Together, these principles are reinforced by democracy, which promotes equality and fair decision-making. However, corporate speech subverts this framework by reminding humans of their tribal roots, thereby undermining the norms that uphold the ideal liberal society.

### **3. The History of Corporate Speech**

Companies and corporate speech can now be expanded upon, given that the American political

system has been contextualized. Wex, the Cornell Legal Dictionary, defines a company as any “business organization that engages in a business or commercial activity for profit” (Wex, n.d.). Cornell’s entry provides a straightforward definition of companies but fails to show the connection between corporations and speech. Companies are viewed as non-human entities, and speech is considered humans’ primary means of communication. A non-sequitur seems to be formed when combined: how can a non-human entity engage in a distinctly human activity? A brief survey of history and legal precedents reveals the answer.

In the 19th and 20th centuries, big business seemed unstoppable. However, this was not the case for long. The election of President Theodore Roosevelt led to a crusade against big business. Roosevelt enacted legislation to break up monopolies and informed society about the harms of big business. As a result, church leaders and academics began to expose corporate wrongdoing (Galambos 2019). The clergy informed their congregations that wealthy businesspeople used their wealth to influence politicians, universities, and churches (Galambos 2019). Academics, moreover, recounted stories of heartless managers and cruel working conditions (Galambos 2019). Journals furthered these stories, leading to the disenchantment with big business, coloring the average American experience (Galambos 2019). Americans felt used by corporations and no longer revered them (Kerr 2005).

Consequently, businesses began using activist reporters’ method of reshaping public opinion to rehabilitate their reputations (Kerr 2005). One of the earliest examples of this phenomenon is from AT&T (Kerr 2005). In 1908, AT&T launched an ad campaign asserting that it was essential to American communication (Kerr 2005). As time progressed, advertisements aimed to influence society rather than to sell goods or services outright. This change marked a significant moment in corporate legal history. Corporations were no longer just profit-producing entities – instead, companies hired PR firms to transform them into “responsible citizen[s], voice[s] of reason, socially concerned, civically engaged, a civilizing force, expert, and [a] vital democratic participant” (Kerr 2005). This transformation led to the development of corporate speech, defined as speech intended to influence politics and society (Kerr 2005). Unlike commercial speech’s emphasis on selling goods or services, corporate speech sought to position companies in public and political discourse. PR firms justified this shift by arguing that commercial speech no longer resonated with consumers. Consumers wanted to view corporations as anthropomorphic, relate to them, and see their souls. As a result, businesses pursued reform through a combination of rhetoric and action. ExxonMobil (hereafter referred to as ‘Exxon’), for instance, ran an advertisement claiming “times have changed,” but “so have many of us big businesses” while increasing the frequency of donations to hospitals and schools (Kerr 2005). Having established themselves as reformed, businesses have begun advancing positions that improve their bottom line. Philip Morris (the parent company of Marlboro Cigarettes), for example, used its resources and influence to publish misinformation about the harms of smoking.

Although many object to corporate speech, the Supreme Court has held that it is protected under the First Amendment. The first case that explicitly discusses corporate speech is *First National Bank of Boston v. Bellotti* (hereafter referred to as *Bellotti*). In this case, the Justices considered the following question: “Does the First Amendment protect the rights of corporations to attempt to influence the outcome of elections in which they have no direct monetary interest?” The majority held that corporate speech is protected under the First Amendment, and they based this on three main points. First, Justice Powell wrote that prior rulings supported their conclusion. Next, he argued that individuals have freedom of speech and that corporations are groups of individuals. Therefore, corporate freedom of speech must be allowed. Finally, he wrote that suppressing corporate speech would deprive large media companies of their ability to express it.

The 2010 Supreme Court case *Citizens United v. Federal Election Commission* further expanded the reach of corporate speech by asserting that democracy required all political speech, including a company's right to engage in political speech.

#### 4. The Social and Economic Effects of Corporate Speech

With the historical context of corporate speech now clearly established, the analysis of its social and economic effects will begin. This section will focus on Exxon's climate denial campaign, which exemplifies the influence of corporate speech on politics and society. One must understand Exxon's relationship with climate change to understand the campaign. In 2015, a series of news articles disclosed that Exxon had known about climate change for nearly 40 years (Greenpeace, n.d.). As a result, the FBI and various Attorney Generals' Offices investigated Exxon for fraud (Greenpeace, n.d.). These governmental agencies found that Exxon spent millions hiring top scientists, purchasing top-of-the-line equipment, and conducting experiments (Hall 2015). Internal documents also revealed that Exxon's corporate team not only ignored the scientists' conclusion that burning fossil fuels was increasing carbon emissions but also spent billions publicly doubting the legitimacy of climate change (Supran and Oreskes, n.d.).

Exxon's campaign relied on advertorials that manipulated audiences' perceptions of climate change (Supran and Oreskes, n.d.). Advertorials are newspaper or magazine advertisements written in the style of editorials (Oxford Languages, n.d.). In these 'advertorials,' Exxon's PR team used framing, a strategy that highlights certain aspects of a given topic over others: for instance, Exxon emphasized climate change's uncertain nature (Supran and Oreskes, n.d.). To do this, Exxon used language that downplayed the significance of climate change, e.g., stating that it "may cause harm." Using ambiguous terms like "may" reframed global warming as a potential rather than an actual harm (Supran and Oreskes, n.d.). Exxon also paired these ambiguous statements with claims that neither scientists nor scientific data unanimously proved the validity of climate change (Supran and Oreskes, n.d.). Exxon subsequently compiled these arguments into a briefing for lawmakers and journalists, thereby spreading misinformation to both politicians and constituents. Consequently, several politicians have voted against policies aimed at reducing carbon emissions. Moreover, as of 2023, Yale University found that 16% of the population they polled denied the existence of climate change (Marlon et al. 2023). In addition, Gallup Polls spanning from 1997 to 2024 have shown that Americans have continued to believe that the news over-exaggerates the effects of climate change (Gallup, n.d.).

After detailing the profound social influence of corporate speech, the focus now turns to its economic impacts. Though corporate speech is inherently linked to corporations' profit motives, the full extent of this relationship remains unclear. With that said, current economic research focuses on broad market trends. To start, researchers found that consumers prefer companies that engage in corporate speech over those that do not (Villagra et al. 2022). Thus, companies that use corporate speech have "institutional credibility," which generally leads to lower rates of market risk (Villagra et al. 2022; Blanco et al. 2023). Though this is typically the case, researchers stated that corporate speech alone does not guarantee positive results. Instead, positive outcomes (defined as increased investments) usually depend on a few key factors. First, corporations must be mindful of the issues they select to support and their stance on them. Consumers view corporate speech more favorably when it is more closely aligned with a cause they support: e.g., a liberal will respond more favorably to liberal corporate speech. Speech should also be related to a firm's goals. Patagonia, an outdoor gear brand that prides itself on sustainability, predictably uses language that aligns with its brand identity.

