



From my perspective

Democracy in America A darkening future[☆]

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Government in the United States is not in paralysis. A different medical metaphor is called for— St. Vitus' dance, endless gyrations and wild flailing in every direction with no progress in any direction. The Constitution, which, by much of the world's reckoning, is the finest political instrument ever created, is a superb document of domestic governance. Increasingly, it falters and fails in the face of an integrated domestic society of continental size and the accelerated globalization and integration of all the world's nations over the past six decades. The indicators of distress are everywhere. The most dismal of the symptoms of our democratic disorder from an American point of view is that global moral leadership has shifted to the Soviet Union. Even that engaging conservative flak Peggy Noonan, the Reagan-Bush speechwriter, acknowledges that Gorbachev may have joined the conservative's pantheon of great leaders, along with Reagan, Thatcher, and John Paul II. The only thing the last two White House occupants have learned from the Russians is "nyet".

The agenda of basic issues with which the policy cannot come to grips is, if not endless, steadily growing: international trade, the deficit, taxes, Social Security, the environment, the stock market, mergers and acquisitions, R&D policy, health care, education, and on and on.

Our superb instrument of domestic governance has been stretched beyond its limits by two independent sets of forces. The first led to the creation of a national continental economy in which the basic economic units operate in an integrated national basis. Whether one is an automobile manufacturer, insurance company, department store, or telecommunications vendor, one plans and operates nationally. On the other hand, a large share of basic governance remains in the hands of the 50 states, several thousand counties, and countless numbers of specialized jurisdictions. The result is that everyone has a brake and no one has a gas pedal. The division of political power is totally mismatched with the structure of the economy. The reader is challenged to identify a single economic enterprise of significance where only one jurisdiction has authority. Enormous negative power lies in the hands of almost anyone or any group choosing to work its will at the state or local level, while the integration of forces to move in any direction is blunted and incoherent. One sees this in the extreme in 2400 people sentenced to death and on death row. In 15 years, only 121 have been executed. However one feels about the death penalty, it should be seen as ironic

and a failure of government that the death rate is now lower for those condemned to death than it is for free citizens in the general society.

The rise of the national society has led to the withering away of one of the key features of the traditional success of American democracy—that is, the willingness to trade off and exchange, to give a little to gain a lot. Today national forces can organize and exert immense concentrated power at a local level. One sees this in either side of the right-to-life vs pro-choice battle, but one also sees it in more ordinary issues in which a national corporation, upset by the possibility of local controls, threatens to close down its facility because it can move somewhere else. One sees this in the attempts to legislate and improve the situation in one state, leading to the threat or the actual movement of those who would be controlled into another environment. The rise of single-issue politics is pernicious to democracy. Irrespective of what else one stands for, if you are not with the single-issue advocates, they will knock you off. This, in turn, has had its most dramatic effect in Congress, in which most members are in dread of the single-issue constituency.

This fear is now disconnected from the general public will. For example, surveys show a steady, strong public desire for better gun control. But the single-issue advocates, with the double-barrel weapon, threats, and largess, routinely prevail.

The second set of forces overstressing our constitutional system are those driving globalization. Their effects are even more disruptive than the rise of the continental society. In a polity dependent upon tradeoffs among conflicting interests, there can be no tradeoffs in the international domain, because no one represents the many other sides of the story. One can see how easily this throws the nation onto the wrong track in extreme ventures such as Vietnam. Imbalance also leads to pathetic failures. The most pathetic of these failures is the inability of the United States to export democracy. Three countries have had our most extreme and extensive interventions, the Philippines, Panama, and Puerto Rico. We have not only failed to export democracy, but we have left each of these regions in a dismal state. Governance is a travesty in each.

Puerto Rico, which we have drawn closest to us as a commonwealth, is hardly a credit to any society claiming a benevolent attitude toward its fellow citizens. The people of Puerto Rico are, on balance, compared to the rest of the nation, illiterate, untrained, unintegrated into the larger economy, and have increasingly dim economic prospects. Rather than U.S. dominance enlivening their world and inviting a high growth and prosperous society, we have turned them into a society rent by the petty squabbles characteristic of the Third World.

