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Strategic Voting and African-Americans: True Vote, True Representation, True Power for the Black Community

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STRATEGIC VOTING AND AFRICAN-AMERICANS: TRUE VOTE, TRUE REPRESENTATION, TRUE POWER FOR THE BLACK COMMUNITY

*Maxine Burkett**

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INTRODUCTION

As a very young adult I continually experienced a fascinating disconnect with my father. I was a burgeoning activist, looking to environmental justice and civil rights as causes around which to build my world. I was decidedly Left, my father on the Right. I was a Democrat,

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long before I could make any true or actual demonstration of that fact.¹ My dad, when he did not remind me that a person's vote is his own business, would always intimate, if not explicitly declare, that he voted the Republican ticket. Shock and dismay often overtook me; a heated debate would ensue, but no resolution would be reached. We would remain, staunchly, at opposite ends of the spectrum.

Following each debate a tremendous feeling of frustration and disappointment resonated within me. This feeling, however, was not a result of a vote lost for "my" Democratic candidate. The frustration ran much deeper. I could not understand how a Black man in our society could seek and find similarity in vision—much less true representation—from a party whose interests seem antithetical to not only the political interests of Black America but to our needs as they pertain to economic, civil and social rights in this country. What kind of power or political voice could be found in a party whose actions many in the Black and Brown² communities often deemed odious and oppressive?

It was not until one particularly contentious argument that my father went beyond partisan politics to explain to me politics, pure and simple. Black people in America would never get anywhere politically, he reasoned, if their loyalties remained in one camp. The sure way for both parties to ignore our interests would be for us to remain wholly uncontroversial. In other words, Black people can get what we want only if we present ourselves as true and shrewd consumers in the political marketplace. We can get the best product only if we are truly shopping. Shrewd consumerism will force political parties to court our vote, then we could determine who is addressing "our" issues most vigilantly. The question would be who has the best product rather than if there is any viable product at all.

My dad had introduced a notion of political activity that made sense on its face. Though I knew he would remain in the conservative camp irrespective of its efficacy in the political marketplace with regard to Black needs, for the first time I was forced to consider the veracity of that idealless, calculating action. If Black people were not so loyal to the Democratic Party, perhaps they could be beneficiaries of the shameless wooing that only politicians know how to perform. Being swing voters would not really mean that we were without conviction or that we were not making an intelligent choice, it would mean that we were making the cleverest move. Despite the "smartness" of this move, however, there was something unsettling to me about this approach to the vote. The vote

1. Today, I am no longer wedded to the Democratic Party, having grown weary of the Party after accumulating frustrations over my short six-year voting history. I no longer have any party loyalties, though I have moved farther Left as both major parties have moved Right.

2. I use the term "Brown" to broadly identify non-White and non-Black communities, including Latinos and South and Southeastern Asian Americans and Pacific Islanders.

would no longer be an expression of true belief; in my view, it would become a purely instrumental and meaningless gesture. Yet after entering the political arena and becoming increasingly frustrated with the consistent elision of race and its contingent issues in American politics, the meaning of the vote has become unclear. Is it the purest disposition of one's convictions or is it a bargaining chip to be employed with unsentimental shrewdness?

This article attempts to answer that question with the interests of the Black community foregrounded throughout the inquiry. Part I begins with a discussion of Black America's party affiliation in recent history. The Democratic Party, enjoying decisive Black support since the 1960s, has done little by way of actual representation and vigorous advocacy on behalf of Black interests. Indeed, Blacks have endured a series of insults from a Party that has continually taken political communities of-color for granted. Notwithstanding the decades of disregard and the likelihood of even greater neglect to come, Blacks are doing little to truly change the destructive patterns in Democratic Party representation. This endemic inactivity is avoidable; nevertheless, Black loyalties are resilient.

Part II demonstrates that Latinos, having suffered a similar disregard of their interests, are making political inroads that are quite enviable. Their increasing willingness to become cross-voters when it best meets their political needs makes them more attractive as political consumers. The result is that the Republican Party, in notably shocking departures from the traditional party line, is offering a better product for the Latino community. In response, the Democratic Party will increasingly have to offer more coherent and substantive support and representation to compete in the Latino marketplace.

Part III argues that Blacks might be able to commandeer similar changes in the political marketplace if they were to consider casting their votes for the Republican Party. However, the consistency in voting patterns and loyalty that marks the Black community suggests that the act of voting for the other side is not so easy. This article argues that the meaning of the vote in the Black community is unique because it represents the true disposition of one's ideological beliefs. For Blacks, the vote is not merely a political instrument. Rather, it holds in it the sentimental and powerful duties and rewards of citizenship, which Black people in America were prevented from enjoying, by both law and practice, throughout much of American history. In addition, and perhaps more importantly, individualist notions of the right to vote trump strong community notions of action in the polis. For Blacks, however, the shared experience of profound exclusion and enduring struggle is what unites the community. With such ties created and re-created in American society, the vote can never be a mere tool; and the goal sought by the vote can never be solely about individual gain. As a result, until the Republican Party provides

more attractive and sincere politics, the Black community will remain, for better or worse, with the better ideological fit.

The article concludes with a discussion of the true villain in party politics: the two-party system. As long as American politics remain securely bound to the two-party system, Blacks will remain a voting block; a block that may shift, but a block nonetheless. And although this appears to be to our strategic disadvantage, allowing conviction to direct us, as well as a deep respect for the intense struggle for the franchise, will forever be a noble posture.

I. AFRICAN-AMERICANS IN THE POLITICAL MARKETPLACE

A. *The Critique*

Carroll Robinson, a Black woman and an active member of the Texas Democratic Party, remarks that despite over 120 years of the franchise “African Americans collectively are still a very politically unsophisticated group of people.”³ Her work indicates that since Blacks made the move from the Republican Party of Lincoln to the Democratic Party under Franklin Roosevelt, Black people have consistently given at least eighty-three percent of their vote to the Democratic Party.⁴ This voting pattern demonstrates a menacing consistency in party affiliation.

Robinson was writing her remarks specifically in response to the treatment of newly elected Black Congressman Gary Franks (R-CT) by the Congressional Black Caucus (CBC).⁵ The largely Democratic CBC found the presence of ultra-conservative Franks in their ranks as disquieting at best, onerous at worst. The CBC’s treatment of Franks was so exclusionary that Robinson deduced, with regret, that Blacks appear to be the only group that cannot disagree politically “without being disagreeable and vindictive towards one another.”⁶ Robinson found this reality to be both disturbing and ultimately to the disadvantage of the community as a whole:

Our “leaders” myopic and irrationally overemotional commitment to a belief in and advocacy of a “single-sided” view of bipartisan politics over the greater communal self-interest of African Americans as the sole solution to the problems confronting us has resulted in our community becoming a “ONE PARTY STATE” that is neglected and

3. Carroll G. Robinson, *It's Time to Put Communal Interest Ahead of Partisan Politics*, 19 T. MARSHALL L. REV. 109, 109 (1993). Robinson is a self-identified Democrat but offers, “[n]otwithstanding that fact, I am an African American first and foremost.” *Id.*

4. *Id.* at 113.

5. *Id.* at 109.

6. *Id.* at 111.

disrespected by our so-called "FRIENDS," and for the most part ignored by those we have been told are our enemies.⁷

The lack of sophistication in the Black community comes from its unwillingness to embrace the realities of the political game. Party affiliation, Robinson instructs, is not an end in and of itself, but rather a means to success on Election Day. A voter may choose to vote for one party or another strictly based upon ideology or some sort of greater strategic play. While most Blacks vote based on ideology, Robinson points out that ideology is a distant second to the importance of strategic play. In fact, ideology is largely irrelevant in the contemporary political arena,⁸ a lesson many White voters have learned with significant success.

As a political phenomenon, White swing voters have been a formidable group throughout history. Contemporary manifestations have been dubbed "Reagan-Bush Democrats" or "Perot voters." Though lacking a descriptive appellation, the White swing voter was hotly sought after in the most recent election between George W. Bush and Al Gore.¹⁰ On the other hand, Blacks have always been decisively *outside of* the swing-voter category. As Robinson explains, Blacks "adamantly, emotionally and stubbornly refuse to cross party lines and are therefore generally taken for granted and disrespected."¹¹

Robinson is not the only Black person to identify community voting patterns as a cause of poor Black political representation. Lani Guinier, a few years earlier, reasoned:

[T]he swing vote theory . . . presumes inter-party competition. When minority interests are not only distinct but antagonistic to those of the white majority, and when one political party presumes black loyalty while the other panders to racial hostility, such representation is merely symbolic. Thus, black interests are neither actually nor virtually represented.¹²

Writing at the close of the Reagan administration, Guinier was responding to a political environment that looked particularly bleak for

7. *Id.* at 114.

8. *See id.* at 112. According to Robinson "[i]f party affiliation truly meant more, e.g. ideological purity, then why are there conservative, neo-conservative, moderate, liberal, progressive and 'new' Democrats. . . . The answer is easy; the Democratic and Republican parties are simply two different sides of the same coin, 'majority' rule." *Id.*

9. *Id.* at 114.

10. *See generally* Paul Frymer, *Race, Representation and Elections: The Politics of Parties and Courts*, in *AMERICAN POLITICS AND SOCIETY TODAY* 56 (Robert Singh, ed., 2002).

11. Robinson, *supra* note 3, at 111-12.

12. Lani Guinier, *Keeping the Faith: Black Voters in the Post-Reagan Era*, 24 *HARV. C.R.-C.L.L. REV.* 393, 429 (1989)[hereinafter Guinier, *Keeping the Faith*].

Black America.¹³ For many commentators in the Black community, that political environment does not look much brighter today. With respect to his work on President Clinton's Race Initiative,¹⁴ Christopher Edley Jr. found that any policy action the administration might take would be inevitably preempted by America's political and racial climate. Commenting on the political environment at the close of the twentieth century, Edley explained with frustration that:

[T]he problem is that if I give you my bold idea for saving inner cities, that bold policy idea will be dead the moment it falls from my lips because there is no moral or political consensus for the bold policy measures needed to make a meaningful difference. The simple proposition is that one reason we do not have that consensus is that to take bold measures we have to care about each other, and color gets in the way of caring.¹⁵

The color line remains bright. Therefore, in order to create a more accommodating environment for itself, the Black Community must play the strategic game with its goals always in mind.

One group that has purportedly kept such goals at the forefront is the CBC. The motto of the Congressional Black Caucus is "Black folks have no permanent friends, no permanent enemies, just permanent interests."¹⁶ Yet the unwavering allegiance to the Democratic Party by the Black community and leaders alike has consistently defied the very mandate of the CBC. For Robinson, this has caused great consternation. She argues that the community refuses to accept the "reality of two party politics and its attendant implications in terms of political empowerment."¹⁷ For the Black community as a whole, this has produced an incredible disadvantage. In order to overcome this disadvantage the community must be willing to "adopt a bipartisan strategy for playing 'the game' of politics within the confines of democratic republicanism."¹⁸

13. Guinier remarked, "In light of the Reagan record of voting enforcement, racial polarization of the electorate and white politicians' limited response, both political parties must affirmatively give black voters a reason to 'keep the faith.'" *Id.* at 430.

14. President Clinton's Race Initiative was an initiative to open a national dialogue on multiracial issues in contemporary America. Its purpose was to better understand the needs of all citizens in America's broad racial spectrum, with the possibility of substantive policy responses in mind. See, e.g., <http://www.pbs.org/newshour/forum/june97/race.html> (last visited Apr. 17, 2003).

15. Christopher Edley, Jr., *Color at Century's End: Race in Law, Policy, and Politics*, 67 *FORDHAM L. REV.* 939, 955 (1998).

16. Earl Black, *Power by the Numbers: An Insider's Look at the Congressional Black Caucus*, *WASH. POST*, Jan. 7, 1993, at C3.

17. Robinson, *supra* note 3, at 111.

18. *Id.*

The rules are clear, according to Black Congressman William L. Clay, who laid out the ground rules for political participation:

If blacks are to unshackle the chains of bondage that bind us to a status of economic and political slavery, we must learn the basic rules of the political game . . . Rule number one is, take what you can, give up what you must. Rule number two is, take it whenever, however, and from whoever. Rule number three is, if you are not ready to abide by the first two rules, you are not qualified for a career in politics.¹⁹

In order to effectively represent Black interests, the Black leadership should strictly adhere to the CBC motto and follow the “rules of the game” without sentimentality.

B. The Notion of Strategic Voting

The ultimate goal of a political party is to win elections. Whether or not there is a fundamental ideological mandate at issue in a race, the winning of elections is vital to the mission and survival of a political party. The vote, as a necessary component of electoral success and a tool with which one can influence the movement of an entire party, must be cast with the election itself in mind. Although voting can be an ideological statement, it is used more effectively as a way to influence a party by promising electoral success. Professor Frymer reminds:

When parties lose elections, particularly when they have sustained losing streaks, the necessity to win becomes more and more dominant, and the party tends to unify more clearly around strategies directed at changing their losing ways. Ideologues who prefer to maintain policy agendas at the cost of winning are marginalized by those who can emphatically proclaim that winning through compromise is better than ending up with nothing at all.²⁰

With the relatively lackluster success of the Democratic Party,²¹ the margins are a familiar location for the Black electorate. That location is made worse by the great appeal of White swing voters.²² The White swing voter has inspired numerous ideological compromises and moved the

19. Black, *supra* note 16, at C3.

20. Frymer, *supra* note 10, at 67.

21. The past presidential administrations are a good example of the successes of the Democratic Party in nationwide elections. Between 1968 and 1992, there was only a single one-term Democratic administration under President Carter.