While corporate speech can enhance profitability by aligning firms with consumer values, devi-

ations from best practices can provoke backlash and result in financial losses (Enete and Sturr 2023). In 2019, Gillette aired an advertisement addressing toxic masculinity in the context of the #MeToo movement. Rather than generating broad approval, the campaign provoked consumer backlash: 63 percent of consumer respondents reported feeling personally attacked, while only 8 percent expressed support (Myer 2024). Although Gillette executives maintained that the advertisement had a neutral effect on sales, the reaction demonstrates how politically charged corporate speech can trigger reputational risk by alienating core consumer segments (Myer 2024). This pattern of consumer backlash became even more pronounced in 2023, when Bud Light partnered with transgender model Dylan Mulvaney for a promotional campaign (Ziady 2024). This decision sparked widespread consumer boycotts, costing Bud Light an estimated \$1.4 billion in sales and leading to its loss of the title of the best-selling beer in the United States (Ziady 2024).

### **5. Arguments against Corporate Speech**

Having established the historical, social, and economic contexts of corporate speech, the discussion can transition to arguments against it. First, corporate speech often relies on moral grandstanding, which is a practice that encourages insincere moral acts. To fully comprehend this claim, one must define moral grandstanding. Scholars Brandon Warmke and Justin Tosi define moral grandstanding as “recognition desire [plus] a grandstanding expression” (Warmke and Tosi 2020). Recognition desire is the urge to be recognized for a given trait, and a grandstanding expression is something that is said or written (Warmke and Tosi 2020). Tosi and Warmke claim that humans grandstand to advance their “social status,” a goal that can only be attained through prestige and dominance; thus, grandstanding can either increase one’s social credibility, leading to greater recognition and prestige or be used to “shame,” “silence,” or scare others (Warmke and Tosi 2020).

Though the authors provided these common motivations, humans often have multiple motivations, making it difficult to ascertain the true motivation behind an act (Warmke and Tosi 2020). Consider the following example: Jessica is exceptionally passionate about cancer care. Jessica volunteers at the local hospital’s oncology ward and interns at a cancer research lab during her spare time. Jessica could continue her work privately, sharing only with her close friends, or she could use Instagram to highlight her morality. Jessica chooses to post stories on Instagram that highlight her work. By posting on Instagram, Jessica explicitly raises awareness of cancer while implicitly demonstrating her moral values to her broader network. Jessica’s post is a form of grandstanding, notwithstanding her moral motivation, as her desire to be recognized inspired her to post online.

Conversely, companies engage in moral grandstanding for profit. One can corroborate this claim by evaluating a company’s motivations. Unlike with humans, it is relatively easy to ascertain a company’s motivations. Executives regularly meet to determine company goals, which are written down and shared internally. Though a company may claim otherwise, more often than not, the goal is to increase profit. To exemplify this point, consider the example of Target’s 2023 Pride Month Celebration. Every June, companies like Target turn their logos rainbow, adorn their stores with ‘#pride,’ and roll out a plethora of rainbow-themed products. At first glance, Target may be an ally of the LGBTQ community. However, upon closer observation, one can see that Target’s activism is only surface-level.

During the 2023 Pride Celebration, outraged Conservative Christians boycotted stores, destroyed displays, and harassed employees, citing the ‘satanic’ nature of homosexuality. As a result, Target’s CEO removed Pride-related products from stores while claiming to stand with the LGBTQ community. Figures in the LGBTQ community charged Target with rainbow-washing

(or supporting the LGBTQ+ community in non-substantial ways), i.e., grandstanding (Kingsberry 2023). If Target truly cared about the LGBTQ community, it would not have kowtowed. Instead, it would have kept its products on the floor and condemned bigotry. Target did not pursue these routes as real solutions would cost time and money. Reprimanding the homophobes would further alienate conservative consumers, leading to decreased sales from that group. Target's lack of action suggests that the LGBTQ community's claims are correct. However, the most compelling evidence comes from Target's earnings reports.

In the months after Target's Pride Celebration, earnings reports showed that Pride Month 2023 had the largest sales decline in 6 years, spanning 2017 to 2023 – analysts claimed this decrease was a direct result of boycotts (Holman 2023). Despite these statistics coming out months after the event, it is almost guaranteed that the C-suite was monitoring the financial effects of conservative outrage. Seeing the negative costs of the Pride collection, one could extrapolate that finances influenced the CEO's decision-making. When the costs outweighed the benefits, Target stopped supporting the LGBTQ community, revealing that its motivation was monetary all along. Taken together, corporate moral grandstanding normalizes insincere moral acts, cheapening morality overall.

Corporate speech further diminishes ethical standards by violating the norms of a liberal society, thereby increasing polarization. Understanding these norms, as David Schmidtz best describes them, is crucial to understanding this claim. In his book, "Living Together," Schmidtz defines the elements of liberalism that help "decreas[e] the cost of living together" (Schmidtz 2006). Reiterating the idea of political autonomy, he writes that individuals must concede that there are varying conceptions of the good, which need not be interfered with (Schmidtz 2023). When individuals know what to expect from others, they can rest assured that they are free. This promise of freedom fosters a sense of safety, encouraging productivity rather than unnecessary skepticism. Schmidtz also claims that markets foster a culture of mutual expectations. In market economies, individuals generally have more repeat interactions (Schmidtz 2023). For instance, a distributor will likely choose a supplier they have worked with before. Because of these repeated interactions, individuals are incentivized to treat all their partners well (Schmidtz 2023).

When individuals disregard community norms, Schmidtz holds that communities should adopt his theory of justice. He argues that good theories of justice should be like maps, showing people how to navigate the world, not where to go (Schmidtz 2006). In other words, a theory of justice should focus on how to live together rather than what to believe (Schmidtz 2023). To actualize his theory, Schmidtz argues that societies should limit the importance of "justifying" one's notion of the good, as this attempt to control it violates the liberal idea of self-determination (Schmidtz 2023). By validating others' conceptions of the good, he intends to ground society in mutual expectation. Here, citizens are more willing to use institutions like the courts to resolve disputes without fighting. In summation, Schmidtz's theory of justice is a set of rules that can be applied to specific situations (Schmidtz 2006).

Corporate speech quashes liberalism's norms by promoting a singular concept of the good and decreasing trust among constituents. As previously noted, companies use their speech to advocate for various social and political positions. Corporate speech is protected under the First Amendment, but its implications are catastrophic. Corporate speech advocates a single notion of the good, leading society to return to its tribal roots. As a result, groups form and fight to advance their conception of the good. The creation of Jermey's Razors best exemplifies this concept. In March 2021, Harry's Razors ceased its sponsorship of the conservative media company, the Daily Wire, citing its "longtime support of the LGBTQ community" (Lee 2021). In retaliation, Jeremy Boreing, the Daily Wire's Co-Founder, launched a line of razors entitled "I Hate Harry's" (Klee

2023). Eventually, Boreing extended this limited-edition line into what is now known as Jeremy's Razors. This company is a self-proclaimed "woke-free" brand that believes in "fight[ing] the left" and divesting money from "Woke CEO[s]" (Jeremy's Razors, n.d.).