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On a macro-international level, we see an administration pushed out of balance by its American domestic business constituents, carping on the wrong issues in trade negotiations with Japan or any other country. We have had to wait decades for the Japanese to steel themselves to tell us the truth about our failings, which our politicians now ignore or deny.

Other factors come into play in our descent from democracy. Some are derivative and some are convergent with the structural failures of the Constitution. Let us review some of them.

First is the stultifying growth of law and procedure. There is no doubt that law was the mainstay and lawyers were the celebrated heroes of the Republic in earlier times. Today their uncontrolled growth has become a social cancer. Let us assume that half of the lawyers are redundant, and do a modest calculation. Assume that they have an average income of \$50,000 a year, that 300,000 are redundant, and that lawyers are involved in leveraging something at least 20 times larger than their own personal income. That simple arithmetic says we have created a \$300 billion mischief machine. The proceduralism on which they thrive and prosper bogs us down at every turn, paralyzing our ability to deal intelligently with tangible problems. No company can now acknowledge a fault because of the undeniable threat of endless legal harassment. No public issue can be discussed without the risk of libel. No public plan can be put forward without endless harassing litigiousness. No criminal can be put on trial with the expectation of quick and speedy or reliable justice.

The perversion of law reflects a pathology of American society, to romanticize the past. The organization that was the strongest bastion of the defense of our liberties has become obsolete and a block to civil rights progress. The American Civil Liberties Union is a victim and a victimizer by being committed solely to the residual values of an older society. Its liberalism and guardianship are exactly parallel to those who rue the passing of William McKinley. The ACLU abjures proactive moves to meet the emerging needs of the new society. The passion to fit all new issues into old categories can do justice to neither. As the model organization defending our rights, one regrets that it has chosen to freeze its vision in an old rather than a new world. Like some nineteenth-century Talmudist or some thirteenth-century scholastic, the ACLU continually seeks less and less viable and more and more strained interpretations of an obsolete document. The mismatch can go in only one direction: worse. The ACLU has never been known to take a look to the future or to put forward a fresh idea.

A second social change threatening democracy is the catastrophic, cognitive collapse of the school system, K-12, and the highly questionable performance of higher education. Our national retreat from education leaves the core of the society, the middle class, in its second generation of the world's widest epidemic of ignorance in history. Never have so many known so little of the world around them, how it is structured, and how it operates. The consequence is a political high explosive. In the absence of understanding of a situation or a system in crisis the polity cannot tell whether the situation calls for minor jiggery-pokery or radical change. As we move into more stressed times—perhaps to a severe recession or a frank depression—that ignorant middle class will be strongly tempted by a man on a white horse. The ignorant always seek easy solutions.

The academic community is mute in criticizing our fundamental democratic institutions or calling for anything more than incremental remedies. Most political scientists, and almost without exception all public administrators, are caught up in either making the rickety system work or in explaining how it works. The total number of political scientists effectively involved in a serious and thoughtful look to the future makes fewer than a dozen. Most of them join in the consensus of middle-class values that the Constitution is sacrosanct and the Bill of Rights is to be hallowed rather than view them as social inventions to be altered, scrapped, or replaced to reflect emerging changes, issues, and values of our man-made world.

Incidentally, as a link to the world of technology, it is worth noting that at least half of the amendments making up the Bill of Rights are

direct responses to eighteenth-century social or physical technologies. Not only is that insight never taught, but we have no prospect of doing anything equivalent to that for the contemporary American world. Let us look again, briefly, at the political situation. While the middle class is the biggest threat to our democracy, a close second is the Congress, which is, to some extent, the more central of the constitutionally defined branches of government. Elected office has become a career. The single most important fact in determining whether you will be elected to Congress is whether you are a member of Congress. That careerism leads to a desire to hold onto the job rather than to serve the nation by any risky thrust to leadership. Furthermore, the Congress is largely populated with that baneful band we have already described, lawyers, who intrinsically, on a professional basis, look backward, not forward. They are committed to legislated procedural solutions that narrow the bandwidth of potential solutions. It is more convenient for a lawyer to look at a narrow issue in a short term perspective than to look to a longer-term issue and a more uncertain leadership opportunity.