22. Terry Smith, *Race And Money In Politics*, 79 N.C. L. REV. 1469, 1515–16 (2001).

party farther Right with respect to civil rights initiatives.²³ For example, a study conducted in a suburb of Detroit on traditional Democratic voters swinging to Republican tickets showed that at least a sizable portion of party movement was due to race politics.²⁴ Swing voters “express[ed] a profound distaste for Blacks, a sentiment that pervades almost everything they think about government and politics. . . . These sentiments have important implications for Democrats, as virtually all progressive symbols and themes have been redefined in racial and pejorative terms.”²⁵

The Democrats have certainly responded to this activity. An under-emphasis on ideology and a focus on election victory have influenced Democratic strategy throughout the 1980s and 1990s. Almost consecutive losses to Nixon, Ford, Reagan and Bush pulled the Democratic platform away from the ideologically based “Great Society” of the 1960s.²⁶ While the entire party moved closer to the middle, moderates of the Party moved further right; and after the decisive 1984 presidential loss, the moderates created the Democratic Leadership Council (DLC). The DLC is noted for its departure from the civil rights and social spending agenda of the earlier Party. Without question, this strategic move by the Democratic Party was meant to woo back the swinging middle, which had been won over by the Republican Party in previous elections. This cross-over activity by White voters has been recognized not only by parties, who act accordingly, but also by more stable members of the political and governing community. Justice Breyer, delivering the opinion of the Court in *Easley v. Cromartie*,²⁷ noted: “[W]hite voters registered as Democrats ‘cross-over’ to vote for a Republican candidate more often than do African Americans, who register and vote Democratic between 95% and 97% of the time.”²⁸ This swing tendency has led to greater representation of the interests of these swing-voters.

Unlike their White counterparts, Blacks do not swing and are instead locked into the Democratic Party. They are contending with the inconstancy of White Democratic voters, and it seems logical to conclude that the only way for Blacks to gain some political power is to begin to shift. This type of “defection” would not be unusual for a racial or ethnic

23. See *id.*

24. Frymer, *supra* note 10, at 67 (quoting Stanley B. Greenberg, “Report on Democratic Defection,” report to the Democratic Party, Apr. 15, 1985, p. 13). See also Smith, *supra* note 22, at 1516 (discussing Al Gore’s “incessant pursuit” of White swing voters in the 2000 election noting his lack of attention to Black concerns, including drug sentencing disparities and the racially disparate impact of the death penalty).

25. Frymer, *supra* note 10, at 67.

26. *Id.*

27. 532 U.S. 234, 245 (2001).

28. *Id.* at 245.

minority in the Democratic Party.²⁹ However, neither a shift nor a meaningful threat to do so has occurred in the Black community. If a shift is vital to effecting change in the Democratic Party, Blacks will never advance politically if they continue to demonstrate a mob-like loyalty.

II. THE MEANING OF BLACK POLITICAL PARTY AFFILIATION

*The telos of slavery was utter dependence, best achieved by depriving the victims of any sense of their history.*³⁰

Observing the current political party affiliation of Black America, many might be surprised to know that less than a century ago the Republican Party was the party of choice of the Black constituency. What has been consistent, however, is the “utter dependence” with which Blacks have historically relied on a given political party. In a manner that seems as binding and blindly consistent as servitude, the Democratic Party has benefited from the plentiful fruits of the Black vote, while giving little or nothing in return.³¹ In many respects, the telos of slavery mirrors the political power dynamic of the Democratic Party with respect to the Black community today. This section will discuss the history of this relationship and the implications this relationship holds for Black voters in the future.

A. The Failure of Democratic Representation

*We Democrats have this habit of too often forming a firing squad in a circle.*³²

29. Jews and Italians, for example, had the same experience with the party one hundred years ago. See, e.g., Mara Liasson, *Concern within the Democratic Party about Losing the Hispanic Vote*, NATIONAL PUBLIC RADIO MORNING EDITION, Nov. 9, 2001.

30. James U. Blacksher, *American Political Identity and History* (reviewing “*The Right to Vote: The Contested History of Democracy in the United States*” By Alexander Keyssar), 95 NW. U. L. REV. 715, 725 (2001) (quoting Laurence Thomas, *Group Autonomy and Narrative Identity: Blacks and Jews*, in BLACKS AND JEWS 286 (Paul Berman, ed., 1994)).

31. This is also true with respect to actual access by Black candidates to positions within the political structure. Earl Black informs us that as late as 1964 there were only five Black members of Congress, all in the House of Representatives: William Dawson of Illinois, Adam Clayton Powell of New York, Charles Diggs of Michigan, Robert Nix of Pennsylvania and Augustus Hawkins of California. Black, *supra* note 16.

32. Joel Siegel, *Stunned Democrats Face Deep Racial Divide: Rift from Runoff Threatens Gov Run*, N.Y. DAILY NEWS, Nov. 8, 2001, at 5 (quoting David Dinkins, the first Black Mayor of New York City as he commented on the Democratic loss in the 2001 New York City mayoral race). See *infra* Part III.B for a further discussion of the race politics of this election.

History reveals that the Democrats had virtually no access to the Black vote for the entire first half of the twentieth century. From the time Blacks first won the vote, they had been loyal to the Republican party of Abraham Lincoln. The post-Civil War Republicans seemed to espouse and support Black socio-economic interests. On the other hand, the Democratic Party was notable for a membership consisting largely of White southerners who were staunchly committed to White supremacy, manifested by Jim Crow legislation and other discriminatory political measures. "The Democratic Party, the party of Southern slave owners and their Northern sympathizers, long before it was the party of F.D.R. and J.F.K., is fundamentally a White institution."³³ Accordingly, Blacks did not vote for Democrats until Franklin Roosevelt ran for his fourth term in office in 1944.³⁴ Since then, Blacks have remained firmly planted in the Democratic corner. In the last ten national elections since 1964, at least 80% of Black votes have been cast for candidates of the Democratic Party.³⁵

Given the tremendous and unwavering support of the Democratic Party by the Black community, one would assume their interests would be adequately represented. However, the Democratic Party participates in a nationwide habit of omitting race and the civil rights issues from contemporary political discourse. Democrats do this so as not to "startle" either conservative or centrist White voters "while delicately balancing subtle race-specific appeals at different moments to both black and white voters."³⁶

Democrats cannot deny the advantages gained by Black support; the instances are countless. As Guinier notes, "this solid base of black Democratic support" has aided Democrats from Louisiana to California.³⁷ For example, in 1986, the Democrats were able to gain the majority in the Senate due to the strength of four mostly southern victories.³⁸ Also, the defeat of ultra-conservative Supreme Court hopeful Robert Bork,

33. Harry Kresky, *City Power, Green Shows the Democrats' One True Color*, NEWSDAY, Oct. 25, 2001, at A47.

34. *Id.*

35. Frymer, *supra* note 10, at 64.

36. *Id.* Frymer argues that the deleterious effects of Democrats' pattern of pandering to white swing voters are exacerbated by the two party system. *Id.* at 65. See also Guinier, *Keeping the Faith*, *supra* note 12; Lani Guinier, *No Two Seats: The Elusive Quest for Political Equality*, 77 VA. L. REV. 1413 (1991). Within this two-party structure Blacks have very little chance to choose a party that will remain as loyal to their interests as Black people are to a particular party. Frymer, *supra* note 10, at 65. Frymer later describes the Republican Party as being almost totally disconnected from Black voters and suggests that they try to win elections by "making direct appeals to white voters without portraying the party as out of the mainstream on race matters." See *id.* at 64 (arguing that both Republican and Democrat approaches "leave African American interests severely underrepresented"). *Id.*

37. Guinier, *Keeping the Faith*, *supra* note 12, at 414 n.93.

38. *Id.* at 414.

dubbed the “Democrats’ greatest symbolic success in recent years,”³⁹ was largely due to Black political activity. In the 1988 presidential election between Michael Dukakis and George H. Bush, Dukakis received almost ninety percent of the Black vote.⁴⁰ Black support of Dukakis was even more decisive when one looks at the demographic breakdown of Democratic support in June 1988. At that time, Dukakis had a ten-point lead over Vice President Bush. The lead was bare among White males and only slightly better among White women. As with other presidential elections, the Black vote was pivotal. According to Professor Guinier, “[i]t was when the votes of blacks—the most loyal Democrats—were added, that Dukakis’ lead became formidable.”⁴¹

Despite this tremendous support for the Democratic Party, however, Black issues have taken a backseat in its political agenda. For example, in the 1988 election in which the Black vote was so decisive, controversial issues like welfare or more general Black interests were “omitted or masked in euphemism” by the candidate.⁴² Guinier observes, “the vision Democrats offered in 1988 hardly mentioned, even indirectly, problems of race, and it deliberately ignored connections between racism and poverty.”⁴³

Forced to be satisfied with incremental advances made by pressuring the Democratic Party, Black politicians have also had to fight hard for a voice and power within the party as well as the political communities they represent. Without power derived from outside the party structure, Black politicians would be unable to effect true change for the Black community. Congressman Clay explains that “[b]y the mid-eighties our influence and power in the House of Representatives, mainly because of the seniority system, had increased to such an extent that the Democratic leadership had no alternative but to accommodate us in order to advance their own legislative agenda.”⁴⁴ This movement by Black politicians as well as the “integration of the Congressional Black Caucus into the machinery of House Democratic leadership” was quite a significant achievement.⁴⁵ Still, support of Black leaders has historically been weak, at best, in the Democratic Party. In the 1988 primary, for example, Jesse Jackson’s second-place finish was unable to reframe the Democratic agenda. Moreover, ties to Jackson have been deemed a disadvantage, such as when Ronald H.

39. *Id.*

40. Bush received nearly sixty percent of the White vote nationwide, and over seventy percent in the Deep South. *Id.* at 414–15.

41. *Id.* at 415 n.95.

42. *Id.* at 416 n.96.

43. *Id.* at 415. Issues such as welfare were considered “controversial” and therefore avoided. See David E. Rosenbaum, *Democrats Set Change in Tone, Using Unity in Passing Platform*, N.Y. TIMES, June 27, 1988, at A1, A14.

44. Black, *supra* note 16 (quoting Congressman William L. Clay).

45. *Id.*

Brown's election as the first Black chair of the Democratic Party was criticized because of his connections with the "Jackson wing" of the party.⁴⁶

In addition to the alienation of the Black electorate and poor attempts by White leadership to build alliances with the Black leadership, strategic alienation is meticulously exercised throughout the Democratic Party's approach to the election game. An egregious example of this alienation strategy is the steps the Party has made to change its primary process. Professor Frymer explains that since the mid-1980s Democrats have actively tried to end their losing streak by manipulating the outcomes of the election earlier in the election year. For example, the Democrats began to use "Super Tuesday" to test the appeal that a candidate might have to southern White voters. The Party holds several southern state primaries on the same Tuesday, which generally results in a conservative southern candidate emerging with a substantial lead. If not, whoever is in the lead will at least influence other candidates to adopt policies consistent with the interest of the southern voter.⁴⁷ Blacks then have no choice but to support the moderate candidate, as he would undoubtedly be the most favorable choice.⁴⁸ As Frymer concludes, the Black voters are forever in a quandary—they have little choice but to unite behind a party that is self-consciously designed to appeal to White swing-voters.⁴⁹

Interestingly, this compromising of Black interests is in no way new to the representative party's modus operandi. It is as old as Black franchise itself. For example, the Reconstruction Radical Republicans compromised over the wording of the Fourteenth and Fifteenth Amendments while limiting Black voting power due to northern and southern Whites opposition to the Black franchise.⁵⁰ Their actions with respect to the White voter foretold the conduct of "Black" parties to come: "For the sake of national reconciliation among whites, they retreated at the congressional, executive, and judicial levels from the Reconstruction Amendments' promise of an end to racial discrimination."⁵¹ This trend persists even today. As late as the early 1990s, Lani Guinier reminds us that:

46. See Guinier, *Keeping the Faith*, *supra* note 12, at 415.

47. Frymer, *supra* note 10, at 73.

48. *Id.* at 64. Frymer explains that although Black voters oppose many components of the Democratic Party platform, they endorse it because it is better, for the most part, than the Republican Party platform.

49. *Id.*

50. Specifically, the compromise allowed the states to retain control over who was qualified to vote. The Republican moderates "deployed short-lived black voting power to establish the terms for readmission of the Southern states to the Union." Blacksher, *supra* note 30, at 729.

51. *Id.*

Democrats, who control both houses of Congress, seem unaware that reciprocity in bargaining requires the active promotion of black interests, not just the occasional subvention and authorization of civil rights enforcement. In other words, black legislative issues can be ghettoized from the Left as well as the Right.⁵²

Though christened the first Black President by Toni Morrison,⁵³ Bill Clinton did not depart from this traditional manner of Democratic Party play. In fact, President Clinton is noted for making it acceptable for a self-defined Democrat to be unabashedly conservative in approach, effectively blurring the line between the Right and the Left.⁵⁴ The Clinton strategy was dubbed a “third way,” employing more circuitous paths to conservative ends.⁵⁵ Though his astronomic popularity with Black America rarely wavered, Clinton went further Right to find additional votes for the 1994 Crime Bill.⁵⁶ His approach to affirmative action, “mend it, don’t end it,” was anemic.⁵⁷ Further, on a more ideological level, though Clinton publicly expressed regret for slavery, he “did not think the federal government should pay reparations to slave descendants.”⁵⁸

Black voices were also ignored during the 2000 election and were later silenced in the post-election debacle.⁵⁹ Once again, the candidates were unwilling to allow race to become a focal point of the campaign.⁶⁰ Both Bush and Gore focused their attention on the issues their strategists deemed more important to voters at the center of the political spectrum. Again, the lack of Black leaders intensified the absence of the true

52. Guinier, *Keeping the Faith*, *supra* note 12, at 416.

53. Frymer, *supra* note 10, at 68.

54. *See id.*

55. Frymer, *supra* note 10, at 67.

56. *Id.* at 68.