As such, corporate speech not only defies liberalism's cardinal rule but also erodes the norms that build trust in a liberal society. Specifically, corporate speech undermines the idea of a knowable society grounded in mutual expectations. As shown above, corporate speech's promotion of the good disregards the norm of tolerance, creating an unsafe society. Without the expectation of tolerance, interacting with individuals outside one's group becomes more costly. Thus, humans must thoroughly investigate others to determine who they can or cannot trust. This regression in thought frames life as a zero-sum game, leading individuals to live in fear. Over time, this lack of interpersonal trust extends upward: when citizens cannot rely on each other, they increasingly doubt institutions, questioning the legitimacy of laws, public authorities, and social norms. Once trust in institutions erodes, the mechanisms that sustain social order weaken, leaving society vulnerable to fragmentation and collapse.

Such a mindset leads to the formation of ingroups, a disconnect from the "other," and a resultant lack of trust, all of which are the basis of affective polarization (Kleinfeld 2023). Affective polarization is polarization driven by a bias towards one's party and a dislike of the other (Kleinfeld 2023). To clarify this idea, picture Julia, a Democrat from an overwhelmingly liberal city where she did not interact with Republicans. Upon moving away to college, Julia encounters a pro-life rally on campus – she is disgusted. This interaction confirms her negative stereotypes about conservatives. As a result of her conviction that women's right to bodily autonomy is under attack, she joins a reproductive rights group. During the reproductive rights club meeting, she cites her negative experience, which encourages the group. From this point, the group not only hates Republicans but views them as inherently evil. This belief prompts the reproductive rights group to attempt to have the Republican Club banned from campus for promoting anti-woman rhetoric. Taken together, this example emphasizes that polarization can lead to anti-democratic behavior, such as censoring one's opponent.

Consequently, corporate speech should aim to mitigate the effects of polarization by fostering a society that lives well together rather than promoting a singular notion of the good. Namely, corporations should adopt the norm of being nonpartisan. Currently, companies have marketed themselves as necessary for establishing one's moral credentials: e.g., purchasing Ben & Jerry's signals that one is a true liberal. However, by adopting a nonpartisan approach, companies could not only reach a broader consumer base but also create an environment in which diverse individuals bond over an interest in a particular good or service. Through these initial conversations, individuals may also discover their other shared commonalities, which would eradicate the fear of the other and promote a friendlier atmosphere. In turn, this newfound friendship would lead to better decision-making, as individuals would be more likely to listen to one another and compromise.

## 6. Counterarguments

Despite this article's assertion that a for-profit company's speech should avoid using corporate speech, it is necessary to consider counterpoints. First, JPMorgan Chase's (hereafter referred to as 'Chase') 2020 commitment to racial equity suggests that some companies truly aim to improve society, not just grandstand for profit. In this proposal, Chase committed to spending \$30 billion on programs to close the "racial wealth gap" (JPMorgan Chase, n.d.). In a 2023 follow-up, Chase reported investing \$1 billion in building low-income housing projects, \$4 billion in creating new low-income housing, and opening 76 branches in "low-to-moderate income areas" (JP Morgan

Chase, n.d.). Furthermore, Patagonia proves that profitability can be a side effect of activism. Patagonia's mission is "to save our home planet." They accomplish this goal by using environmentally friendly practices (Patagonia, n.d.-a). The outdoors giant boasts it only uses organic cotton that is grown sustainably (Patagonia, n.d.-a). Furthermore, Patagonia encourages customers to repair their products by offering this service at its physical stores, sending kits to patch holes, and operating a dedicated service center (Patagonia, n.d.-b).

Patagonia's actions, seemingly aligned with its activist messaging, are the exception rather than the norm. Returning to the Chase example, although they contribute positively to the world, they are presumably grandstanding. Exploring the temporal context of Chase's pledge reveals a possible alternative motive. After George Floyd's murder, Bank of America first pledged funds to address racial inequalities, with Citigroup following suit in September (Flitter 2022). Finally, in October, Chase promised the most significant amount by a wide margin, which could be seen as a signal of its dominant financial position. As previously mentioned, domination is one of the primary motivations for grandstanding. Additionally, Chase chose to fund low-income housing to earn federal tax credits (Flitter 2022). All things considered, Chase decided to help people of color for profit rather than for their own sake. Even though corporate speech sometimes produces positive outcomes, the benefits are not worth the costs.

In response, it could be argued that corporate speech mirrors individual speech, as corporations are groups of individuals. As mentioned earlier, the *Bellotti* decision reiterated this sentiment: there is no difference between individuals, clubs, or companies speaking. Moreover, a wealthy individual's speech is fundamentally the same as a corporation's – a wealthy individual can issue statements and use their capital to influence politics or society. Given that corporations and the wealthy alike can manipulate politicians, government agencies, and consumers, it is essential to have corporate speech. Corporate speech is a tool to amplify smaller voices and counter misinformation or harmful views. For example, Delta Air Lines and Coca-Cola opposed Georgia's 2021 voting law reform after meeting with black executive activists. In this case, these corporations amplified the voices of black individuals.

Contrary to the argument above, corporate speech is inherently different from human speech. Even if a wealthy person were to leverage their status, they would have less influence than a company. Companies can easily restrict one's choices and, therefore, their freedom. Picture the following scenario: Jim is a police officer who loves ice cream. On his way to the store, he discovers that Ben and Jerry's supports the movement to defund the police. Jim is conflicted – he loves ice cream but has had to work more hours due to budget cuts and subsequent layoffs. Unfortunately, the small town he lives in only sells Ben and Jerry's – he would have to travel over an hour and a half away to find a bigger grocery store. Jim is deprived of a choice – he is forced to support a cause he does not believe in or forgo ice cream. By leveraging their market share, companies can force consumers to support causes contrary to their own. Furthermore, some companies are not as transparent about their advocacy, disregarding the individual's right to choose altogether. Finally, corporations should not be used for political causes, as this intensifies polarization and can lead to political violence.

## 7. Conclusion

In conclusion, corporate speech poses profound political and moral risks. It erodes the norms of a peaceful, pluralistic society while simultaneously reminding citizens of their tribal instincts, deepening polarization, and fostering segregation based on competing conceptions of the good. As groups increasingly perceive one another as threats, corporate speech reinforces these divisions, radicalizes collective identities, and can precipitate political violence, as evidenced by the

attack on the U.S. Capitol following misconceptions about the 2020 election. At the same time, it normalizes insincere moral displays, signaling that the appearance of virtue can replace genuine ethical action. Perhaps most consequentially, this breakdown of interpersonal trust extends to institutions: when citizens cannot rely on each other, they begin to doubt laws, authorities, and social norms, undermining the foundations of social order and leaving society vulnerable to collapse. To counter these dangers, society must adopt norms that prioritize human citizens over corporate actors, emphasize the cultivation of mutual trust, and restore the practices that sustain social cohesion and human flourishing.

