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The Ascendancy of Reform Populism

Americans have tried repeatedly to improve their political system in various ways. They have extended voting rights to women and racial minorities, ensured more regular presidential rotation, replaced indirect with direct Senate elections, and regulated congressional pay by constitutional amendments. State and local governments have experimented with nonpartisan elections, the citizen's initiative, recall, referendum, participatory budgeting, and city manager government. Political jurisdictions at all levels have passed measures to reduce material corruption, control campaign finance, improve government ethics, and lessen government secrecy. The result is a complex assortment of limits, prohibitions, and requirements that regulate many facets of political activity.

American political improvement is also highly institutionalized. Nonprofit reform groups abound – some with broad agendas, such as Common Cause, the League of Women Voters, U.S. PIRG, and the Brennan Center, and others with more specific democratic goals, such as Open Secrets and Open the Government (transparency), the Fund for Constitutional Government (effective government oversight), No Labels (lessened partisanship), OMB Watch (fiscal responsibility), Democracy 21 and the Campaign Legal Center (tighter lobbying and campaign finance controls), and Little Sis and the Center for Voting and Democracy (better voting procedures). But despite some notable reform achievements, there is a nagging doubt about all of this activity: is America truly making progress, or is the goal of achieving a less imperfect democracy simply futile?

By almost any measure, Americans' perceptions of their government have worsened in recent decades. According to polls by Gallup, the Pew Center for Research, and others, Americans had a higher level of trust in their government in the 1950s – before many of the modern political regulations were adopted – than they do now (Pew Research, 2013a). To be fair, indicators like trust and

satisfaction with government usually fluctuate up and down with prevailing conditions (Miller, 1974; Chanley, Rudolph, and Rahn, 2000). But that said, trust in the US government still has not recovered to pre-1970 levels. Congress as an institution has particularly suffered, as polarization and gridlock have driven evaluations to an all-time low (Pew Research, 2013b). The national government has always been viewed less favorably than state and local governments, but the gap has gotten worse in recent years (Pew Research, 2013c). Underneath the fluctuations, the general trend is downward.

The American public has a particularly negative view of its elected representatives. The public rank them just above car salesmen even as they rate unelected public officials, such as police and nurses, much more favorably (Gallup, 2013). And despite many reforms to prevent corruption, a significant number of Americans (between one-third and one-half) have consistently said since the 1990s that "quite a few" people running government are crooked (ANES, 2008). Trust and confidence in the mass media have dropped steeply, but faith "in the American people as a whole when it comes to making judgments under our democratic system about the issues facing our country" has only dropped slightly (Gallup, 2009). This discrepancy – confidence in the public but not in elected officials – shapes America's approach to political reform.

Taken as a whole, the picture of current American politics is not pretty. This is reflected in the titles of recent books, such as *Broken: American Political Dysfunction and What to Do about It* (Garfinkle, 2013); *Plutocracy and Democracy: How Money Corrupts Our Politics and Culture* (Garfinkle, 2012); *It's Even Worse than It Looks: How the American Constitutional System Collided with the New Politics of Extremism* (Mann and Ornstein, 2012); *Our Undemocratic Constitution: Where the Constitution Goes Wrong and How We the People Can Correct It* (Levinson, 2006); *Off-Center: The Republican Revolution and the Erosion of American Democracy* (Hacker and Pierson, 2005); and *Republic Lost: How Money Corrupts Congress – And a Plan to Stop It* (Lessig, 2011).

The concerns in these books largely center on partisanship, money, the US Constitution, and gridlock. The general narrative is this: American politics have become too polarized. This distorts normal congressional processes and poisons policy negotiations. The Constitution is full of anachronistic procedures and undemocratic institutions, such as the electoral college, a situation that may eventually lead to political disasters given the current tensions between the political parties. The Republican Party has become deeply ideological, acting almost like an antisystem party bent on obstruction. Money is now a dominant resource in electoral politics, which enhances the power of the donor class and undermines popular sovereignty. The authors of these

jeremiads provide solutions, but often as a shopping list of patches to discrete problems rather than as remedies that are tied to a bigger, coherent picture of what their reforms are trying to do and to an explanation of why past efforts have failed.