57. *Id.*

58. Chris K. Iijima, *Reparations and the “Model Minority” Ideology of Acquiescence: The Necessity to Refuse the Return to Original Humiliation*, 19 B.C. THIRD WORLD L.J. 385, 389 n.13 (1998)(quoting President Clinton).

59. Though fascinatingly unprecedented in other areas, Frymer argues that on matters of race, the 2000 election was unremarkable. Frymer, *supra* note 10, at 56.

60. Frymer argues that the elision of race is, in fact, more pervasive than it appears on its face:

Even in the most civil of elections (such as 2000), national political discourse is merely racially generic—the parties focus on narrow sets of issues that are believed to be without any racial content. . . . [I]n practice it amounts to discourse that is quite race-specific, as it focuses on issues that can be discussed in white households without implicit connections to racial minorities.

Id. at 59.

political voice the Black voter demands.⁶¹ For example, in a frustrating censorship of Black outrage, the Gore campaign “quietly asked” Jesse Jackson and Al Sharpton to mute their attempts to rally protest against suspected voting rights violations in Florida.⁶² Thus, the Black voter or candidate has dwindling influence in the party they continue to support.

This centuries-old pandering continues to marginalize Black interests, and it shows no signs of stopping. In the name of a false notion of racial harmony—harmony being equated with the absence of Black interests—intelligent and complicated debates on policy issues give way to what are essentially White interests. Frymer explains, “[I]n the current context, [the pandering to swing voters] has resulted in a defensive politics: Democrats appeal to African American issues at the base level calculated to keep blacks in the party.”⁶³

B. *Our Resilient Loyalties: The Brief Tale of Gary Franks and the CBC*

The most telling demonstration of the Black community’s unflinching support of the Democratic Party is its treatment of “defectors.” Black Republicans are often treated as pariahs in the Black political community. Although the prevalence of this (still quite small) political identity is increasing, there remains a general discomfort with those who identify with the party whose position, or lack thereof, on Black policy issues is generally deemed odious. Sometimes referred to as an “Uncle Tom,”⁶⁴ the Black Republican is most benignly known as a “race-traitor.”

Occasionally, the presence of even one Black conservative proves troublesome. The Congressional Black Caucus was forced to come to terms with its own “prejudices” when faced with conservative Republi-

61. We are further limited in raising our own voice with the Democratic Party by the inability of Black leaders to make strides in their own political careers. This inability is also attributable to Party politics; the Democratic Party for fear of ultimate loss in November thwarts a search for formidable Black leaders. *See id.* at 60.

62. *Id.*

63. *Id.* at 59–60. Frymer presents the Hobson’s Choice by adding, “Republicans address racial issues with only enough care not to frighten white voters with unattractive racism.” *Id.* at 60.

64. In an editorial, Jack Sims, mayor of District Heights, Maryland, and President of the Maryland Black Mayors, takes another official to task for his comments about a Black Republican. Sims queries:

Michael Steele is a Prince Georgian, an American and a Republican, and he has an African American heritage. In your statement to the Gazette on September 28, you refer to him as an “Uncle Tom.” Mr. President, does your comment mean that all African American Republicans are “Uncle Toms”? If we start calling each other names, then what’s next? The “n” word?

can Gary Franks' membership. Franks, a Black man, was elected by Connecticut's ninety percent White fifth district and is the most conservative of the three Republican delegates from the New England state.⁶⁵ Due to personal, ideological and political differences, the CBC considered ousting Franks, though membership is only contingent upon his status as a Black congressman. More than the Congressman being a loyal, toeing-the-party-line Republican, the Democrats charged that Franks held "historically blasphemous and racially traitorous views on civil rights."⁶⁶ Franks, for example, opposed the creation of majority-minority congressional districts under the 1965 Voting Rights Act—districts from which all of the new southern CBC members were elected in 1992.⁶⁷

In spite of clear differences between Franks and the rest of the membership, official bipartisanship, as painful as it may be, would prevail in the end. Then CBC Chairman, Representative Kweisi Mfume (D-MD), asked rhetorically, "[c]an the Congressional Black Caucus accommodate diversity and plurality?" Mfume's lucid response was that "It must. And as long as I am chair it will."⁶⁸ As discussed below, the changing political tide makes it especially important for African-Americans not to succumb to internal dissension.

C. Interethnic Competition: Dealing with the Decreasing Piece of the Pie

If significant power within the Democratic Party ever existed for Blacks, that power is being challenged by the changing demographics of the nation. The close of the last century witnessed an increase in immigrant persons of color who are decisively altering the political landscape. That increase is only going to grow more consequential as political parties continue to respond to the change in the electorate. Once the most coherent and sizeable racial minority in the United States, Blacks will now have to "compete" with the political needs of newer citizens. Their voice will increasingly become only one in a loud chorus.

With the growth of "ethnic minority" groups, especially Latinos, Asians and Pacific Islanders, as well as Blacks, Walter Farrell, Jr. and James Johnson predict, among other things, growing tensions between these groups vying for political power.⁶⁹ Already, the 2000 census indicates that

65. Frank McCoy, *Can the Black Caucus Be Bipartisan?*, BLACK ENTERPRISE, Jan. 1, 1994, at 22.

66. *Id.*

67. *Id.*

68. *Id.* To that end, Mfume devised a solution that allowed the CBC Democratic Caucus to hold private meetings, debating and voting on various policies. The full Caucus including Franks would then debate its decisions again. *Id.*

69. See generally Walter C. Farrell, Jr. & James H. Johnson, *Minority Political Participation in the New Millennium: The New Demographics and the Voting Rights Act*, 79 N.C. L. REV. 1215 (2001). Farrell and Johnson argue that conflicts loom in the 21st century political horizon,

political power is shifting in the South and West, where twelve congressional seats have been added, due to population resulting from the increase in the number of immigrants from countries south and west of the United States.⁷⁰

Currently, in the 107th Congress, Blacks occupy 39 Representative and Delegate seats, constituting the largest of-color group representation.⁷¹ Latinos follow with fourteen seats, Asians and Pacific Islanders, eight seats. This composition, however, will undoubtedly change. By the middle of this century, the United States is projected to be a racially pluralistic society, with no one racial group holding a majority in the population. By 2050 the U.S. population is expected to reach 400 million, a 50.2% increase from 1992. Eighty-two million members of the population, accounting for twenty-one percent, will be immigrants and their children who arrived after 1991. By then, the Black population will almost double from its current size to sixty-two million.⁷² At the same time, the Latino population, for example, is expected to jump from thirty-four million to eighty-one million.⁷³

The worst-case scenario for Blacks, which is not unlikely, is even greater political isolation. This is due in part to the fact that many immigrants adopt the prejudices against the Black community that are, arguably, part and parcel of citizenship in American society. Farrell and Johnson note that interethnic intolerance, poignantly illustrated by the Los Angeles riots (discussed in greater detail *infra*),⁷⁴ is made worse by the fact that "newly arrived immigrants often bring with them negative perceptions, stereotypes and prejudiced attitudes toward America's racial minority groups."⁷⁵ Blacks are viewed negatively with regard to intelli-

and in order for minority groups to advance their political interests they must collaborate. They insist, "[M]inorities of all racial and ethnic hues must make a conscious effort to reduce inter-group competition by embracing each other's concerns and devising collaborative strategies to facilitate progress across groups." *Id.* at 1242. The conflict arising out of competition for political power is only one of three challenges they associate with the actual and projected increase in groups of color. The other two are the establishment of majority-minority districts and the factors and/or initiatives that work to reduce voter participation among these groups. *Id.*

70. *Id.* at 1225. These countries are Mexico and those in Central America and the Pacific Rim.

71. *Id.* at 1227. Thirty-eight of the Representatives are Democrats and members of the Congressional Black Caucus; one is not.

72. *Id.* at 1218-19.

73. *Id.* Projections show that the largest increase will be in the Asian population. It is projected to grow by 412% followed by: Latinos, 238%; Native Americans, 109%; Blacks, 94%; and Whites by 29%. *Id.* It is interesting to note, however, that only one out of every four voting-age adults in predominantly Latino communities voted in the 2000 presidential election. Jamie Dettmer, *Future Hinges on Hispanic Vote*, INSIGHT, Oct. 1, 2001, at 14. Thus, the perceived "threat" may be exaggerated.

74. Farrell & Johnson, *supra* note 69, at 1224.

75. *Id.* at 1219.

gence and welfare dependence.⁷⁶ All things considered, as long as the Black community remains “the most rigidly segregated” of American of-color groups,⁷⁷ Blacks will literally have to go-it-alone.

The growing Latino population, in particular, complicates the political arena for Blacks. Politically, Latinos are attracting incredible attention due to their growing population and the concomitant increase in Latino voter participation. Christopher Edley, Jr. observes, “[t]aking stock politically, one has to observe that the most important development afoot . . . is the burgeoning Latino population in California and in several Eastern states. . . . [W]e seem to be on the verge of what could be a very important political realignment.”⁷⁸ The realignment might make it more difficult for the Black voice to be heard, and the political consequences of that disconnect will continue to occur in spite of—or perhaps because of—the two groups’ close proximity to each other, both physically and socio-politically. Farrell and Johnson note that as Latinos increasingly move into traditionally Black residential areas, the conflict over political representation between Latinos and Blacks will only become more contentious.⁷⁹ If community conflicts are any measure, the political conflict will prove destructive to the Black community.

The Los Angeles riots, and the manner in which they were framed, demonstrated how the political landscape might be reframed. A May 1992 editorial, written in Mexican-American newspaper *La Presna* (San Diego), pontificated about the “true” subtext of the riots one month after the fact:

Though confronted with catastrophic destruction of the Latino businesses, which were 60% of the businesses destroyed, major looting by Blacks and by the Central Americans living in the immediate area and a substantial number of Hispanics being killed, shot and/or injured, every major television station was riveted to the concept that the unfolding events could only be understood if viewed in the context of the Black and White experiences. They missed the crucial point: [t]he riots were not carried out against

76. A study asked one group to rate another more negatively on characteristics including the following: intelligence, welfare dependence, being hard to get along with, willingness to have intimate and prolonged social contact with the other racial and ethnic minority groups. *Id.* at 1221.

77. *Id.* at 1222. Blacks are suffering, most acutely, from a systemic reality. For example, “contemporary observations of racial residential segregation . . . suggest that racial segregation in America is approaching apartheid proportions.” *Id.*

78. Edley, Jr., *supra* note 15, at 943.

79. The growth in Latino political activity is not mere conjecture. Tony Cardenas, State Assemblyman from the San Fernando Valley, observes, “[t]he Latino community feels more empowered by the population growth and more included, and they’re voting in greater numbers.” Michael Janofsky, *Death Puts Focus on Demographic Change*, N.Y. TIMES, Dec. 24, 2000 at 16.

Blacks or Whites, they were carried out against the Latino and Asian communities by the Blacks!

What occurred was a major racial confrontation by the Black community, which now sees its numbers and influence waning.

Faced with nearly a million and a half Latinos taking over the inner city, Blacks revolted, rioted and looted. Whatever measure of power and influence they had pried loose from the White power structure, they now see as being in danger of being transferred to the Latino community. Not only are they losing influence, public offices, and control of the major civil rights mechanisms, they now see themselves as being replaced in the pecking order by the Asian community, in this case the Koreans.⁸⁰

Farrell and Johnson report, in contrast, that there was actually little evidence of Blacks attacking Latino businesses during the riots. Furthermore, most of the people arrested for burning and looting were of Hispanic background. However, the authors maintain, "these perceptions and stereotypes have gravitas in the Hispanic community." Though clearly not the disposition of all members of the Latino community, *La Presna* introduced a way to frame the issues that are taking shape. Ronald Brownstein notes that the "relentless Latino population growth" is "destabilizing" old political accommodations between Blacks and Whites, "creating a three-way struggle for influence."⁸¹

Nascent evidence of this power struggle has been most apparent in mayoral races in major cities nationwide.⁸² In Houston, the 2001 election between the incumbent Black Democrat and a Latino Republican pitted the two groups against one another.⁸³ In Los Angeles the unification of Black leaders with James Hahn, a white moderate Democrat, facilitated an unusual coalition in which eighty percent of the Black voters joined White conservatives and liberals, allowing Hahn to defeat Hispanic candidate Antonio Villarogosa, the frontrunner during the race. Brownstein contends that Hahn had an advantage with the Black community, not

80. *Id.* at 1223.

81. Ronald Brownstein, *Latinos Are Stirring the Political Pot*, NEWSDAY, Nov. 28, 2001, at A41.

82. *See id.* (discussing the elections in Houston in 2001, New York in 2001, and Los Angeles in 2000).

83. *Id.* Brownstein describes the races as "bitter competition." Here, Latino votes, typically cast by Mexican-American Democrats, were willing to make a Cuban-American Republican become Houston's first Latino mayor. *See* John Williams, *Election 2001/Voter Turnout a Boon for Sanchez/Strong GOP, Hispanic Support Surpasses Pundits' Predictions*, HOUS. CHRON., Nov. 8, 2001, at 23.

only because he has longtime family ties to the community, but partly because Blacks feared that a Latino mayor would tip the local balance of power out of their favor.⁸⁴ In New York City,⁸⁵ though there was greater unity between the two groups during the primary elections, Farrell and Johnson recount a conflict between prominent Black leader Al Sharpton, and Latino candidate Fernando Ferrer. Ferrer rejected Sharpton's demand for the candidate's endorsement of Black candidates for two specific city offices. Sharpton offered his endorsement of the Latino candidate in exchange for the meeting of his demand.⁸⁶ Though his offer was rejected, Sharpton did support Ferrer, which helped him win seventy percent of the Black vote in the Democratic primary against Mark Green. However, the early coalition building that occurred collapsed on the November election day, when almost half of the Latino vote went to Republican candidate Mike Bloomberg.⁸⁷

In the major mayoral races, ethnic conflicts (as they have been nationally), are endemic to the Democratic Party, the chosen political party for these two of-color groups. However, the outcome of the New York mayoral race may portend seismic changes in political identification over the next few decades. Chris Garcia, a political scientist at the University of New Mexico, postulates, "Perhaps the mayoral races in Los Angeles and New York are a harbinger of things to come. We may have the beginning of Latinos becoming much more aware of group self-interest separate from the Democratic Party."⁸⁸ In response to frustrations with the Democratic Party, Latinos are demonstrating, stridently, their unwillingness to accept the failed promises of access and power. Unlike their Black counterparts, Latinos view movement to the other party as a possibility in their struggle for a political voice.