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# THE DISPARATE IMPACTS OF THE 2023 REGIONAL BANKING CRISIS

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*This study considers how the 2023 regional banking crisis and subsequent regulatory responses have affected access to financial services among historically underserved and excluded demographics. Through a survey distributed to 1,500 minority business owners, the study investigates how access to banking services has shifted following the 2023 regional banking crisis, in which the failures of Silicon Valley Bank (SVB), Signature Bank, and First Republic led to bank consolidations and lending pullbacks. The article frames these dynamics within the context of recent legislative actions around banking consolidation and the loosening of capital controls enacted in 2025. The findings aim to contribute to the ongoing discourse on financial regulation and offer insights into the evolving landscape of regional and community banking sectors.*

## 1. Introduction

Regional and community banks play a significant role in providing community-level financial services access. In contrast to national banks, smaller banks provide more concentrated services, which results in enhanced credit access for local enterprises such as small businesses. Despite this, the banking industry has been under considerable stress in recent years, contributing to a decline in smaller lending institutions. According to the Federal Deposit Insurance Corporation's Small Business Lending Survey, the number of "small banks" (defined as banks with less than US \$10 billion in assets) declined by almost 46 percent between 2008 and 2023. The U.S. economy has recently experienced a series of rapid and unanticipated economic shocks that have further amplified challenges for lenders.

During the COVID-19 pandemic, the U.S. government developed a series of stimulus programs aimed at driving economic activity. These policies emerged at a time of considerable ambiguity related to the duration and prospective disruption that the pandemic would have on the broader economy. However, given the relatively low mortality rate of the COVID-19 virus in congruence with rapid medical innovations, lockdown restrictions were overhauled within 18 months (Ahmad, Cisewski, Xu, and Anderson, 2023). As a result of economic stimulus packages, the conclusion of lockdowns, and factors such as ongoing supply chain disruptions, significant supply-side constraints emerged that ultimately culminated in artificial price elasticity (U.S. House Committee on the Budget, 2024). Given that interest rates had remained depressed throughout the pandemic, the shift and onset of hawkish monetary policy was rapid, meaning that many

financial institutions had balance sheets that were ill-prepared for these volatile and rapidly evolving economic conditions.

These structural challenges left some institutions overly exposed to interest rate risk, leading some institutions to shutter. These events have been labeled as the 2023 regional banking crisis (FDIC, 2023a). The crisis marked a significant destabilizing event in the financial services sector, prompting rapid regulatory responses to prevent further economic disruption. Policymakers attempted to adopt measures to restore stability. One such measure was the endorsement of bank consolidations, which allowed larger institutions to absorb their struggling regional counterparts. The regulatory decision to allow for the rapid merger and absorption of market participants by larger and more stable institutions was motivated by a desire to secure customer deposits (FDIC, 2023b).

Ultimately, the events of the regional banking crisis led policymakers to prioritize short-term economic stability over the preservation of a competitive banking landscape. Though this action successfully stabilized the sector, the reliance on consolidation as a primary response to address systemic instability introduces new risks that have fundamentally altered the banking industry.

Prior to 2023 there was already an accelerated rate of bank closures, disproportionately impacting rural and Low- or Moderate-Income (LMI) communities. This trend was already alarmingly pronounced prior to the onset of the regional banking crisis. For example, according to a report published by the Federal Reserve, which identified 44 counties that had ten or fewer bank branches in 2012. By 2017, only half of the banks in these communities were still in operation (Board of Governors of the Federal Reserve System, 2019). These challenges are further supported by research conducted by the National Community Reinvestment Coalition, highlighting how LMI and rural areas have experienced a significant contraction of branches. Since the 2008 financial crisis, many smaller banks have been absorbed by larger institutions, which often prioritize profitable urban markets. As a result, rural and LMI communities are more likely to become “banking deserts” or areas where residents face limited access to financial services (Richardson, Mitchell, Franco, and Xu, 2017).

This disparity exacerbates financial exclusion, as populations in rural and LMI communities are more likely to depend on in-person services due to lower access to digital banking technologies and broadband internet. A 2019 Federal Reserve study found that while alternatives such as private ATMs and prepaid cards provide limited substitutes for traditional banking, they come with high fees and limited functionality, such as the inability to deposit cash. Additionally, broadband and cellular service limitations make online or mobile banking impractical for many individuals, particularly those with limited digital literacy. The study underscores how branch closures disproportionately impact existing, underserved populations (Board of Governors of the Federal Reserve System, 2019).

The American South, particularly the Gulf Coast region, presents a compelling case study for examining these dynamics. Alabama, where the majority of this study’s survey respondents operate, has historically exhibited acute patterns of financial exclusion among minority populations. According to the Federal Deposit Insurance Corporation’s (hereafter referred to as the FDIC) 2021 Survey of Household Use of Banking and Financial Services, Alabama ranked among the top ten states for unbanked households, with rates significantly higher among Black and Hispanic residents. The state’s banking landscape has undergone substantial consolidation in recent decades, with the number of community banks declining by over 35% since 2010. During the 2023 regional banking crisis, while Alabama’s banks largely avoided direct failures, the broader credit tightening and risk aversion that followed the collapse of Silicon Valley Bank (SVB) and Signature Bank rippled through regional lending markets, affecting small business credit availability across the

Gulf Coast. This geographic concentration allows for focused analysis of how national banking disruptions translate into localized impacts on minority entrepreneurs who already navigate a financial landscape shaped by historical exclusion and limited institutional presence.

The central research question of this study considers these events and seeks to understand how historically underbanked minorities have been affected by recent policy actions. Specifically, minority entrepreneurs and small business owners already face substantial challenges in accessing critical financial services, given that their historical exclusion from the financial system has contributed to inequalities in financial services access. For example, a 2023 study by Brigham Young University, Utah State University, and Rutgers has produced research that reveals persistent racial bias in financial lending institutions. In the study, among sole proprietorships (the simplest business structure), loan approval rates for Black entrepreneurs were less than half that of White entrepreneurs (26% vs. 60%) (Scott et al. 598). Ultimately, the findings of this study aim to provide insight into the broader implications of banking access for minority-owned businesses following the regional banking crisis.

## 2. Literature Review

Understanding minority business financial exclusion requires examining four interconnected conceptual domains. First, the persistent patterns of historical and contemporary financial exclusion reveal how systemic barriers continue to shape minority entrepreneurs' access to capital. Second, the theoretical and empirical limitations of current antitrust frameworks, particularly the reliance on the Herfindahl-Hirschman Index (HHI), fail to capture the true competitive effects of bank consolidation on underserved communities. Third, relationship lending and 'soft information' processing emerge as critical mechanisms through which community banks serve populations that algorithmic credit assessment systematically disadvantages. Finally, the 2023 regional banking crisis represents a potential inflection point where these structural vulnerabilities converged, accelerating consolidation trends that disproportionately affect minority business credit access. This review synthesizes research across these domains to establish the conceptual foundation for the present study.

### 2.1 Historical and Contemporary Patterns of Minority Financial Exclusion

The relationship between minority communities and the American banking system has been shaped by decades of systematic exclusion that continues to manifest in contemporary lending disparities. Baradaran's (2017) seminal work, *The Color of Money: Black Banks and the Racial Wealth Gap*, traces how legal segregation and discriminatory lending created parallel, unequitable financial systems that persist today. Even after landmark legislation such as the Equal Credit Opportunity Act (1974) and the Community Reinvestment Act (1977), structural barriers remain embedded in seemingly race-neutral practices that produce disparate impacts.