To be sure, the question of whether American political institutions are up to the task of modern governance is a serious one. Increased global economic competition, high immigration levels, greater economic inequality, and more intense partisanship will likely continue to put considerable strain on the American political system for the foreseeable future. The current political climate more resembles the turbulent nineteenth-century American experience than the bipartisan interlude after World War II. US political institutions may have seemed to work better several decades ago as a result of US economic and military dominance, low levels of immigration, less economic inequality, and lingering bipartisanship in the wake of two wars. Is it possible that American institutions are optimized for the good times and not for the bad?

The American system, with its many veto points, has always been vulnerable to gridlock. Indeed, its implicit premise is that major policy change requires a broad consensus. But can the United States achieve enough consensus under its current structure to make important policy decisions, given the stresses of party polarization, rising inequality, racial diversity, and geographic sorting? Features like the separation of powers, federalism, and judicial review have always made it easier to stop new policy directions than to move them forward. And the US system has always provided ample opportunities for interest group influence and private wealth enhancement though government action. But in the immediate postwar period, crosscutting electoral cleavages in both political parties acted as a socioeconomic brake on any potentially accelerating partisan divide. Socially conservative Southerners coalesced with northern liberals in the Democratic Party, and social moderates with economic conservatives in the Republican ranks. Political professionalization was not as advanced as it is today, and therefore the pressure to raise money for campaigning was less. Immigration rates did not pick up until the 1960s.

The question of whether our exceptional institutions are up to modern challenges underlies many of the recent studies. Tom Mann and Norman Ornstein ask whether congressional institutions can handle highly polarized political parties (2012). Lawrence Lessig (2011) and Dennis Thompson (1995) worry that dubious campaign finance and lobbying practices have created an institutionally corrupt political system, undermining the will of the majority and constructive deliberation. Richard Hasen (2012) warns of pitched battles over election rules because we have a partisan election administration system. Juan Linz (1990) and Arend Lijphart (1994) have suggested that it should

trouble us that the US system does not seem to perform as well as other democratic systems. Can America continue to govern successfully in its idiosyncratic and seemingly anachronistic way?

THE MODERN REFORM DISCUSSION

The debate over reform on the ground is also bedeviled by other complicating factors. Short-term political calculation is one of them. Political institutions and rules unavoidably favor some interests over others. Knowing this, political professionals and elected officials all too often adroitly game new political rules almost as soon as they are announced. Political people, immersed in the fray, cannot separate their own calculations of political advantage from considerations of what is best for American democracy. This is most clearly illustrated by the current intensely partisan divide over such election administration issues as requiring voters to show photo identification at the polls or permitting eligible persons to register and vote on the same day. Underneath the principled arguments about the trade-offs between ballot security and expanded political participation, Republicans fear that making voting more convenient advantages Democratic voters, while Democrats believe that the new restrictions allegedly aimed at preventing fraud are really thinly veiled attempts to keep Republicans in power (Hasen, 2005, 2012).

In addition, the characteristic hype and hyperbole in American politics usually undermines efforts to have sober reform conversations. Getting reluctant politicians to pass new rules that might disrupt the status quo or getting indifferent, inattentive citizens to vote for initiative reform measures calls for strong rhetoric and bold promises. Measured and fair arguments get lost in the cacophony of competing claims. Reforms are sold hard, even when there is no credible empirical support for strong assertions. And so a new campaign finance law will finally eradicate corruption and restore equality for all citizens. Or a citizen redistricting commission will wipe out incumbent advantage, lessen partisanship, and produce political fairness. Circumspection is rarely rewarded in public reform discussions. How many voters would support reforms that they knew would yield only marginal improvements or could be easily evaded? Ironically, reformers have to play by the same informal rules of modern public opinion strategies that so many of them deplore, but necessity is the mother of political imitation. However, there is a hidden price for political hyperbole. When the exaggerations needed to mobilize support are not realized, public cynicism and reform weariness can set in (Bowler and Donovan, 2013).

Even well-intended reform advocates are sincerely divided about how and why they want to fix American politics. The US commitment to democracy per

se is solid. Except for the paranoid fringes on both ends of the ideological spectrum, there is little fear about the United States lapsing into autocracy, as there is in many emerging democracies. The principle of electoral accountability enjoys broad support, even as American political campaigns seem more superficial and unsatisfying than ever. But beyond this core commitment to popular sovereignty, reformers often sincerely disagree about the trade-offs between competing democratic values and the best ways to implement institutional design.