This shift has significant implications for Blacks, beyond the potential gains for the adversarial party. And perhaps, there is something to be learned. Rather than viewing them as a threat, African-Americans might best view Latino voters as an emerging model.

84. Brownstein, *supra* note 81.

85. For more detailed discussion of this mayoral race, see *infra* Part III.B.

86. Farrell & Johnson, *supra* note 69, at 1245.

87. Brownstein, *supra* note 81. Interestingly, rather than viewing the New York City mayoral race as a failure of "structural racism" endemic to the Democratic Party, Myriam Marquez, referencing the Puerto Rican community, wrote, "They've left behind the divisive racial politics of New York, where Hispanic voters this month were so turned off by black/Hispanic tensions that huge numbers of Latino Democrats bolted to the GOP's candidate." Myriam Marquez, *Politically Speaking, Where is the Hispanic Community?*, ORLANDO SENTINEL, Nov. 27, 2001, at A15. Here Marquez frames the Latino "defection" as a consequence of an interracial power struggle amongst the two largest of-color groups.

88. Liasson, *supra* note 29.

III. EMERGING POLITICAL ACTIVITY AND ACTIVISM IN THE LATINO COMMUNITY

A. *The Growing Population and the Influence of Demographic Shifts on the Political Tide*

The 2000 census affirmed growing suspicions that Blacks were no longer the largest of-color group in the United States.⁸⁹ Latinos have experienced the most profound demographic changes over the last few decades, recently surpassing Blacks in sheer numbers.⁹⁰ In California, for example, as of 1976 the White American population was seventy-eight percent, dwarfing the numbers of any of-color group.⁹¹ The Latino population, along with Asian Americans, however, contributed to eighty-nine percent of California's large population growth over the last twenty-five years.⁹² In Los Angeles, alone, the Latino population is forty-seven percent, again larger than any other of-color group. L.A.'s east coast counterpart, New York, has a twenty-seven percent Latino population, almost equal to the Black population.⁹³ One commentator speculates that if current immigration trends continue in a similar fashion, the proportional population of non-Hispanic whites will fall dramatically.⁹⁴ This demographic change has certainly reverberated politically.

The Latino population is disparate in national origin, culture, and socio-economic status. However, in spite of this intra-group diversity, Latinos have demonstrated a strong political bias in favor of the Democratic Party.⁹⁵ James Gimpel cited a *Post/Kaiser/Harvard* poll of 3800 Hispanic respondents as a reliable measure of Latino political preferences by national origin.⁹⁶ According to Gimpel, the Democratic Party remains

89. James G. Gimpel, Q: *Is the GOP Outreach to Latinos Likely to Succeed?* (Symposium), *INSIGHT*, Oct. 15, 2001, at 40. See also Lynette Clemston, *January 19–25: National; Hispanic Power*, *N.Y. TIMES (NAT'L)*, Jan. 26, 2003, at 2.

90. *Id.*

91. Edley, *supra* note 15, at 950. This figure is from 1976.

92. *Id.*

93. Brownstein, *supra* note 81.

94. Gimpel, *supra* note 89, at 41.

95. *Id.* Gimpel asserts that despite coming from dozens of countries, each with their own cultural traits and traditions, the Democratic Party line has historically been more attractive.

96. Removing the Cuban population, the Democratic advantage ranges from a low of 21.5 points among Salvadorans to a high of 57.6 points among Dominicans. Among Mexicans, the largest Latino group in the United States, the Democrats have a 22-point edge over Republicans. The Democratic advantage is more formidable when one considers that the Republican advantage in the Cuban political community is only six points. Gimpel's conclusory analysis of the poll data insists that the Democratic advantage is strong regardless of economic standing. In fact, Latinos with "longer tenure" in the United

attractive to most Latinos due to the total effect of its immigration policy, healthcare, social welfare, and social programs.⁹⁷

The consistent and growing support of the Democratic Party by Latinos might appear daunting to the Republican Party.⁹⁸ Regardless, Republicans view pursuit of the Latino vote as an imperative. The cost of not pursuing this emerging demographic is a threat calling many Republicans into uncharacteristic action.⁹⁹ And, despite Gimpel's evidence of unshakeable Democratic support, there are signs that the Latino vote may be increasingly up for grabs.

In the past, the strength of the Latino vote has been in the Democratic camp for both presidential and congressional races.¹⁰⁰ However, Latinos are seeking greater political power "more urgently than ever;" and in spite of strong efforts, there has been, as with other racial minorities, difficulty "getting in the door."¹⁰¹ With knowledge of their growing political power and the degree to which they might influence major elections in the future, Latinos are self-consciously examining their strategies for getting in the door. Acknowledging that Central Florida, for example, will be at the "center" of presidential elections in the future, Andres Gonzales, the Democratic National Committee's Latino Affairs point man, remarked, "We realize that either party, to be dominant in the future, must have the Latino vote."¹⁰² This sentiment is not unique to Gonzalez; this type of political self-consciousness is gaining greater complexity and strength among the Latino political community, from leaders to laypersons.

Writing in the mid-1990s, Executive Director of the Southwest Registration Project, Ricardo Martinez, offers a comprehensive present and future view of the Latino participation in the political landscape.¹⁰³ For Martinez, Latino power in the U.S. political market can only occur once all Latinos realize their size and strength and act on that using their

States and "greater educational attainment" increasingly vote in favor of the Democratic Party. *Id.*

97. *Id.* at 43.

98. See generally Dettmer, *supra* note 73. Dettmer makes observations similar to those of Gimpel. She also states that the once healthy advantage among Cuban Americans has diminished to "a meager 6%." She adds, "More alarming for Republicans is that, unlike a lot of European minority groups in the past, Latinos appear to identify just as much with Democrats the more educated they are or, if they're immigrants, the longer they've lived in the United States." *Id.* at 14.

99. See *infra* Part III.C n.138 and accompanying text.

100. Yet, importantly, that strength is dulled by the relatively low rates of voter registration and election day turnout as compared to Black and White voters. Dettmer, *supra* note 74, at 14.

101. See Brownstein, *supra* note 81.

102. Quoted in Marquez, *supra* note 87, at A15.

103. See Ricardo Martinez, *Motivation of Latino Voters for Political Empowerment*, 14 CHICANO-LATINO L. REV. 103 (1994).

own voice. He argues “We began to organize our vote—not to support presidential candidates, gubernatorial candidates, the Democratic Party, or the Republican Party—because none of the aforementioned wanted to see the Latino vote grow to any extent.”¹⁰⁴ He makes the further point that the dramatic increases in voter registration among Latinos nationwide were achieved, solely, by the efforts of Latinos in the courts and in the community. The Democratic Party and the Republican Party, during this period of growth, were of no help.¹⁰⁵

Latino politics is notable, first and foremost, by its growing power that since the mid-1990s is foolish to ignore. As the Latino political community becomes increasingly self-aware, its allegiances become even more devoutly based in the community, to the exclusion of a particular national party. Martinez insists “[t]he ‘sleeping giant’ must be addressed, not by Democrats, the courts, or the legislature, but by our community.”¹⁰⁶ Determinations must be made as to whether or not a “leader” or “representative” deserves community support. Such support needs to be earned and, more importantly, vigilantly maintained.

B. Threats of Flight: The Increasingly Tenuous Relationship Between Latinos and the Democratic Party

Though the story is not specific to the City of New York, the 2001 Mayoral election is a poignant allegory for the growing tensions between Latino voters and a Party that pathologically takes its voters *and* leaders of-color for granted. Described as one of New York City’s largest, most loyal of-color groups, Latinos usually give Democrats roughly seventy-five percent of their vote.¹⁰⁷ However, Latino leaders are pushing the Democratic Party to consider a new political landscape. Bronx Democratic Party leader Roberto Ramirez insists that it is obvious that the party must do some “soul-searching” and affirmatively work to woo alienated voters of color in New York.¹⁰⁸ The message is clear: The Latino community is not

104. *Id.* at 104.

105. *Id.* According to Martinez, between 1976–88, Latino voter registration grew by 83%. The numbers were as follows: California—95.6%, Colorado—91%, Arizona—65%, New Mexico—52%. Voter turnout in five western states increased by a total of 61%. The numbers: California—28.9%, Colorado—88%, Arizona—64%, New Mexico—59%, Texas—114%. *Id.*

106. *Id.* at 106.

107. Liasson, *supra* note 29. See also Juan Andrade, *Latinos Taught New York Pol a Lesson; Moral of the Story: Don’t Disrespect Hispanics and Expect to Win*, CHI. SUN-TIMES, Nov. 18, 2001, at 38. Andrade writes that no one could envision Green’s loss when Democrats, generally outnumber Republicans five to one.

108. Ron Howell, et al., *Election 2001, Latino Vote No Longer a Lock*, NEWSDAY, Nov. 8, 2001, at A6. Howell asks, “How does [the Democratic Party] come to accept the basic notion that there is a new political landscape in New York?” *Id.*

convinced that the Democratic Party has done enough to deserve the community's support.

Since 1989, the Latino vote for Democratic candidates has been gradually slipping, tracking waning faith in the Party.¹⁰⁹ With a question that might have seemed near political blasphemy just years ago, one Puerto Rican voter, Juan Jose Rosario, demonstrated this waning faith in the Party by asking, "What are the Democrats doing for us?"¹¹⁰ Democrats apparently have not created a sufficient amount of political empowerment for Latinos to gain credibility and a substantive connection with the community.¹¹¹ The Party, generally, and Mark Green, specifically, has spoken out of both sides of their mouth. Reporter Harry Kresky, using a Mark Green gambit as an illustration, demonstrates the hypocrisy of "party-speak":

In a 1999 letter to the Justice Department claiming that a shift to non-partisan elections would violate the Voting Rights Act, Green contended that because most blacks are Democrats, they can exercise more influence in a Democratic primary than in a nonpartisan election where their voting strength would be diluted by white Republicans and independents. He argued that the only shot a black or Latino mayoral candidate would have is through the Democratic Party. But when a legitimate candidate arose to carry that mantle, Green did what he could to knock him down.¹¹²

As was evidenced by the 2001 mayoral election, the Latino community has held the Democratic Party accountable. In that election, a vital number of Latinos voted against Democratic candidate Mark Green or stayed at home.¹¹³

In light of New York City mayoral history, the presence of racism in the 2001 election is not exceptional. When considering the five-to-one edge¹¹⁴ Democrats have over Republicans, New York becomes notable for its lack of Black or Brown representation over the years.¹¹⁵ The city has

109. Mirta Ojito, *City's Hispanic Shift, Moving Toward G.O.P.*, N.Y. TIMES, Nov. 8, 2001, at D5.

110. Marquez, *supra* note 87.

111. *Id.*

112. Kresky, *supra* note 33.

113. See Ojito, *supra* note 109.

114. Andrade, *supra* note 107. See also Kresky, *supra* note 33.

115. New York seems to be peculiar in its absence of of-color mayors throughout its history. "By contrast, according to the National League of Cities, in 1997 there were 40 Black mayors of cities with populations of 50,000 or more, and 29 of those cities elected their mayors through nonpartisan elections." See Kresky, *supra* note 33.

only had one Black mayor—one-term Mayor David Dinkins¹¹⁶—and no Latino mayors. The 2001 mayoral election was overtly riddled with race politics, from the Democratic Party primary to the November election day. Fueling the arrogance that would later lead to his undoing was Green's inability to envision losing a significant number of the of-color votes in a city that favors Democrats so heavily. Yet, his tactics were so insidious that his use of race could do nothing but alienate some of the Party's most loyal supporters.¹¹⁷

November 6, 2001 produced a surprising loss for Democrats in New York City. In what one commentator has described as a powerful blow for respect and political independence,¹¹⁸ 100,000 Latinos voted for "Republican-lite"¹¹⁹ Michael Bloomberg. Forty-one percent of the Latino voters that voted for Democrat Ferrer in the primary switched to Bloomberg the day it mattered most for Democrats.¹²⁰ Bloomberg would win this race by 45,000 votes.¹²¹

The loss occurred in the wake of the Democratic Party's fragmentation and increasing evidence of Latino disenchantment. Ferrer opined that the Latino "switch" was a necessary outcome because the Democratic

116. According to Kresky, Dinkins lost his bid for a second term when tens of thousands of White Democrats "deserted" him to vote for Republican candidate Rudolph Giuliani. In sum, Kresky finds politics in New York City, generally, and this election, specifically, noteworthy because of its demonstration of the "structural racism" of the Democratic Party. *Id.*

117. Green ran a particularly divisive campaign, beginning with his race against Fernando Ferrer. The last day before the primary election, Green ran a television ad against Ferrer asking, "Can we afford to take the chance?" *Id.* Further, voters in predominantly white areas received telephone calls warning voters that a vote for Ferrer was a vote for Al Sharpton. Such action worked as an indicator of the potential power and participation Latino leaders would enjoy within a Green administration. With such clear exclusion of Latinos in his electoral coalition, exclusions from his governing coalition would logically follow. As a consequence, while exit polling indicated almost seventy-five percent of Black voters voted for Green, the Latino vote nearly split in half. *Id.* See also Ojito, *supra* note 109.