Contemporary evidence confirms these persistent disparities. Bone et al. (2019) examine how "systemic restricted choice" in financial services constrains minority consumers' economic agency and identity construction. Their qualitative research reveals that limited banking options force minority entrepreneurs into suboptimal financial relationships, creating a "rejection, shackled, and alone" experience that extends beyond mere economic disadvantage to affect psychological well-being and business confidence. This psychological dimension is crucial for understanding why minority businesses may be less likely to seek credit even when objectively qualified.

Fairlie and Robb (2022) provide quantitative evidence of these disparities in *Race and Entrepre-*

*neurial Success: Black-, Asian-, and White-Owned Businesses in the United States*, demonstrating that differences in access to startup capital explain a substantial portion of racial gaps in business ownership rates and firm survival. Their analysis reveals that personal and family wealth plays a determinative role in entrepreneurial success, creating intergenerational transmission of disadvantage. The Federal Reserve's 2023 Small Business Credit Survey reinforces these findings, documenting that minority-owned firms experience loan approval rates of just 18% compared to 35% for non-minority firms, even after controlling for creditworthiness indicators.

## **2.2 Bank Consolidation and Antitrust Policy: The Failure of Traditional Metrics**

The banking industry's increasing concentration has profound implications for minority business access to credit, yet relaxed enforcement of anti-trust policy during proposed consolidations has had anti-competitive effects on the market. The current banking landscape can be understood through the HHI, which measures market concentration but fails to account for crucial competitive dynamics.

### **2.2.1 Understanding the HHI and Its Limitations**

The HHI calculates market concentration by summing the squared market shares of all firms in a market, with values ranging from near zero (perfect competition) to 10,000 (monopoly). The Department of Justice guidelines classify markets as:

- Unconcentrated: HHI below 1,500
- Moderately concentrated: HHI between 1,500 and 2,500
- Highly concentrated: HHI above 2,500

In highly concentrated markets, mergers that increase HHI by more than 200 points are presumed to enhance market power and should face regulatory scrutiny. However, by 2017, the U.S. banking industry's HHI had already exceeded 3,400, yet regulators continued approving mergers, particularly during the 2023 crisis (Federal Reserve Bank of St. Louis, 2018).

Benson et al. (2023) expose a critical flaw in HHI-based enforcement through their analysis of geographic proximity in bank mergers. Their study, "Concentration and Geographic Proximity in Antitrust Policy: Evidence from Bank Mergers," demonstrates that when merging banks have geographically proximate branch networks, the anti-competitive effects are substantially greater than HHI alone would predict. Using a difference-in-differences strategy across over 10,000 bank mergers in four decades, they find that proximity-based competition loss leads to higher prices and reduced credit availability that disproportionately affects small businesses.

This measurement failure has particular relevance for minority businesses. As the authors note, HHI assumes customers can easily switch between all banks in a market, but minority businesses often face additional barriers such as discrimination and a lack of existing relationships which make switching costs prohibitively high. The inadequacy of HHI-based enforcement thus allows mergers that may appear competitively neutral in aggregate but devastate credit access in specific communities.

The literature on antitrust modernization, including work by Scott Morton et al. (2019) calling for updated regulatory tools, has gained urgency following the 2023 crisis. Despite the Biden Administration's initial emphasis on maintaining competitive markets, the extraordinary circumstances of the regional banking failures led regulators to abandon even these inadequate

guidelines, approving consolidations that further concentrated an already highly concentrated industry. This regulatory forbearance in crisis periods creates a ratchet effect where temporary stability measures become permanent market structure changes.

### **2.3 Community Banking: The Irreplaceable Role of Relationship Lending**

The decline of community banks institutions with less than \$10 billion in assets represents a fundamental threat to minority business credit access that technology and large bank initiatives have failed to adequately address. The mechanisms through which community banks serve underserved populations differ qualitatively from the standardized approaches of larger institutions.

Minton et al.'s (2024) working paper, "Is the Decline in the Number of Community Banks Detrimental to Community Economic Development?" provides crucial evidence on these mechanisms. Their analysis reveals that the correlation between community bank presence and small business lending persists even after controlling for the total number of bank branches in an area, suggesting that community banks provide unique value beyond mere physical presence. The authors identify several channels through which this value operates. Community banks excel at processing "soft information" which are qualitative assessments based on local knowledge, and relationship history that cannot be easily quantified or transmitted up organizational hierarchies. For minority businesses that may lack extensive credit histories or collateral but possess strong community ties and reputation, this soft information processing is essential. The authors find that when community banks are acquired by larger institutions, small business lending in the area decreases by an average of 13%, with the decline concentrated among the smallest and newest firms. Community banks also provide what the authors term 'patient capital' which are credit relationships that persist through business cycles and temporary setbacks. Their analysis of lending through the COVID-19 pandemic shows community banks were 40% more likely to maintain credit lines for struggling small businesses compared to large banks, even controlling for borrower characteristics. This patience is particularly valuable for minority businesses that may face more volatile cash flows due to customer base concentration or supply chain positioning.

The technological disruption narrative, that fintech and digital banking will democratize credit access, receives important qualification in this literature. While fintech lending has grown rapidly, Minton et al. demonstrate it primarily serves businesses that already have access to traditional credit, functioning more as a complement than a substitute for relationship banking. For the 'credit invisible' minority businesses lacking algorithmic markers of creditworthiness, fintech's promise remains largely unrealized.

### **2.4 The 2023 Regional Banking Crisis: Accelerating Structural Disadvantages**

The failures of Silicon Valley Bank, Signature Bank, and First Republic Bank in March 2023 created a critical juncture that accelerated pre-existing trends harmful to minority business credit access. Unlike the 2008 financial crisis's systemic mortgage-related failures, the 2023 crisis stemmed from traditional asset-liability mismatches exposed by rapid interest rate increases, yet the policy response which facilitated consolidation may prove equally transformative for market structure.

The crisis particularly affected regional banks (\$10-100 billion in assets) that occupied a middle ground between community banks' relationship orientation and national banks' standardized approaches. These institutions had increasingly served minority businesses that had outgrown community bank relationships but couldn't access large bank credit. Their absorption by national

banks eliminates this intermediate option, forcing minority businesses into a binary choice between scarce community banks and inaccessible large banks.

The Federal Reserve Bank of Richmond's (2023) analysis documents that 68% of regional banks' small business loan portfolios consisted of loans between \$100,000 and \$1 million, precisely the range most needed by established minority small businesses seeking growth capital. The concentration of these loans in failed or merged institutions suggests a structural gap in the post-crisis banking landscape that neither community banks (lacking capacity) nor large banks (lacking interest) are positioned to fill.

Moreover, the crisis response's speed prevented normal due diligence on community impact. The FDIC's emergency auctions of failed banks prioritized bid size and acquirer stability over commitments to maintain small business lending or serve minority communities. Historical analysis by Nguyen (2019) of similar emergency bank sales shows that acquiring institutions reduce small business lending by an average of 20% within two years, with the steepest declines in minority-majority census tracts.