Reform proposals sometimes conflict even when they appear to be grounded in the same democratic principles (e.g., fairness, equality, free choice, integrity, political legitimacy, and the like). Invoking fairness, for instance, some voting rights groups judge redistricting processes by the number of majority-minority districts they produce, whereas Common Cause, the League of Women Voters, and other good-government organizations typically believe fairness simply means neutral procedures and impartial line drawers. In the interests of cleaner government and of eliminating corruption, liberals argue for campaign expenditure limits, whereas many conservatives believe that disclosure is the only legitimate means to that end. Advocates of direct democracy laud popular initiatives in the name of accountability, whereas critics fear that they undermine representative government. It is hard to make progress when people disagree so fundamentally on what they want to achieve and how to do it.

This point was driven home to me several years ago when I agreed to participate in conversations about a possible constitutional convention to remake California government. It is far easier to change California's constitution than to change the national one. For those who wish the federal government could be more easily changed, it offers a sobering lesson. California was mired at the time in a serious recession with mounting budget deficits. Services had been cut severely. The majority Democratic legislature wanted to enact revenue increases but was stymied by supermajority rules that empowered a deeply conservative Republican caucus. The conference calls I participated in included representatives from many of California's most prominent reform groups as well as a few academics like myself who had worked with the Constitutional Revision Commission in the previous decade.

When the conversation turned to the specific reforms a constitutional convention might consider, the suggestions were all over the map: smaller districts, proportional voting rules, nonpartisan elections, multiyear budget cycles, protections against state raids on local government coffers, a part-time legislature, restrictions on popular initiatives, and so on. Many of these proposals did not even remotely address the causes of California's structural deficit, the crisis that had precipitated the meetings in the first place. The complicated politics

surrounding the budget and policy making were replicated in the divisions over proposed reforms. There was not much effort at keeping behind the Rawlsian veil of ignorance with respect to who would win or lose in the short run if various changes were actually implemented.

The California reform community was also flirting with the idea of a constitutional convention consisting of citizens chosen by lottery (Halper and York, 2010). The thinking was that average citizens would not be captured by the preconceptions and status quo interests that politically active and knowledgeable people might have. Representation was more important to the proponents than expertise. But after many months of forums and public debates on the matter, it was pretty clear to many that a convention chosen by lottery with a wide-open reform agenda would veer out of control pretty quickly. In the end, the lingering image of California's chaotic 2003 recall with 135 candidates, including a porn actress and the former child actor Gary Coleman, tempered the enthusiasm for a constitutional convention of citizens chosen by lottery. All of this is a reminder that a modern-day constitutional convention would look very different from the one the founding fathers held and that the United States needs a clearer conception of what it wants to achieve through political reform.

IN A NUTSHELL

My purpose in this book is to critique the common populist assumptions underlying many recent reforms and to suggest an alternative vision of a coherent blended design that draws more heavily from neglected pluralist principles. The central argument is as follows: Contemporary US reform often expands citizen democratic opportunities to participate in, observe, and control government in order to remedy and prevent problems that arise with representative government. This strategy fails when it overestimates citizen capacity and commitment and when it ignores the critical role that intermediaries inevitably play in any large democracy.

The neglected aspect of American reform design is the pluralist dimension. The pluralist goal is to make the proxy representation of citizens by interest groups, nonprofits, political parties, and other intermediaries as fair and effective as possible. Pluralism reminds us that political design must include governance (i.e., the joint operation of formal and informal political representation) as well as the formal rules and processes of government itself.

Moreover, US political reform cannot aspire to be consistent (i.e., apply one uniform approach to governmental design), but it can become more coherent. There are three major reform traditions in the United States. I call them the populist, the pluralist, and the apolitical. In essence, all three are genetically

encoded in our constitutional structure and manifest at all levels of US government. They can and often do complement one another in a positive way, but they can also interact in a negative way. One particularly problematic dynamic is when well-resourced and highly motivated individuals and groups capture the democratic opportunities intended for ordinary citizens. A coherent blended strategy aims to make these approaches operate in a complementary fashion that furthers fairness and effectiveness.

Finally, given the many constitutional, institutional, cultural, and political constraints, American reform will necessarily be second best and only incremental unless there is a catastrophic breakdown in the US political system. Meaningful reform is and will continue to be hard, but worth doing.