118. Andrade, *supra* note 107.

119. Bloomberg was a Democratic Party member just prior to his decision to run for mayor. Adam Nagourney, *Conquered Party Bitterly Divided Across the City*, N.Y. TIMES, Nov. 8, 2001, at A1. Nagourney notes that Mr. Bloomberg was, in fact, a lifelong Democrat. *Id.* A shift in party affiliation by the Latino political community might not be as notable, ideologically speaking, when one considers that, not only was Bloomberg a Republican newborn, but also that New York City Republicans tend to be farther left than their counterparts nationwide. In other words, Republicans from a major city in the Northeast tend to be far more palatable than many, perhaps most, other Republican leaders. Tellingly, while Bloomberg's capturing of forty-seven percent of the Latino vote is noteworthy his yield was only four points higher than Mayor Guiliani in his 1997, second term election. Ojito, *supra* note 109.

120. Siegel, *supra* note 32.

121. Andrade, *supra* note 107.

Party “fails to understand its core constituencies.”¹²² Bronx Assemblyman and Democrat Jose Rivera did not campaign for Green on Election Day.¹²³ He explained, “I took the day off. Mark Green’s people thought they could prove they could win without the Latino vote. They gave it their best shot, and they failed.”¹²⁴ The overt use of race, on one hand, and its elision,¹²⁵ on the other, was considered just desserts¹²⁶ for the sometimes-principled Democrat.¹²⁷ However, Green is merely one example of a systemic problem of the Democratic Party.¹²⁸

Interestingly, while Black voters remained loyal, Latinos sparked a crisis. Angelo Falcon, Senior Policy Executive with the Puerto Rican

122. Siegel, *supra* note 32. Elsewhere, Ferrer was quoted saying, “I think we ought to understand what happened yesterday, the Democratic Party had been used to for a long time taking a lot of people for granted. They bolted, notwithstanding the recommendations of people like me or other people.” Nagourney, *supra* note 119.

123. Rivera was not alone in his boycott of traditional Party-wide election day campaigning. Howell and Taylor described “bitter” Black and Latino Democratic leaders sitting out the day of the campaign and enjoying their own party in the Bronx that evening. They wrote, “[e]ven Bill Lynch, the respected Democratic loyalist and strategist who guided former Mayor David Dinkins to victory more than a decade ago, did not campaign for Green. ‘I am going to get a haircut,’ Lynch said yesterday afternoon.” Ron Howell & Curtis Taylor, *Democrats’ Task: Pull Party Together*, *NEWSDAY*, Nov. 7, 2001, at A7.

124. *Id.*

125. By this I mean that there was a profound, and consequential, disconnect between Green and his sizeable of-color constituency. Green did not sufficiently consider the effects of his willful disregard of the Latino community. Angelo Falcon remarked, “The way [Green] was able to basically use the race card showed how disconnected he was from the Black and Latino base of the Democratic Party.” *Id.*

126. According to Andrade, the Latino vote for Bloomberg was not as much a vote for the Republican ticket as it was a vote against Green, “whose arrogance and racist tactics were too much for Latinos.” He explains further:

Green made the biggest mistake of his political life by assuming that Latino votes were incorrigible Democrats who would invariably vote overwhelmingly for the Democratic nominee. . . . Green believed incorrectly that Latino voters would just overlook or forget about whatever he said or did to Ferrer in the heat of a campaign, because the alternative would mean electing a Republican mayor.

Andrade, *supra* note 107.

127. Representative Major Owens (D-Brooklyn) remarked, “Mark should have learned a lesson from this. . . . I think he is a person of high principles but . . . sometimes he doesn’t put enough value on his relations with the people on the bottom.” Howell & Taylor, *supra* note 123.

128. See, e.g., Siegel, *supra* note 32 (“The race was a microcosm of the struggle faced by national Democratic leaders, who are trying to balance various interest and ethnic groups.”). Using a disturbingly accurate analogy, Dennis Rivera, head of the healthcare workers union and Ferrer supporter, said in reference to the Party’s treatment of minority voters in this campaign: “It’s almost a battered woman syndrome—no it doesn’t matter what I do to you, you have to be with me.” Nagourney, *supra* note 119. Democrats have now lost the last three elections. That fact, according to Rivera, is “basically an indictment of the Democratic Party.” *Id.*

Legal Defense and Education Fund, declared the end of a politically abusive relationship: "It should shake the Democratic party to its foundation. For too long, the Democrats have taken the Latino vote for granted. They have insulted us. They have ignored us, and still we voted for them. No more."¹²⁹

This declaration of independence is loud and determined.¹³⁰ Declarations have ranged from admonition to clear threats.¹³¹ The message sent to "big-city Democrats," according to Brownstein, is that they can "either make more room in city government for Latinos or turn over the keys to the GOP."¹³² Finally, emphasizing the vital importance of the Latino vote, Juan Andrade, author and President of the U.S. Hispanic Leadership Institute, emphatically declared, "Candidates who try to win in a city with a substantial Latino population without including Latinos in their electoral coalition can forget about involving us in their governing coalition because there isn't going to be one."¹³³

Andrade's insistence on the strength of the Latino vote is clear. While many Latino voters cannot stomach voting for a Republican candidate,¹³⁴ many Latinos chose to support Bloomberg, who by most accounts is not "perfect," but did not play the race card.¹³⁵ Instead of noting the number of White Democrats that have chosen to crossover and vote for the Republican candidate, Andrade contends that New York City had two consecutive Republican mayors for the first time in its history in large part due to Latino "defection."¹³⁶ He writes that Bloomberg follows Guiliani "thanks to an unrepentant, arrogant Democrat and a newly

129. *Id.*

130. Hints of similar dissent among Blacks have come from purported Black leader Al Sharpton. Sharpton insisted, "I refused to help Green, and by anyone's estimation it hurt him, but there's nothing the party can do to me. What can they do to me?" Nagourney, *supra* note 119. The Democratic Party did complain about the havoc Sharpton was wreaking. Howell, *supra* note 108. Sharpton's estimation over the impact he made on voter choices may be slightly overstated, however. The Black community still overwhelmingly supported Green on election day. Brownstein, *supra* note 81.

131. Anthony Miranda, President of the 10,000 member Latino Officers Association of New York City, encourages "the Hispanic community and the community at large . . . not to fall into the old politics of falling into one party versus another party." *Across the Nation—Latino Group Switches to Bloomberg*, SEATTLE TIMES, Oct. 22, 2001, at A8.

132. Brownstein, *supra* note 81.

133. Andrade, *supra* note 107. Andrade also warns that "Democrats who think they can continue to offend the Latino community, disrespect our leaders or deny us representation, don't deserve Latino support and shouldn't get it . . . we don't have to tolerate them anymore. And that should be good news for Republicans going into 2002." *Id.*

134. Howell and Taylor interviewed one woman whose antipathy towards Republicans was particularly acute. South Bronx resident Ebony Veney, 24, said that she "categorically refuses" to vote Republican. On election day she preferred not voting at all rather than voting for Green, whom she believed was "two-faced." Howell & Taylor, *supra* note 123.

135. Kresky, *supra* note 33.

136. Andrade, *supra* note 107.

invigorated Latino electorate."¹³⁷ The Latino electorate is powerful enough, if Andrade and similar commentators are correct, to change the political tide, perhaps to change history.

C. Republican Prospects for the Future

If Democrats continue to act in the racially divisive ways that they have demonstrated, Republicans may not have to play very many cards at all in order to win the Latino vote. The Republican Party, however, is not leaving this potentially powerful realignment to chance (or Democratic Party failings, as the case may be). The Party is not only wooing the Latino electorate, by offering a willing ear, but also promising handsome rewards for its leaders.¹³⁸ More fundamentally, however, some in the Republican Party believe that the Latino electorate may find more than just money and power on the Right. Ideologically, Republicans have attempted to create ties, however sincere, with Latinos sometimes-conservative political leanings. In an assessment of the burgeoning political landscape, Republican National Committee Chairman Jim Gilmore opined:

I certainly think that the Democrats have not consolidated the Hispanic community as part of their coalition, and these races, of course, continue to demonstrate that. But we're not worried about what the Democrats are or are not doing. We're focusing on being for the Hispanic community and offering the common values and goals that we believe that we all share of entrepreneurship and independence and strong family values. This is the essence of the Hispanic community, and we think they're natural Republican voters.¹³⁹

Gilmore's convictions are belied by the relationship that the Republican leadership has fostered with its constituents. Only eight years ago, the Republican platform in California was marked by its nativist approach to new policy. Pete Wilson crafted his re-election campaign for governor around proposals to deny state benefits to illegal immigrants—a proposal that would be realized by the passage of Proposition 187.¹⁴⁰ However, less

137. *Id.*

138. Marquez tells the story of Democrat Tony Suarez who ran for a state House seat in a majority Republican district in 1999. The state Leadership "resisted spending a penny until the very end." Marquez concludes, "Suarez won that election in spite of the party." Marquez, *supra* note 87.

139. Liasson, *supra* note 29.

140. See Dettmer, *supra* note 73, at 39. At that time, Wilson, without fear of electoral repercussions, broadcasted ads showing Mexicans crossing the southwest border of California with a voice-over warning, "they just keep coming." *Id.* Dettmer believes that California sums up the challenge for the GOP, with its prior association with "several

than a decade later, George W. Bush, who now leads the Republican Party, sought legislation allowing more Mexicans to live and work in the United States legally.

There is ample evidence of Republican efforts to woo Latino voters. President George W. Bush has been the most vigilant politician to pursue this voting demographic. The President's Senior Political Adviser, Karl Rove, has told reporters of the President's "mission" and "goal"¹⁴¹ of wooing the Latino population, requiring all Republicans, "in every way and every day working to get that done."¹⁴² To that end Bush has forged a strong relationship with Mexican President Vicente Fox, the only significant foreign-policy relationship forged prior to September 11th.¹⁴³ Bush also made the controversial decision to halt military practice bombings in Vieques, Puerto Rico.¹⁴⁴ Further, prior to the September 11th attacks, Bush was shopping the proposal to "regularize" the status of millions of undocumented Mexican immigrants.¹⁴⁵ Other affirmative efforts include a festival held on the South Lawn in celebration of Cinco de Mayo,¹⁴⁶ expansion of the North American Free Trade Agreement,¹⁴⁷ and the tailoring of Cabinet picks and controversial policy decisions.¹⁴⁸

'anti-immigrant policies' that strike at their pride." *Id.* According to Peter Schrag, Latinos are the key to the GOP's future in California. They have represented "virtually all" of the increase in the state's electorate over the last decade. Peter Schrag, *A GOP Resurgence in California?*, SAN DIEGO UNION & TRIB., Oct. 20, 2001, at B8.

141. Dettmer, *supra* note 73.

142. *Id.*

143. Gimpel, *supra* note 89. Bush's first foreign trip was to President Fox's ranch. See Mimi Hall, *New White House, New 'War Room' for Strategizing*, USA TODAY, July 5, 2001, at A4. Hall also noted that Fox made two visits the White House, the second, as a guest of honor at President Bush's first state dinner. *Id.* Dettmer notes that Bush's motivations are no mystery. The motivation was clear in his decision to make Mexico his "first foreign port of call after inauguration . . . snubbing a more traditional European venue or Canada." Dettmer, *supra* note 73. In less than eight months Bush met with Fox five times. *Id.*

144. Dettmer, *supra* note 73, at 14.

145. Schrag, *supra* note 140.

146. Cinco de Mayo is the May 5th holiday celebrating a Mexican victory over French invaders. In addition to the festival, the President delivered his weekly address that day in English and Spanish. Hall, *supra* note 143. The weekly Republican radio message is now being broadcasted in Spanish as well. Gimpel, *supra* note 89.

147. Polls indicated that there was a seventy-five percent approval rating for this expansion. Dettmer, *supra* note 73, at 39.

148. Gimpel notes, "While publicly [Republican Party Chairman Jim Gilmore] opposes quotas based on race or ethnicity in filling federal-government patronage jobs, the Bush administration has set a recruitment goal of at least 10 percent Hispanics." Gimpel, *supra* note 89, at 41. Dettmer remarks that Bush aides have primarily focused on "attracting wealthy and educated Latinos by appointing a handful of well-heeled Hispanics to government posts." Dettmer, *supra* note 73, at 14-15.

There are some detractors in this Party shift;¹⁴⁹ however, the effort to participate in the struggle over voters that will respond to enticement, genuine or otherwise, is clear. Whether or not such recruitment efforts will truly be to the benefit of Republicans,¹⁵⁰ the advantages that Latinos will gain is a more willing ear in positions of power.

IV. THE REPUBLICAN PARTY AS AN ALTERNATIVE FOR AFRICAN-AMERICANS

A. Status and Possibilities

The Black voting community has largely remained outside of the Republican Party because of the great divergence in political priorities both groups possess. For the Black community, “civil rights” has historically been the primary interest. In fact, it is the space from which more sophisticated voting rights measures have emerged. Recently, however, economic justice has competed for top billing amongst Blacks, providing a potential window of opportunity for Republican expansion.

According to a 2001 National Urban League poll of African-Americans, economic issues tied racial discrimination at number one on a list of community concerns.¹⁵¹ Columnist for USA Today, DeWayne Wickham speculates that “[t]his may be just the opening Republicans need. African Americans, by a wide margin, believe that ‘economic opportunity,’ not ‘political leadership,’ should be the primary focus of major black organizations.”¹⁵² Sixty percent of the respondents polled said that they want Black leaders to focus on economic empowerment, while political leadership was of primary concern to only twenty-four percent of respondents.¹⁵³ Economic empowerment is linked more frequently, as the

149. Dettmer quotes a Senior GOP Senator, “I worry that we will be seen as pandering for purely electoral reasons. Take the Vieques decision—the Navy really needs that range and we did a disservice to the military. And take immigration—I’m not sure our own grassroots approved of the amnesty idea at all.” And reporting a more sophisticated analysis by the Senator, Dettmer writes, “The senator also points to another worry skeptics of the Bush approach frequently mention: that the White House fails to discriminate between the nationality groups within the Latino vote and fails in the sophisticated understanding of what appeals to the different groups. ‘Latino voters cannot simply be pushed into a single category,’ he says.” Dettmer, *supra* note 73, at 39.