A wash over several of the items already discussed is a deep-seated moralistic attitude in American society. By moralistic, I mean the interpretation of situations in narrow conceptual categories largely driven by formal religious beliefs or secular ideological equivalents. This moralistic attitude is accompanied by action programs that tend to be primitive, unidimensional, and severe or unequivocal. America has long been recognized as a moralistic society by domestic and foreign commentators. The side effects of that moralism show up in many places. In the international sector, the United States is an unreliable partner. The United States repeatedly responds to international situations with threats, boycotts, sanctions, renegeing on trade agreements, and cancellations of joint projects. As the public stamps its foot, the Congress and the White House respond with the showiest, most personally self-satisfying gesture. The moralistic elements show up in boycotting. A recent example is the movement to sell stock held in companies operating in South Africa. This could have no punitive effects on the South African economy; it merely creates an opportunity for those buying up that stock to enjoy substantial benefits. They would be buying undervalued assets.

Our moralistic predilection shows up in time-wasting chauvinism, which enjoys great popular public press and allows the deferral of serious issues. The latest of these is the Congressional and White House hurly-burly about the Supreme Court decision on flag burning. Even more deplorable than ensconcing religion in government is to ensconce secular religion in government. Jackboots present a more aggressive threat to the democratic society than crosses, crescents, or hexagrams.

Returning to the larger social trends, the middle class is addicted to symbolic behavior. The routinization of protests followed by benign, peaceful movement to a police station and symbolic jailing, all of them under absolutely guaranteed safe condition, creates for them the shallowest illusion of involvement with no involvement at all. Empty symbolic behavior demeans the enormous contributions and the risks of people who are jailed and who put their lives, their health, and their safety on the line. The symbolism for the middle class is the complement to its addiction to institutions and procedures and to the most pathetic of middle-class errors, to confuse the thought with the deed, the wish with the accomplishment. Consider the situation of our southern tier: let there be a border, let that border be closed. We have passed the laws, we have framed the regulations, we expressed the wish, but that border is not closed. In recent years so many as 1.8 million people have been apprehended illegally entering the United States. Our middleclass addiction to symbolism has allowed us to become the only advanced nation in the world, and the only nation in history, to refuse to maintain the integrity of its borders. Middle-class symbolism seems to be enough. Just say “yes” or just say “no,” and its wishes will be done.

It is dangerous to offer solutions at the same time that one is putting forth diagnosis. The tendency will be to concentrate on the solutions rather than on the diagnosis. While I strongly advocate a heartfelt

position that under no circumstances should one ever vote for a lawyer for any public office, there are other things to be done as well. I advocate boycotting all national elections. The sooner the voters in national elections drop to about 35%, the sooner a few political figures will recognize that the present arrangements are serving no one's long-term interests. Clear and unequivocal expressions of alienation from the present mess are one of the best means of promoting therapeutic change.

We must rewrite the Constitution for the twenty-first century and beyond, and that includes starting from scratch, taking nothing as sacred, and beginning the discussion anew. Such a discussion could not be conducted by merely assembling a national convention. Each time I have proposed this, whether to those planning the Bicentennial in 1976 or the Bicentennial of the Constitution in 1989, the powers that be turned away. It was alarming to see how Chief Justice Burger turned his attention as chair of the Constitution's celebration entirely to the past. As the model lawyer and jurist, he was entirely committed to the past of American

constitutional accomplishment and unequivocally refused to address the future. What we need antecedent to a constitutional convention is a massive, one to two year, mock constitutional convention. My advocacy is that it be broadly based, sponsored by industry, labor unions, churches, associations, the media, foundations, and others, and that we take advantage of the media to begin allowing each group to purge their concerns and to have full vent of their anxiety before we move to a positive agenda and a new constitution.

Ironic as it is, the middle class, which has the most to lose in the present descent from democracy, is the group most in fear of radical change, and hence the group most in need of having its anxieties and concerns vented. Keep in mind that there is no law of science and no word from God that says America must succeed. The future is in our hands and we can see the present decaying and crumbling, falling to dust between our fingers.