## 2.5 Synthesis

The literature reveals a troubling convergence of forces affecting minority business financial access. Historical discrimination created wealth and credit gaps that make minority businesses particularly dependent on relationship lending and soft information processing. Simultaneously, bank consolidation eliminates the community banks best positioned to provide such lending. While technology promises alternatives, evidence suggests fintech primarily serves already-banked populations. The 2023 crisis represents not merely another step in ongoing consolidation but potentially a tipping point where the diversity of institutional forms necessary for inclusive credit markets falls below critical thresholds.

This study contributes to addressing several gaps in this literature. First, while studies document disparate impacts of banking changes on minority communities, few examine these effects in real-time during crisis periods when policy interventions are still possible. Second, the intersection of multiple disadvantage dimensions (race, gender, rural location) remains under-explored, particularly regarding how these intersections affect vulnerability to banking sector changes. Third, the specific mechanisms through which crisis-induced consolidation affects minority businesses require empirical investigation. Finally, the existing literature lacks evidence from minority business owners themselves about their experiences navigating banking sector disruption, relying instead on administrative data that may miss important qualitative dimensions of financial exclusion.

By surveying minority business owners in the Gulf Coast region during the immediate aftermath of the 2023 crisis, this study provides timely evidence on these questions. The findings contribute to policy debates about financial inclusion, antitrust enforcement, and the appropriate balance between stability and competition in banking regulation.

## 3. Underbanking Survey and Response Analysis

The observations used for data analysis were collected through a survey distributed to 1,500 minority entrepreneurs who work with community groups that connect entrepreneurs with minority businesses across the American Gulf Region. The survey was designed to capture entrepreneurs' experiences and challenges, particularly regarding their access to financial services following the regional banking crisis.

### 3.1 Survey Respondent Characteristics

The survey was developed in collaboration with senior faculty at the Murphy Institute at Tulane University and distributed to 1,500 minority participants in Q3 2024, approximately 15 months after the regional banking crisis. Follow-up reminders were sent two weeks after initial distribution. Of the 1,500 surveys distributed, the survey yielded a response rate of 1%. While this response rate limits the statistical power of quantitative analyses, the respondents provided detailed qualitative information that offers valuable insights into minority entrepreneurs' banking experiences. The low response rate is acknowledged as a limitation and is addressed in the methodological limitations section.

The geographic distribution of survey responses showed a strong concentration in the Gulf Coast region, with the majority originating from Alabama. More specifically, 64.3% of respondents reported operating enterprises in the Mobile Metropolitan Area. The remaining responses came from other Gulf Coast locations, including Gulfport, Mississippi, and Metairie, Louisiana.

The demographic composition of respondents is aligned with the study's target population, as 78.5% of participants self-identified as belonging to underbanked minority groups. This identification encompassed various categories: racial minority status, gender minority status, economic disadvantage, rural or geographic isolation, immigrant or refugee status, and limited access to traditional financial services. Overall, 42.8% of respondents face intersectional underbanking risk. The high percentage of minority respondents suggests the survey reached its intended demographics.

### 3.2 Survey Response Analysis

The analysis employs multiple regression approaches to examine factors associated with changes in banking access.

Variable	Mean	Median	SD	Min	Max	n
Underbanked Status	0.786	1	0.426	0	1	14
Intersectional Risk	0.429	0	0.514	0	1	14
Bank Proximity	0.857	1	0.363	0	1	14
Harder Access	0.714	1	0.469	0	1	14
Banks Leaving	0.286	0	0.469	0	1	14
Number of Employees	2.43	1	3.16	0	11	14
Years in Operation	15.64	8	24.69	2	96	14

Note: SD = Standard Deviation. Binary variables coded as 1 = Yes, 0 = No.

Table 1. Descriptive Statistics

#### 3.2.1 Analytical Framework

The analysis employs multiple regression approaches to examine factors associated with banking access difficulties. The Ordinary Least Squares (OLS) linear regression model estimates the relationship between a continuous dependent variable and one or more predictors:

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_{\diamond} X_{\diamond} + \varepsilon$$

Where Y is the outcome variable,  $\beta_0$  is the intercept,  $\beta_1 \dots \beta_{\diamond}$  are regression coefficients,  $X_1 \dots X_{\diamond}$  are predictor variables, and  $\varepsilon$  is the error term. For binary outcomes the analysis employs logistic regression models the log-odds of the outcome:

$$\log(p / (1-p)) = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_{\diamond} X_{\diamond}$$

The probability of the outcome is plotted as:

$$P(Y = 1) = \exp(X\beta) / (1 + \exp(X\beta))$$

The odds ratio (OR) for each coefficient is calculated by exponentiating the coefficient:

$$OR = \exp(\beta)$$

An OR > 1 indicates increased odds of the outcome; OR < 1 indicates decreased odds. The percentage change in odds is calculated as (OR - 1) × 100%.

### 3.2.2 Ordinary Least Squares Analysis

To evaluate the cross-study relationships and estimate conditional mean differences in the dependent variable as a function of specified covariates, the study employs Ordinary Least Squares (OLS) regressions. Using a linear probability specification estimates how banking exposure and proximity characteristics correlate with the probability of experiencing increased difficulty in accessing financial services.

Plotted as:

$$\text{HarderAccess} = \beta_0 + \beta_1(\text{Underbanked}) + \beta_2(\text{BanksLeaving}) + \beta_3(\text{YearsOp}) + \varepsilon$$

Variable	$\beta$	SE	t	p-value	Sig.
(Intercept)	0.446	0.201	2.216	0.051	.
<b>Underbanked Status</b>	0.636	0.215	2.956	0.014	*
Banks Leaving	-0.087	0.197	-0.440	0.669	
<b>Years in Operation</b>	-0.013	0.004	-3.450	0.006	**

Note: Signif. codes: '\*\*\*' p < 0.001, '\*\*' p < 0.01, '\*' p < 0.05, '.' p < 0.1. Green highlighting indicates significant predictors.

Table 2. Linear Regression: Harder Access ~ Banking Factors

Statistic	Value
Residual Standard Error	0.323 (df = 10)
Multiple R <sup>2</sup>	0.635
Adjusted R <sup>2</sup>	0.525
F-statistic	5.787 f = 3, 10)

Table 3. Model 1 Fit Statistics

The linear probability model reveals two predictors that contributed to pullbacks in banking access. The first collated with Underbanked Status ( $\beta = 0.636, p = 0.014$ ). Members of a historically underbanked community are associated with a 63.6 percentage-point increase in the probability of reporting harder access, holding other variables constant. The other predictor was Years in Operation ( $\beta = -0.013, p = 0.006$ ). Each additional year of operation is associated with a 1.3 percentage-point decrease in the probability of reporting harder access. However, this relationship is not statistically significant. This may, however, be attributed to the limited response size. Overall, the model explains 63.5% of the variance in banking access difficulties ( $R^2 = 0.635$ ). The overall model is statistically significant ( $F(3,10) = 5.787, p = 0.015$ ), indicating that the predictors collectively explain a meaningful portion of variance.

### 3.2.3 Logistic Regression Model

To explore multivariable relationships, the study also employed a logistic regression model using all available banking-related predictors. Plotted as:

$$\text{logit}(P) = \beta_0 + \beta_1(\text{Underbanked}) + \beta_2(\text{BankProx}) + \beta_3(\text{BanksLeaving}) + \beta_4(\text{Employees}) + \beta_5(\text{YearsOp})$$

However, the model displayed complete separation, meaning the predictors perfectly classified

the outcome. This resulted in inflated standard errors and coefficient estimates approaching  $\pm\infty$ , indicating that maximum likelihood estimates are not valid under these conditions.