150. As noted above, only one-fourth of the voting-age adults in predominantly Latino neighborhoods voted in the 2000 election. *Id.*

151. DeWayne Wickham, *Economic Issues Loom Large for Blacks and GOP*, USA TODAY, July 24, 2001, at A13.

152. *Id.*

153. *Id.*

poll suggests, with the still “overriding” concern among Blacks about civil rights.¹⁵⁴

Urban League president, Hugh Price, commented on the survey saying, “Basically the message is, if you want to get the attention of black people, deal with their concerns about their economic well-being and get serious about closing the economic gap that separates African Americans from whites.”¹⁵⁵ This indicates that the Republican Party, known for their unflinching commitment to economic prosperity, may have an important ideological connection with a sizeable majority of the Black community. Further, other areas of the Republican platform have become more attractive to Blacks. Faith-based initiatives, for example, are supported by fifty percent of the polled respondents, while only thirty-two percent opposed them.¹⁵⁶

The changing political priorities of the Black community should be of great advantage to the Republicans. The emphasis on economic opportunity and the “deep roots religion” in the Black community might indicate that Republicans can woo Black voters without first changing their position on civil rights.¹⁵⁷ Wickham notes that news of the poll will undoubtedly produce a “ripple of excitement in the White House and the Republican caverns on Capitol Hill, where conventional right-wing dogma holds that black leaders are out of step with the African American masses.”¹⁵⁸

However, by most accounts the optimism should be tempered. As Wickham also argues, it will not be easy for Republicans to convincingly distance themselves from racial discrimination. For example, major programmatic concerns for Blacks still contradict distinctly Republican tenets. Eighty-seven percent of African-American respondents believe that there is still a need for affirmative-action programs in higher education and places of employment.¹⁵⁹ Though George W. Bush has engaged in

154. Civil rights were “a relevant and meaningful concern” for eighty-seven percent of the respondents. Eighty-three percent rated race relations as either “only fair” or “poor.” *Id.*

155. *Id.* Further, Price does not believe that the Black Community’s concerns about financial status and the “continuing vestiges of racism are ‘mutually exclusive.’” *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* Wickham cautions,

[T]he bad news for Republicans is that most African Americans believe that affirmative action is a way of overcoming the discrimination that has clustered many of them at the bottom of this nation’s ladder of opportunity—and as a means of leveling an economic playing field that has been warped by past and current acts of racial bigotry.

Id.

several discrete instances of affirmative action,¹⁶⁰ he and his Party have yet to ingratiate themselves with most of the African-American electorate on this issue.¹⁶¹ His presidential approval rating among African-American respondents, according to this pre-September 11th poll, was at a paltry 16%.¹⁶²

B. *Their Likelihood of Success*

*Black people have survived 400 years of slavery . . . I think we can survive four more years of Republicans.*¹⁶³

The prevailing perceptions of the Republican Party have such a long and deep historical root that envisioning a movement toward the political Right seems wistful, at best. For one politically active African-American man, quoted above, Republican presidencies can be equated with long and sustained periods of oppression; and, as suggested by Lani Guinier, this perception may not differ too sharply from the Black community at large.¹⁶⁴ Although Guinier is describing the racial and political climate of the late 1980's and early 1990's, the activity of Republican administrations from Nixon to the second Bush attest to the repressive qualities of the Republican Party and its members with respect to Blacks. "The modern day GOP," according to columnist Cynthia Tucker, "has surrounded itself with the strategies and symbols of bigotry, making those who harbor its hateful attitudes comfortable."¹⁶⁵

160. Though he would never describe it as such, his pre- and post-election activity provides evidence to support that assertion. During Bush's campaign and televised debates, the candidate "maintained commitment" to civil rights, while avoiding previous Republican race-baiting tactics, according to Paul Frymer. See Frymer, *supra* note 10, at 56. Black, as well as Latino and Asian-American, faces were prominent throughout the campaign and, especially, the Republican National Convention. In addition, Bush has nominated several people of color to cabinet posts, including the first Black Secretary of State, Colin Powell, and National Security Adviser, Condoleeza Rice. *Id.*

161. Neil A. Lewis, *Bush and Affirmative Action: Constitutional Questions; President Faults Race Preferences as Admissions Tools*, N.Y. TIMES, Jan. 16, 2003, at A1.

162. Wickham, *supra* note 151.

163. Dirk Johnson, *Jackson Addresses Convention of PUSH*, N.Y. TIMES, June 28, 1988, at A2. These are the remarks of a Black organizer during the 1988 presidential race between George H. Bush and Michael Dukakis. Guinier writes, "Echoing the views of many others, Mr. Walker [self-described as a 'nameless, faceless black person'] said he found the differences between Mr. Dukakis and Mr. Bush to be not so great." Guinier, *Keeping the Faith*, *supra* note 12, at 414 n.92. The Republican Party is deemed as far more odious, such that its 'reign' can be equated with slavery. *Id.*

164. *Id.*

165. Cynthia Tucker, *Shunning Racism of GOP*, ATLANTA J. & CONST., Apr. 29, 1992, at A15. Tucker uses a current case in South Carolina to illustrate her point. There, a Republican consultant, Rod Shealy, hired a Black man facing felony charges to run for office "hoping that the appearance of an unattractive black candidate would spur a huge white voter turnout." *Id.* This is not an isolated incident, Tucker insists; as she sees it the incident

In the 1960s, Richard Nixon based his campaign around wooing two voting groups into his camp. One group was the “silent majority,” comprised of voters that were not protesting, that were not breaking laws, were employed, and had families and home mortgages.¹⁶⁶ The other was Southerners. The “southern strategy” was defined by its attempts to woo a group of voters who were opposed to school integration efforts and favored states rights.¹⁶⁷ Republican candidates have not abandoned Nixon’s basic roadmap. In fact, Reagan appealed to these same groups during his winning bid for the presidency, with special emphasis placed on southern whites and working class northern whites, dubbed the “Reagan Democrats.”¹⁶⁸

In the 1980s, Reagan’s approach was particularly divisive with respect to racial issues. His administration is marked by what can be read as nothing less than blatant hostility toward Black and Latino communities throughout America. His purpose, or at the very least the glaring effect, was to polarize the electorate.¹⁶⁹ Reagan’s administration notoriously stripped Blacks of a public forum, not to mention any substantive representation in the administration.¹⁷⁰ Further, Reagan made affirmative efforts to push back advances in civil rights for Blacks.¹⁷¹ Subsequent Re-

is, instead, the continuation of a theme. Tucker explains that Shealy studied the strategy of the late Lee Atwater who, “despite his later renunciations of hateful demagoguery—clearly influenced the campaign tactics of Republican presidential campaigns for years to come.” *Id.*

There is also scholarship that identifies strategies for excluding Blacks as a part of a traditional Republican philosophy. See e.g., Cass Sunstein, *Beyond the Republican Revival*, 97 *YALE L.J.* 1539 (1988).

166. Frymer, *supra* note 10, at 66.

167. *Id.*

168. *Id.*

169. See generally Guinier, *Keeping the Faith*, *supra* note 12. Guinier notes that, it is hardly a coincidence that racial hostility increased during Reagan’s eight-year administration, a hostility reflected in incidents of racial violence and unrest. *Id.* at 399 n.29. In fact, Reagan’s popularity could be attributed, in part, to his blatant appeals to the perception that civil rights policies unfairly advantaged Blacks and other persons of color. *Id.* at 397.

170. Guinier notes that Reagan, among other unpleasantly conspicuous acts and omissions, “made no effort to seek out or appoint traditional civil rights leaders.” *Id.* at 394.

171. Guinier spends considerable time discussing the “Reagan-Reynolds” civil rights legacy. In short, William Bradford Reynolds, in his position as Assistant Attorney General for Civil Rights, was the “chief architect” of Reagan’s civil rights program. Under Reynolds’ ideological and intellectual leadership, the “philosophic engines” of the Right were deployed. “Propelled in part by the philosophic engines of New Right cost-benefit analysis, the Administration attempted to drive civil rights laws out of the marketplace for being more costly than they are worth.” *Id.* at 396.

More specifically, and of greater relevance to the larger theme of this article, primary enforcement of the Voting Rights Act of 1965 was left to those whose interests were antithetical to the general Black interest. According to Guinier, with the leadership of Attorneys General Smith and Meese and Assistant Attorney General Reynolds, conservative policymakers were able to “launch a profound assault on [the Civil Rights Division of

publican administrations have done little to depart from, much less redress, the racially partial approach of prior Republican administrations.

Vice President George H. W. Bush marked his 1988 election campaign by indicting Democratic candidate Michael Dukakis as a politician who was soft on crime. As proof, Bush ran the infamous Willy Horton television advertisements, in which the ex-felon and repeat offender's face encapsulated for American voters what happens when Democrats are "soft" on Black criminals.¹⁷² Bush's son, George W. Bush, attempted to make a slight departure from the more racially exclusive strategies of his predecessors. With the exception of his ill-advised trip to Bob Jones University, Bush tried to strike a careful balance between "passionately" opposing affirmative action, welfare, and federally mandated school integration, while attempting to appear "equally empathetic" to basic civil rights principles, endorsement of Black politicians in high leadership positions, and his campaign promise to leave no child behind.¹⁷³ Black voters were overwhelmingly immune to what they perceived as thinly veiled attempts at inauthentic gestures towards racial harmony.¹⁷⁴

It is no surprise, considering the above, that only ten percent of Blacks believe that the GOP "is committed to the issues that are most important to Blacks in America."¹⁷⁵ Though many Blacks have a tendency toward social conservatism,¹⁷⁶ that is, with respect to issues outside of social justice and civil rights, and as the Black middle class continues to burgeon, their resistance to the Republican Party remains a "curious historical anomaly."¹⁷⁷ Even some of the Black community's most

the Department of Justice's] policies and goals, and upon those whom the Act was intended to protect." *Id.* at 402-03.

172. Frymer, *supra* note 10, at 66.

173. *Id.* at 69. Needless to say, Bush was unconvincing to more than ninety percent of Black voters on election day. According to Frymer, Bush received a smaller percentage of the Black vote, yielding eight percent nationally, than any other Republican candidate since 1964. *Id.* at 78 n.28.

174. This immunity is not new; in fact, it is the same song in a different decade. Guinier, over a decade earlier, explained that though Black voters are frustrated with Democrats' response, or lack thereof, to their interests, Blacks are "hardly convinced of the sincerity of the Republican Party's nascent and token outreach." Guinier, *Keeping the Faith*, *supra* note 12, at 417.

175. Wickham, *supra* note 151. Conversely, sixty percent of African Americans said that they believe that Democrats are committed to those issues. *Id.*

176. Exposing the Black community's closet conservatism, Cynthia Tucker states: "Quiet as it is kept[,] . . . Black Americans tend to be somewhat conservative on all social issues except those related to social justice." Tucker, *supra* note 171, at A15.

177. *Id.* All things considered, Tucker is compelled to ask, "Why aren't affluent Blacks and the GOP a happy match?" The short answer seems to be that the Party, and its deeper devotion to the Right, is irreparably invidious. What is of even greater interest is that the early 1990's produced some evidence that the match between Blacks and the Right could have been made.

conservative members have reservations about the GOP. Quoted in 1987, four years before his Supreme Court nomination debacle, Clarence Thomas commented on the Right: "It often seemed that to be accepted within the conservative ranks and to be treated with some degree of acceptance, a Black was required to become a caricature of sorts, providing sideshows of anti-black quips and attacks."¹⁷⁸

The Republican Party and the Black community, even in apparent overlaps, is not an easy match. To be Republican, as it has come to mean in many respects, requires, at best, an unpalatable disinterest in the civil rights and social justice issues that in many ways define every aspect of the Black community's political agenda. Black political participation, itself, grew out of and because of devotion to these bedrock principles; from this foundation of civil rights and social justice, the Black community frames and struggles for all other issues.

V. THE POLITICAL AND ROMANTIC VALUE OF THE VOTE AND THE BLACK COMMUNITY

A. *General Theory: Privilege vs. Right*

The vote and the substance of the act of voting has been a particularly contentious aspect of American democracy. Its link to ideological notions of full citizenship as well as its practical relevance to empowering individual members of the polity has made the vote a focal point of struggle for marginalized communities throughout American history. The vote itself, whether a mere symbol of membership in the polity or an actual exercise of power, holds a meaning that, regardless of source, is significant. Its connection to American citizenship, and its attendant value, is relatively uncontroversial. However, whether the vote is a right or a privilege, and to whom that privilege is afforded, engenders greater dissent.