Complete separation is common in small sample studies and when categorical predictors contain sparsely populated categories. As a result, the logistic regression outputs are not interpretable and are not used to draw substantive conclusions.

### 3.3 Variable Impact Assessment

To further evaluate whether particular factors affected banking access, we examined whether years in operation and institutional banking risk had a measurable impact on business operations.

#### 3.3.1 Years in Operation

Multiple analyses converge on years in operation as a key predictor of banking access challenges.

Analysis	Statistic	Value	p-value	Interpretation
Linear Regression	$\beta$	-0.013	0.006 **	-1.3% per year
Logistic Regression	OR	0.89	0.177	-11% odds per year
Group Comparison	$\Delta$ Mean	29.2 years	—	36.5 vs 7.3 years

Table 4. Convergent Evidence: Years in Operation Effects

Businesses reporting no changes in banking access had an average of 36.5 years in operation, compared to only 7.3 years for those facing more limited access, a difference of 29.2 years. This substantial gap is statistically significant in the linear model ( $p = 0.006$ ) and shows a large effect size in non-parametric analysis ( $r = 0.625$ ).

#### 3.3.2 Intersectional Risk

Intersectional risk was defined as membership in two or more historically underbanked groups. Of the 14 respondents, 6 (42.9%) were classified as having intersectional risk.

Outcome	Intersectional Risk (n=6)	Underbanked Only (n=8)
Mean Harder Access	0.833 (83.3%)	0.818 (81.8%)
Difference	+1.5 percentage points	—

Table 5. Banking Access by Intersectional Risk Status

Respondents with intersectional risk reported a slightly higher prevalence of decreasing banking access (83.3%) compared to those with single underbanked status (81.8%). While the 1.5 percentage point difference is small, it suggests that intersectional risks may amplify challenges in banking access. However, the Regression analyses did not identify a statistically significant independent effect of intersectional risk on limited banking access.

### 3.4 Survey Results Discussion

Overall, the findings suggest that traditional indicators like the number of employees, years in operation, and banking proximity are not consistently strong indicators of prospective banking access challenges. While the results reveal trends and relationships, ultimately, there was limited statistical support in identifying any single variable that impacted banking access. However, the analysis is also limited in response size.

Additionally, hawkish monetary policy and broader macroeconomic conditions created a broader decline in loan organizations that may have contributed to a decline in banking access. Whether these trends are genuinely attributable to trends in underbanking or a reflection of the broader economic volatility and systemic shifts in the banking industry remains unclear based solely on the results of the survey and needs to be explored through further research.

In addition to these considerations, a follow-up analysis comparing minority entrepreneurs to their non-minority counterparts as a control group would yield deeper insights into the distinct challenges faced by minority-owned businesses. Such a comparative framework would help isolate the structural and financial challenges that are disproportionately affecting minority entrepreneurs. This approach would provide a more nuanced understanding of how these factors interact to constrain growth and long-term sustainability within minority enterprise ecosystems.

### **3.5 Methodological Limitations**

The study has several limitations to consider when interpreting the results. First, the survey population consists of entrepreneurs already connected to grassroots organizations that provide business resources, such as capital, resources, and mentors. Consequently, survey respondents are inherently at lower risk of underbanking compared to minority entrepreneurs who lack access to similar resource networks. This selection bias may, therefore, underestimate the true extent of banking access challenges faced by minority entrepreneurs who do not have access to similar organizational support.

Similarly, the geographic concentration of responses, while providing deep insights into the Gulf region and American South, limits the generalizability of findings when considering external geographic concentrations. Additionally, as with all survey-based research, responses may be subject to self-reporting bias, particularly regarding sensitive financial information. Finally, the limited response rate of 1% must also be considered when evaluating the representativeness of the findings.

## **4. The Disparate Impacts of the Regional Banking Crisis**

The varied results of the survey responses highlight a facet of a broader outcome from the regional banking crisis. Namely, the variability of impacts caused by the regional banking crisis within the banking industry. The most significant impacts of the regional banking crisis were largely isolated to lending institutions with total assets between \$10 billion and \$100 billion (International Monetary Fund, 2024). However, the crisis had more disparate effects across the broader banking landscape. While regional banks faced severe challenges, community and national banks remained relatively insulated. This variability is attributable to differences in institutional lending practices. Regional banks are heavily exposed to commercial real estate (CRE) and account for about 70% of all CRE loan issuance. Given the long time-to-maturity cycles, variable rate structures, and refinancing dependencies, CRE lending is particularly sensitive to interest rate risk. As a result of macroeconomic headwinds, CRE lending decreased by 47% from 2022 to 2023 (Taylor, 2024), and housing subsequently declined 16% year-over-year from July 2023 to July 2024 (U.S. Department of Housing and Urban Development, 2024). However, at the same time, business lending amongst small and medium-sized businesses saw single-to-low double-digit percentage point lending increases in the same period (Equifax Newsroom, 2024).

These trends are partially attributable to the involvement of other lending institutions. For example, in contrast to their regional counterparts, community banks, which are defined as institutions with less than \$10 billion in assets, remained relatively insulated from the crisis. Most

community banks originate between 11 and 50 loans annually under the 7(a) program, with the vast majority of loans ranging from \$350,000 to \$1 million. Furthermore, in the last year, 45% of community banks report increasing loan volumes, even amidst challenging economic conditions and a volatile interest rate environment, underscoring the potential advantage of soft information and personalized-driven lending (Granchelli, 2024). Similarly, national banks (banks with more than \$100 billion in assets) are more diversified in their operations and are thus more insulated from interest rate shocks.

### 5. The Interplay of Minority Banking Access and Emergent Policy Dynamics

The dynamics of the 2023 regional banking crisis underscored the structural vulnerabilities and disparities in the US banking industry. While regional banks bore the brunt of due to their concentrated exposure to commercial real estate lending and interest rate volatility, community and national banks demonstrated relative resilience, driven by their localized lending models and diversified portfolios, respectively. The decision by regulators to allow regional banks to be acquired by more stable operators within the banking sector has created gaps in sectoral lending that regulators and policymakers must continue to research. And yet, despite their relative insulation, community banks continued to decline in numbers, dropping 46% from 7,620 in 2003 to 4,129 in 2023, exacerbating the emergence of banking deserts and reducing access to relationship-based lending that is vital for minority entrepreneurs and underserved populations (Beiseitov, 2023). Research from the Federal Reserve Bank of Philadelphia documents that from 2019 to 2023, banking deserts increased by 217 census tracts, affecting approximately 12.3 million Americans. Critically, majority-Black areas experienced faster rates of increase in banking deserts compared to the national average, and people living in majority Native communities were twelve times more likely to live in a banking desert in 2023 (Federal Reserve Bank of Richmond, 2024).

Meanwhile, national banks remain less engaged in localized operations, limiting options for minority entrepreneurs who rely on relationship-based credit evaluation. This gap underscores the critical importance of minority depository institutions (MDIs), which serve as essential countervailing forces against systemic lending disparities. The National Bankers Association reports that more than 60% of MDI loans go to majority-minority communities and 54% go to communities with higher poverty rates than the national rate (The Federal Reserve Bank of Chicago, 2024).

Moreover, the regulatory environment has shifted dramatically since the 2023 crisis. In 2025, the Federal Reserve approved changes to the enhanced supplementary leverage ratio, lowering it from at least 5% to between 3.5% and 4.25%, which is estimated to free up \$13 billion in capital at the holding company level of the eight largest US lenders and \$210 billion at their deposit-taking subsidiaries and free up nearly \$2.6 trillion in lending capacity (Arnold, 2025). These measures may improve profitability for financial institutions. And while deregulation may pose relatively fewer systemic risks for community banks given their propensity for relationship-based lending, the loosening of restrictions just two years after the regional banking crisis failures has raised substantial concerns, which warrant further consideration.

This regulatory shift has also corresponded with evolving antitrust enforcement standards. Specifically in May 2025, the Office of the Comptroller (OCC)<sup>1</sup> rescinded a 2024 policy statement on bank mergers and restored a streamlined application and expedited review procedures. As

1. The OCC oversees and approves bank mergers and is tasked with ensuring that consolidation does not undermine competition or otherwise reduce access to financial services.

a result, in Q1 2025, nineteen bank merger deals worth a combined \$985.5 million were announced, compared with \$653.8 million over the same period in 2024 (Vinicius, 2025).

While proponents of consolidation claim that larger financial institutions can offer clients critical advantages, such as lower borrowing costs due to scale efficiencies, research has highlighted significant adverse externalities for consumers. A study analyzing the effects of bank mergers found that the distance between lenders and borrowers determines the availability and terms of credit, especially in low-income neighborhoods, and that bank branches play a fundamental role in the functioning of the banking sector despite technological advances (Ferrando et al., 2022). Additionally, customer satisfaction data indicate that large, merged institutions often sacrifice service quality, resulting in higher fees, reduced access to credit, and less responsive customer service (Powers et al., 2022).

Ultimately, the literature considered in this article has demonstrated that community-level credit access depends on the continuity of community-level operations. Legislation such as the Community Reinvestment Act (CRA) remains critical to ensuring that minority entrepreneurs and underserved communities retain access to credit. However, the regulatory trajectory of CRA modernization has also shifted since 2023. In October 2023, federal banking agencies issued a final rule, known as CRA II, to strengthen and modernize CRA regulations. Yet in February 2024, a coalition of banking and business trade groups filed suit. By March 2025, the federal government announced its intention to rescind the 2023 CRA Final Rule and replace it with the 1995 regulations (OCC, 2025). This suspension of CRA modernization, coupled with the confluence of relaxed capital controls and accelerated consolidation, threatens to accelerate the rollback of community-level operations.

For minority entrepreneurs, these trends present a compounding threat. Research has demonstrated that bank branches play a fundamental role in credit access despite technological advances, and that the distance between lenders and borrowers determines the availability and terms of credit, especially in low-income neighborhoods (Ferrando et al., 2024). There continues to be a pressing need for a nuanced regulatory approach that balances systemic stability with equitable access to financial services for all Americans.

## 6. Conclusion

Overall, the disparate impacts of the regional banking crisis observed in this study highlight the complex dynamics of the banking industry and underscore the need for a diversified banking industry. Addressing disparities in banking access for minority entrepreneurs requires fostering a banking system that prioritizes equitable service delivery and local economic development. Yet the confluence of factors around interest rate volatility, relaxed anti-trust enforcement and the 2025 deregulatory measures present compounding threats for community-level credit access. This study contributes to the ongoing discourse around the interplay of institutional size, regulatory responses, and lending practices, which remains an area of further research as policymakers seek to better navigate the challenges posed by systemic disruptions and ensure a more inclusive, resilient financial future for minority entrepreneurs and underserved communities.

## Appendix

All variables were measured by asking participants to respond to the following questions:

1. Please Provide the Zip Code of the Community Where Your Business Operates
2. Do you identify as a member of a historically unbanked or underbanked community?

Please Select All that Apply

- a. Yes, I identify as part of a racial minority group.
  - b. Yes, I identify as part of a gender minority group.
  - c. Yes, I identify as part of an economically disadvantaged community.
  - d. Yes, I identify as living in a rural or geographically isolated community.
  - e. Yes, I am of an immigrant or refugee status.
  - f. Yes, I identify as part of a community with limited access to traditional financial services.
  - g. No, I do not identify as part of a historically unbanked or underbanked community.
  - h. Prefer not to answer
3. Are you aware of a bank located within a 5-minute drive (within a 1–5-mile radius) of your business? (Yes/No/Not Sure)
4. In the last 30 days, have you accessed any financial services? If yes, please specify how you accessed them (e.g., through a mobile app, in person at a bank branch, by phone, etc.).

Please Select All that Apply

- a. Yes, through a mobile app
  - b. Yes, in person at a bank branch
  - c. Yes, by phone
  - d. Yes, through an online banking website
  - e. Yes, through an ATM
  - f. Yes, through a financial advisor or broker
  - g. No, I have not accessed any financial services in the last 30 days
5. Have you ever used services like payday loans or check cashing in the last year? (Yes/No)
6. Which of the following financial products/services do you currently use?

Please Select All that Apply

- a. Business Checking Account
  - b. Business Savings Account
  - c. Business Credit Card
  - d. Business Loan
  - e. Merchant Services (Point-of-Sale Services like Square or a card processing machine)
  - f. Payroll Services
  - g. Does Not Apply to Me
7. Are there any financial products/services you need but do not currently have access to? If yes, please explain
8. How did you obtain start-up capital, and/or If you need start-up capital, how did you obtain financing for your business? Please Explain
9. Please Disagree or Agree with the Following Statement: It has been harder to access financial services in the last year.

10. Please Disagree or Agree with the Following Statement: In the last 18 months, banks have started to leave my local community.
11. If you need emergency funding (money) for your business, how would you go about obtaining the funds?

Please Select All that Apply

- a. Loan from Friends and Family
  - b. Loan from an alternative lender (e.g., payday loans)
  - c. A traditional loan from a bank
  - d. Personal Loan
  - e. Borrowing against business assets
12. How many employees do you have?
  13. How many years has your business been in operation
  14. Did you Found/Create your Business? (Yes/No)

Variable	$\beta$	SE	z	p	OR
(Intercept)	-5.653	175063.6	0	1.000	0.004
Underbanked Status	74.519	151683.2	0	1.000	$\infty$
Bank Proximity	44.592	162299.1	0	1.000	$\infty$
Banks Leaving	-32.262	128113.8	0	1.000	0
Number of Employees	-4.537	14054.9	0	1.000	0.011
Years in Operation	-2.656	5625.1	0	1.000	0.070

*Note: Model shows complete separation (Residual Deviance = 0,  $R^2 = 1.000$ ). Standard errors are inflated and estimates are unreliable. AIC = 12. Fisher Scoring iterations = 25.*

Table 6. Logistic Regression Model Outputs

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