The notion of voting as a privilege, relative to notions of voting as a right, tends to be attached to more exclusionary periods and characters throughout America's history. In 1875, for example, the Supreme Court upheld a lower court decision ruling that suffrage was not an inextricable component of citizenship and that authority to determine who held the

Tucker reports on a 1991 USA Today poll that asked 400 African Americans the following: "Some people say that blacks who hold conservative political views are out of touch with the needs of blacks. Others say blacks have relied too much on government and should embrace more conservative views. Which comes closest to your view?" Forty percent of the respondents said that conservative Blacks were out of touch. Forty-one percent of the Blacks polled thought that Black people should embrace conservatism. Nineteen percent were not sure. Today, it seems that the more than 90% that leaned away from the Republican ticket in 2000 are a better indicator of the political tide for Blacks. *Id.*

178. *Id.*

privilege to vote was in the individual state.¹⁷⁹ In fact, most references to women, in discourse surrounding the vote, was used to demonstrate the very fact that voting was a privilege not a right.¹⁸⁰ Women were, after all, citizens; yet, even for them, the rigors as well as the advantages of the vote were not necessarily afforded.¹⁸¹ In fact, early in the women's suffrage movement, women attempted to invoke the Privileges and Immunities Clause of the 14th Amendment to demand the right to vote. In the case *Minor v. Happersett*,¹⁸² the Supreme Court echoed Chief Justice Taney's reasoning in *Dred Scott v. Sandford*.¹⁸³ Taney argued that citizenship did not include the right to vote. His evidence was that "exclusion from the franchise did not prevent white women and minors from being members of 'the community who from [sic] the sovereignty.'" ¹⁸⁴

More recently, Guinier finds that this sentiment of voting as a privilege persists. Among her evidence is the belief among local officials that individual initiative to register to vote is a legitimate voting requirement. For Guinier, that belief is consonant with the way in which "local officials treat the franchise as a privilege that the voter must earn."¹⁸⁵

Those who continue to operate under the belief that voting is a privilege ignore the history of the vote as experienced by men of color and women for the past two centuries. Those fights have been based upon the strong conviction that access to the vote is *a*, if not *the*, defining characteristic of citizenship. The two are, in fact, inextricably linked. To gain access to the vote is the process by which one realizes authenticated citizenship; and the reverse, though with much less romantic history, may also be true.

This relationship strikes a particularly sharp chord with Blacks. Their early existence in America was set against the backdrop of citizenship and full humanity, to which they were denied admittance. In fact, Black people in America played a significant role in defining citizenship by embodying what citizenship was not. Judith Shklar provides piercing analysis of the way in which Blacks worked as an oppositional

179. ALEXANDER KEYSSAR, *THE RIGHT TO VOTE* 181 (2000). Keyssar notes that the advent of Black suffrage did not occur because this sentiment changed. According to Keyssar, "Black suffrage triumphed—albeit temporarily—not because the polity had become convinced of the virtues of equal rights or universal suffrage but due to the unique political exigencies of Reconstruction and the political goals of the Republican Party." *Id.* at 183.

180. *Id.* at 175.

181. AILEEN S. KRADITOR, *THE IDEAS OF THE WOMAN SUFFRAGE MOVEMENT, 1890–1920* 28 (1965). "A vote," explains Kraditor, "was not simply the registering of an opinion; it was a demand and consequently would be meaningless unless exercised only by the muscular portion of the community." *Id.*

182. 88 U.S. 162 (1874).

183. 60 U.S. 393 (1856). See Blacksher, *supra* note 30, at 730.

184. Blacksher, *supra* note 30, at 731 (quoting *Dred Scott v. Sandford* 60 U.S. 393, 422 (1856)).

185. Guinier, *Keeping the Faith*, *supra* note 12, at 418.

background against which the core values of this country developed.¹⁸⁶ With respect to voting, Shklar argues “slavery was the background which gave content to the notion of citizenship and suffrage. The ability to vote has been partly justified as a way of distinguishing the citizen from the slave, the truly human from the subhuman, the white from the Black.”¹⁸⁷

There is little wonder, as a result, that the right to vote would resonate so profoundly with Black America. Since emancipation, membership in the polity was less contradictory, in theory, for Blacks. As new citizens they would, in varying degrees throughout history, demand the necessary tools for participation in electoral politics, specifically, and in the democracy, in general.

B. *The Right to Vote*

Myriad struggles for the vote are illustrative of a broadly perceived understanding of voting as a right of citizenship. A far more quixotic notion of the vote and citizenship was a driving force in the women’s suffrage movement. In 1867, Henry Ward Beecher, a staunch proponent of women’s rights, declared, “[S]uffrage is the inherent right of mankind.”¹⁸⁸ The vote’s relationship to citizenship was without question. Alexander Keyssar explains that women were “unquestionably” citizens.¹⁸⁹ The vote, according to the suffragists, was an intrinsic feature of their citizenship. It required citizenship for its disposition, political intelligence for its execution,¹⁹⁰ and power was its ultimate motivation.¹⁹¹

For White women, the suffrage movement hinged on struggles for independence and autonomy, because their status as citizens was far less

186. Adeno Addis, *Recycling in Hell*, 67 TUL. L. REV. 2253 (1993). Addis, introducing his analysis of Shklar’s thesis, comments, “Some would argue that concepts like ‘virtue,’ ‘fairness,’ and ‘liberty’ are, in this country, given concrete meaning by employing characteristics attributable to blacks as oppositional backgrounds. There is some validity to the argument.” *Id.* at 2255 n.6.

187. *Id.* American citizenship, in its inception and through its formative years, necessarily excluded Black people. Shklar asserts, “Americans lived with [slavery]. . . . It was a profound experience and was to put its mark on the most basic institutions of our public life, American citizenship.” JUDITH N. SHKLAR, AMERICAN CITIZENSHIP 17, 39–40 (1991), quoted in Addis, *supra* note 186, at 2255 n.6.

188. Keyssar, *supra* note 179, at 178.

189. *Id.* at 180.

190. In his discussion of the ethos and sentiment of the women’s suffrage movement, Kraditor explains, “Voting implied much more than simply dropping a ballot in a box once a year. It meant on the part of woman an entire intellectual reorientation. Having the right to vote imposed the duty of exercising that right competently, which required doing whatever was necessary to become politically intelligent.” Kraditor, *supra* note 181, at 22.

191. At the 1851 Second National Convention on women’s rights it was resolved that “The Right to Suffrage is . . . the corner-stone of this, since we do not seek to protect woman, but rather to place her in a position to protect herself.” Keyssar, *supra* note 179, at 176.

controversial than that of other disenfranchised members of the populace. For Blacks—though initially only for men with the significant involvement of Black women not occurring until the Civil Rights Movement—political independence and autonomy was a community-wide achievement. In other words, the true significance of the vote was that it had greater transformational aspirations.¹⁹² In an illustrative quotation, Martin Luther King, Jr. declared:

Give us the ballot, and we will no longer have to worry the federal government about our basic rights . . . [G]ive us the ballot and we will fill our legislative halls with men of good will . . . [G]ive us the ballot and we will help bring this nation to a new society based on justice and dedicated to peace.¹⁹³

Whereas the women's vote was for the triumph of the individual White woman, voting for Blacks was, if completely and successfully actualized, a nation-wide triumph of justice and change.

C. The Vote For African-Americans: A Political Narrative

The right to vote for Blacks begins and ends with commitment to the community.¹⁹⁴ That right is deemed as one of the most fundamental for many in the Black community.¹⁹⁵ Jesse Jackson, for example, insists that

192. This is in sharp contrast to the maintenance of status quo that occurred after women won the right to vote. James Blacksher notes, "It is a well known irony in American history that politics did not change very dramatically after [White] women were enfranchised. . . . Class, race, ethnicity, and religion remained the more salient predictors of a person's voting behavior." Blacksher, *supra* note 30, at 731.

193. Guinier, *Keeping the Faith*, *supra* note 12, at 393 n.3 (quoting Martin Luther King, Jr.).

194. Of course the initial granting of that right, post-Civil War and the during the deconstruction era, did not include Black women. Yet the movement later was marked by the involvement of vocal women like Fannie Lou Hamer, whose struggle for voting registration is remembered today and memorialized by a voting rights organization in her name. For more information on the Fannie Lou Hamer Project see, <http://www.flhp.org> (last visited Apr. 17, 2003).

195. Charles Hamilton Houston, one of the first and most prominent Black politicians, saw the right to vote and the right to an education as the two most fundamental rights. See Nathaniel R. Jones, *The Sysphean Impact on Houstonian Jurisprudence*, 69 U. CIN. L. REV. 435, 435 (2001).

It is important to note that not all of the prominent Black leaders saw the vote as psychologically hopeful or politically valuable. W.E.B. DuBois became increasingly disillusioned by how ineffective his vote really was. See generally, W.E.B. Dubois, *I Won't Vote*, THE NATION, Oct. 20, 1956, available at <http://www.thenation.com/doc.mhtml?l=1056102020&s=19561020dubois> (last visited Apr. 8, 2003). DuBois decided that it would be best to not vote at all rather than participate in a sham democracy. He asked, "Is the refusal to vote in this phony election a counsel of despair? No, it is dogged hope." *Id.*

“we need to be concerned about the link between voting and public policy.”¹⁹⁶ Guinier states that for the Black community the right to vote has always been viewed as “the number one civil right,” for it is an essential tool in preserving “the traditional civil rights agenda.”¹⁹⁷ Certainly the intense struggle fought for realization of that right suggests that electoral power was crucial to liberation for Black people. James Blacksher offers a concise description of the political climate that allowed Black political action to bear fruit:

Cold War politics, the Vietnam War, the liberal democratic tilt of the Warren Court, public revulsion from European totalitarianism, and unprecedented economic expansion all helped make possible the Supreme Court’s reinterpretation of the Equal Protection Clause to include voting rights and the corresponding passage of the Voting Rights Acts of 1965 and 1982. But nearly every step was explicitly or implicitly sparked by the rise of black political action. *Brown v. Board of Education* was the springboard for what became known as the Civil Rights Movement, but the right of African Americans to vote was the movement’s “heart.”¹⁹⁸

The voting rights movement was marked by threatened and actual violence against determined Blacks.¹⁹⁹ In fact, it was the manner in which the Black community insisted on the right, in the face of vehement disapproval and roadblocks, that brought the battle to the public eye.²⁰⁰ Specifically, the Voting Rights Act,²⁰¹ according to Pamela Karlan, is a reflection of the “national consensus that American politics and governance should be racially integrated.”²⁰² With the Act, “nonwhite voters . . . [would] become part of, rather than . . . separate from, the political process.”²⁰³

196. Farrell & Johnson, *supra* note 69, at 1241 (quoting Reverend Jesse Jackson).

197. Guinier, *Keeping the Faith*, *supra* note 12, at 393 n.3.

198. Blacksher, *supra* note 30, at 732.

199. *See id.*; *see also* Lani Guinier, *No Two Seats: The Elusive Quest for Political Equality*, 77 VA. L. REV. 1413 (1991).

200. Blacksher, *supra* note 30, at 731–32.

201. 42 U.S.C. § 1973 (Supp. IV 1998). Primarily enforced by the Civil Rights Division of the Department of Justice, the Act has been steered by Section 2, a nationwide prohibition on discriminatory elections schemes, and Section 5, an administrative monitoring mechanism for electoral changes in covered jurisdictions of the Act. *See* Guinier, *Keeping the Faith*, *supra* note 12, at 399 n.32. In the last two decades, the Supreme Court has used strict scrutiny analysis to restrict the reach of the 1965 Voting Rights Act to deny affirmative opportunities for Blacks. Frymer, *supra* note 10, at 71.

202. Pamela S. Karlan, *Our Separatism? Voting Rights As An American Nationalities Policy*, 1995 U. CHI. LEGAL F. 83, 83–84 (1995).

203. *Id.* at 84.

According to Guinier, under the Voting Rights Act the right to vote necessarily entailed the right to “fair and effective” representation.²⁰⁴ And the underlying assumption of the Act, and the larger importance of its success, is that political interests may correlate with membership in racial and ethnic groups.²⁰⁵ Further, it is corrective in that it operates under the additional assumption that those interests may not be valued fairly in the electoral system as it is contemporarily configured.²⁰⁶

Though the Voting Rights Act represents a tangible advance in electoral politics, perhaps the greater success of the voting rights movement was a more clearly developed and defined articulation of an African-American political narrative.²⁰⁷ According to Laurence Thomas, the essence of the real pain of slavery was the inability for Blacks to create their own narrative. The freedom of Blacks to formulate their own national narrative and to achieve autonomy would allow Blacks to be “not merely formal equals with other Americans before the law, but coauthors of the law, comembers of ‘We the People,’ who form the nation that gives its consent to legitimate, constitutional government.”²⁰⁸ Generally, a narrative is “a set of stories which defines values and entirely positive goals, which specifies a set of fixed points of historical significance, and which defines a set of ennobling rituals to be regularly performed.”²⁰⁹ A political narrative, therefore, would be an articulation of the values and goals that, historically informed, is driven by participation in traditional methods of political

204. Guinier, *No Two Seats*, *supra* note 200, at 1417.

205. Karlan, *supra* note 202.

206. *Id.* This is crucial once the struggle for the right to vote has been successful, as Guinier asserts. She advises that after first fighting for the “basic” right, voting rights advocates seek a “meaningful” vote. Meaningful suggests that the vote cast is able to elect candidates of the Black community’s choosing. Guinier, *No Two Seats*, *supra* note 200, at 1415.

207. Here it is important to address a concern about the essentializing of the Black community with respect to its goals, political motivations, and the sense of a clearly bounded and definable community itself. Guinier’s disclaimer, of sorts, briefly states my own understanding of a Black political consciousness. She says, “Generalizations about the concerns of African Americans or blacks are not an attempt to describe a single, monolithic viewpoint, but reflect the consistent political cohesion that black voters display.” Guinier, *Keeping the Faith*, *supra* note 12, at 393 n.2.

Of course, this belief has been the subject of legal controversy. See, e.g., *Holder v. Hall*, 512 U.S. 874 (1994), in which Justice Clarence Thomas states, *inter alia*, “[W]e have devised a remedial mechanism that encourages federal courts to segregate voters into racially designated districts to ensure minority electoral success. In doing so, we have collaborated in what may aptly be termed the racial ‘balkanization’ of the Nation.” *Id.* at 2592. See generally *Shaw v. Reno*, 113 S. Ct. 2816 (1993), in which Justice O’Connor, writing for the Court, states that drawing electoral lines to accommodate a racial or ethnic group is based on the false notion, in her opinion, that African Americans have “little in common with one another but the color of their skin.” *Id.* at 2827.

208. See Blacksher, *supra* note 30, at 725 (discussing Laurence Thomas and “the narrative”).

209. *Id.*

empowerment in the appropriate marketplace (i.e., voting). A narrative and autonomy is “prerequisite to entering the constitutional compact.”²¹⁰ And a narrative is vital in a “hostile society.”²¹¹ Thomas argues that Blacks “cannot flourish in a hostile society, [because] it is only having a narrative that, in a hostile society, a people can have assistance born of respect instead of pity.”²¹² For African-Americans, that narrative and autonomy is based in, and on behalf of, the community.

D. *The Community: Origins and Current Manifestations.*

The concept of the individual is usually subordinate to a group orientation. It is the group that is important, and the Black self is an incorporated part of the social group. “Cooperation through collective efforts is the accepted means of achieving culturally prescribed goals.”²¹³

The “community” has a rich history and a full definition for Blacks. The individual, which is a focal point in American culture, remains important but a careful second to the needs of the Black community at large. According to many, the source of the individual’s allegiance to community is as old as older than, the Middle Passage. Voting, consequently, is an outgrowth of a worldview that is made for us and by us.

Chiekh Anta Diop, for example, goes as far as to assert that Black communal goals and actions have been influenced by African values on collectivism and universal ownership.²¹⁴ Our political activity, therefore, may track an age-old philosophy of collective successes and failures. Yet, even if one is skeptical about the authentically African source of this group activity, it is true that “common sense suggests that groups of people systematically segregated from each other will develop distinctive cultures over time.”²¹⁵ Of course, and perhaps more accurately, the combination of these two sources—that is ancient culture and modern-day oppression—is at the root of Black cultural activity.²¹⁶ While actively es-

210. *Id.*

211. *Id.*

212. *Id.*

213. Vincene Verdun, *If the Shoe Fits, Wear It: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597,625 (1993)(quoting ROBERT STAPLES, INTRODUCTION TO BLACK SOCIOLOGY 78 (1976)).

214. *Id.* According to Verdun, “Philosophers in this group argue that these values have manifested in different ways depending on the African community and time period examined; however, each value has survived as a staple of the African world view to the present day.” *Id.* at 616.

215. *Id.* at 617.

216. Verdun defines culture as inclusive of values that can be identified with a group and does not purport to establish a Black point of view. She questions the existence of such a viewpoint. Verdun explains that “[t]he African American consciousness described in this Article identifies a perspective that is prevalent in the African American community,

chewing essentialist analysis of the “community,” it would not be outrageous to identify and explore a Black consciousness that certainly manifests a political voice.²¹⁷

After all, considering the political and legal history that all Blacks were forced to negotiate at different times throughout American history, the experience of oppression was singular and limited enough to militate in favor of a constant and continuing community mandate. As Vincene Verdun offers, “The struggles and hardships of African Americans, caused by living in a nation founded on principles of racial inequality, have led to the evolution of common values, ideas, attitudes, beliefs, and perspectives.”²¹⁸

That difference in history has created a dichotomy between the dominant²¹⁹ American culture, and its behaviors in the political marketplace, and the (distinctively un-American) Community culture that colors the general proclivities of African-American consumers in the political marketplace. For the dominant culture—which defines “normal,” savvy, strategic voting activity—the African-American voting block is oddly inefficient, and thus without valuable or productive political capital, and less likely to be fully and consistently accommodated by both political and jurisprudential forces.

Further, the dominant culture influences the distribution of rights. Rights, under this cultural perspective, are afforded to the individual rather than communities, and this approach is largely immutable.²²⁰ In fact, Robert Cottrol argues that it is not at all an excisable aspect of the American cultural fabric. He argues, “This individualistic approach cannot be lightly set aside without doing violence to much of American constitutional doctrine, doctrine that has been painfully achieved over the

but it is not the exclusive or essentialist voice of the African American community.” *Id.* at 617 n.53.

217. An essentialist analysis would be one that assumes that all Black people can be categorized as subscribing to this communal approach alone or to the same degree. I make these general comments humbly, recognizing that they are just trends, educated speculation, or both; they certainly do not attempt to speak for all.

218. Verdun, *supra* note 213, at 600. Verdun identifies the argument of proponents of an “African American consciousness” as spawning from generations of survival as an oppressed people in hostile environment and rooted in African culture and heritage, “which survived the trip across the Atlantic Ocean and the institution of slavery.” *Id.* at 610. Verdun also quotes Gerald Torres on this issue. He says, “Members of a self-conscious subculture, through identification with their group, are able to construct and identify a place within the larger society that provides a relatively autonomous sphere within which social life is lived and created, even if primary identification remains with the subgroup.” *Id.* at 619.

219. The dominant perspective describes a “system of values and perceptions common to the group that exercises economic, political, and ideological control over society.” White members of American society usually subscribe to this perspective; it is the conceptual goggles through which they understand the depths of their participation in the polity. *Id.*

220. See generally *id.* at 624 n.85 (discussing Robert Cottrol).

tutional doctrine, doctrine that has been painfully achieved over the course of two centuries."²²¹

Sociologist Robert Staples offers an analysis of the dominant (White) culture and its ideological opposite that is the Black culture. He describes the value orientations of White Americans on individualism in the following manner:

In human society each individual must make his own mark through competition for the prestige goals of his culture. The rewards of his victory in the competition are his alone, to be shared only with certain prescribed people (e.g., wife, children) over whom he has control. Those who have not achieved success or are without sufficient resources have only themselves to blame because of their inability to compete.²²²

In sharp contrast, Black culture distinguishes itself by subsuming the individual to larger community goals. The political significance of this activity, and its relevance to this article's thesis, is that voting with devotion to principle is not only a learned habit but also a necessity by definition. The vote is the true disposition of all to which the Community aspires. It is powerfully aspirational; bare strategy is perhaps a very distant second. Robert Ezra Park's analysis of the Black community in 1950 still rings incredibly true today:

It is the necessity for collective action, the necessity that Negroes should cooperate to win for themselves the place and the respect in the white man's world that the Constitution could not give them, that has created among the Negroes of the United States a solidarity that does not exist elsewhere. Race consciousness is the natural and inevitable reaction to race prejudice.²²³

Though not savvy, devotion to principled and community oriented political action is perhaps more true to the actions of voters at the pinnacle of political participation. It is not clear that most, or at least half, of Blacks can or should depart from principle-driven voting. Pure strategy may be antithetical to what the vote can and should be imbued with by all Americans, especially vote-hungry and often principle-bereft politicians. However, with these ideological triumphs, the Community will continue to be political losers under the current market scheme.

221. Verdun, *supra* note 213, at 624 n.85.

222. *Id.* at 619.

223. ROBERT E. PARK, RACE AND CULTURE 294 (1950), *quoted in* Verdun, *supra* note 213, at 613.

VI. ONE PARTY WITH TWO NAMES

*I believe that democracy has so far disappeared in the United States that no "two evils" exist. There is but one evil party with two names . . .*²²⁴

The two-party system, in which only Republicans and Democrats participate in the political ring, is structurally disadvantageous for African-Americans. Republicans and Democrats alike remain deafeningly silent with regard to race. In fact, the complete elision of race has become a more politically correct manner of navigating political discourse and debate. The result tends to be that "[w]hile silence may mean the absence of racist expressions, it can also mean the absence of opportunities for the promotion of racial equality."²²⁵ A cursory look at the actions of each party supports the latter proposition.²²⁶ As a result, the two-party system, by virtue of being comprised of these two parties, allows issues of race to remain off of the political stage, much less the foreground.

Professor Frymer argues that two-party politics is not, despite popular notions, essential for democratic progress. Instead it serves as "one of the most important ways in which the ideas and ideologies that are

224. DuBois, *supra* note 195. The full quotation reads as follows: "In 1956, I shall not go to the polls. I have not registered. I believe that democracy has so far disappeared in the United States that no 'two evils' exist. There is but one evil party with two names, and it will be elected despite all I can do or say." DuBois also had trouble identifying a viable and worthy third party as his voting preferences were "limited by the candidates' attitude toward Negroes." In addition, participation in alternative parties, such as the Socialists, was suspect in an increasingly jingoistic American society. To DuBois, it was not clear that America could hold a fair election on real issues. His cynicism with respect to democracy in America was deep. He insists, "Stop yelling about a democracy we don't have. Democracy is dead in the United States." *Id.*

225. Frymer, *supra* note 10, at 62.

226. Frymer explains that the Democratic Party, in order not to "startle" conservative White voters, leave race off the agenda, "while delicately balancing subtle race-specific appeals at different moments to both black and white voters." *Id.* at 64. Republicans, on the other hand, "try to win elections by making direct appeals to white voters without portraying the party as out of the mainstream on race matters." *Id.* Republicans, unapologetically, are almost totally disconnected from Black voters. *Id.*

Frymer further argues that the two-party system is, in fact, dependent upon the elision of racial matters. He writes:

[T]he reason we can have two party competition in the US is exactly because racial matters are suppressed. Were African American interests prominently advocated on a consistent basis in electoral politics, the two-party system would break down because one party would consistently win and the other would consistently lose. Thus, an essential element of democratic freedom in US society exists precisely because race is kept out.

Id. at 65.

communicated in national political campaigns denies a multi-racial political viewpoint."²²⁷ In spite of this reality, the major structures of our government remain wedded to this system. A series of Supreme Court cases are illustrative.²²⁸ Departing from its noteworthy advances in civil rights, specifically voting rights, from the 1950s to the 1970s,²²⁹ the Court in the last decade has been largely unresponsive to the electoral needs and concerns of African-Americans. With respect to third parties, it has made proactive efforts to limit the possibility of third party successes. The Court steadfastly endorses the two-party system, believing that it serves a positive role in democracy, holding that the "States' interest permits them to enact reasonable election regulations that may, in practice, favor the traditional two-party system."²³⁰ To that end it has allowed the exclusion of third parties from televised public debates as well as denying efforts to allow non-affiliated voters to participate in party primaries.²³¹

Without question, the two parties continue to find it electorally advantageous to ignore issues surrounding race. Many Black scholars and politicians believe this proposition so strongly that they insist that Black Community interests will only be addressed once the current system is abandoned.²³² Lani Guinier, for example, believes that Blacks have been particularly stifled by the two-party system,²³³ and she has written important scholarship on alternative voting schemes.²³⁴ For Guinier, alternative voting practices, like cumulative voting,²³⁵ not only allow for a more effective voice for Blacks, they also promote the equally important goal of coalition building. She argues:

227. *Id.* Frymer is also persuaded by the calls for structural reform with respect to our party choices. He argues, "Given the power of our two-party system to maintain a racial discourse that is profoundly disadvantageous to racial equality, such reforms are vital in the promotion of a more inclusive democracy." *Id.* at 60.

228. See, e.g., *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 107 (1990)(Scalia, J., dissenting)("The stabilizing effects of such a [two-party] system are obvious."); *Davis v. Bandemer*, 478 U.S. 109, 144 (1986)(O'Connor, J., concurring)("There can be little doubt that the emergence of a strong and stable two-party system in this country has contributed enormously to sound and effective government."); *Branti v. Finkel* 445 U.S. 507, 532 (1980)(Powell, J., dissenting)("broad-based political parties supply an essential coherence and flexibility to the American political scene") noted in Frymer, *supra* note 10, at 79 n.46.

229. See generally Frymer, *supra* note 10, at 69-72.

230. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 367 (1997).

231. Frymer, *supra* note 10, at 72.

232. *Id.* at 74-75.

233. Guinier, *Keeping the Faith*, *supra* note 12, at 394. This reality is particularly dangerous because people may withdraw or, perhaps hopefully, seek nonsystem means of action in response to an unresponsive political system. *Id.* at 417.

234. See e.g., Lani Guinier, *More Democracy*, 1995 U. CHI. LEGAL F. 1 (1995); LANI GUINIER, TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY (1994) [hereinafter TYRANNY OF THE MAJORITY].

235. For an introduction to alternative voting schemes, see SAMUEL ISSACHAROFF, ET AL., THE LAW OF DEMOCRACY (2d ed. 2001).

As a solution that permits voters to self-select their identities, cumulative voting also encourages cross-racial coalition building. No one is locked into a minority identity. Nor is anyone necessarily isolated by the identity they choose. Voters can strengthen their influence by forming coalitions to elect more than one representative.²³⁶

Irregardless of the specific scheme chosen, however, the vital goal is a departure from the current system in which the Black community is entrenched. It seems clear that the two avenues of political participation are without true direction with respect to the interests of Blacks. It seems that our political capital would be squandered with either party. That we are devoted to Democrats is not as tragic, all things considered, as our society's devotion to the two-party system.

I am in full agreement with those scholars who argue that the current two-party system thrives on the elision of race in complex and meaningful political discourse and action. Further, I am convinced that a restructuring of the system will open the doors for politicians who are willing to be firm and consistent advocates for the Black Community.

CONCLUSION

At present, Blacks are confined by their attachment to the Democratic Party. It is plausible that if we were to follow the "consumer" model demonstrated by Latino voters, our political attachments, or more importantly non-attachments, will be far more liberating. Blacks, however, are not likely to follow this model, favoring instead a community-based view of value and meaning in the right to vote and practice of voting. This community-based view also disfavors the Republican Party due to actual and ideological conflicts between Republicans and Black people in America. Therefore, even if Blacks were to contemplate strategic voting, their alternative party choice is wholly unappealing. In sum, however, it is the two-party system that is weakening the African-American vote. It fails by systemically discouraging ideologically driven votes.

Because of these failures, until there is a restructuring of the entire party system, the Black community should continue to vote its conscience. Though it might make the community political losers, it is remaining true to the meaning of a right for which it has nobly struggled.

236. Lani Guinier, *THE TYRANNY OF THE MAJORITY*, *supra* note 234, at 152.