THE DEMOCRATIC IMPERATIVE

The general drift of American political reform has been to try to fix the problems of representative democracy by creating more opportunities for citizens to observe, participate in, and control their government's actions. There is in American political culture a strong implicit faith in popular sovereignty as the remedy to government corruption, misrepresentation, and incompetence. The populist reformer aspires to apply the "one person, one vote" equality principle across all dimensions of political influence, empowering individual citizens with equal opportunities to contribute to campaigns, acquire information from the government, observe decisions, and remove officials they do not like. But the questions that are not asked frequently enough, despite decades of empirical research on this topic (Lazarsfeld, Bereleson, and Gaudet, 1948; Campbell, Converse, Miller, and Stokes, 1960), are whether individual citizens have the resources, motivation, and capacity to undertake these new civic opportunities, and, if not, what this means for the design of effective reforms. These questions will only become more important as the Internet continues to generate novel ways for citizens to interact with their government. Handled correctly, these new interactions can usefully supplement representative government. The dangerous illusion is that they should supplant it.

Dissatisfaction with representative government is the core of the populist reform impulse. When elected officials fail through corruption, incompetence, or, sometimes, bad luck, there are two choices: replace the individuals or fix the system. Americans do both. What is the problem with fixing democracy with more democracy? The answer lies in the *delegation paradox*. Representative government is an essential component of the modern state for a simple reason: citizens on average do not have the time, expertise, resources,

and interest to make the many decisions required in contemporary governance.

The delegation by citizens to representatives is simply the first in a string of delegations that undergird the American system. Congress delegates legislative tasks to committee chairs and the implementation of laws to agencies. The president delegates powers to cabinet members and heads of other departments. Key monetary matters are delegated to the Federal Reserve Bank. The federal government delegates functions to states, and states to counties and cities. Somewhat ironically, governments at all levels increasingly delegate to private contractors for all sorts of functions, including maintaining prisons, providing security, and monitoring terrorists (i.e., basic Hobbesian functions). Each delegation efficiently divides responsibility for a key government task, but the cumulative effect is a weakening of direct citizen control and an increase in monitoring costs.

The secondary delegations only magnify the problems inherent in the initial delegation from voters to elected officials. Citizens delegate to elected officials because they lack the expertise and resources to govern themselves. But as numerous political scientists have argued for decades, representation entails many agency problems: information asymmetry (the government has more information than you do), resource asymmetry (the government has more resources than you do), and a potential mismatch of interests (government officials may pursue goals that you disagree with). Some of these are the same problems that bedevil principal-agent relationships generally, but they are compounded in democratic representation by the fact that the single agent (i.e., the elected representative) has to act for the interests of many principals (i.e., his or her constituents). Unless all constituents think alike, it is guaranteed that someone will be disappointed even if the elected official does not behave badly. And, of course, in some cases, representatives or the actors to whom they have delegated government functions do actually perform badly. When the failures of representative government become salient, the democratic impulse is to ratchet up the level of control that the delegators have over the delegate. For voters, this means demanding more transparency or citizen participation, and for elected officials, it means more lengthy, detailed legislation or layers of bureaucratic reporting.

The *delegation paradox* is this: The effort to gain more citizen control can never close the representation gap. It merely shifts the delegation. Elect more representatives to check the ones that have disappointed or failed, and you have created more delegations. Resort to direct democracy to check or bypass representative government, and a new class of election entrepreneurs gets the delegated task of formulating policy, organizing the effort to get something on

the ballot, and providing voters with the information and cues they need to make a decision. Create new citizen forums, and they become the new agents. Average citizens will sporadically give input to government when something really matters to them. Organized interests are a constant presence.

The original sin of citizenship is our cognitive fallibility: it can never be overcome. Representative government and pluralist design accept that fallibility, aiming for a framework of competing groups and organized interests. The "more democracy" illusion downplays that inherent cognitive fallibility and creates more opportunities for citizens to monitor, participate, and control government directly. In the end, there is no escaping the original-sin problem, and the inevitable subsequent disappointment with past reform merely generates a new cycle of efforts.

The democratic imperative plays out in many contemporary reform issues. It undergirds the trend toward greater democratic inclusion, expanding the electoral franchise to previously excluded individuals and making voting easier. Political corruption increasingly means the corruption of equal-voice ideals (i.e., democratic distortion), not the traditional bribery, extortion, and self-enrichment. Lottery-selected citizen assemblies and popular initiative amendments have replaced experienced elites deliberating in a select constitutional convention. The demands for more transparency from candidates and government continue to ratchet up, and citizens expect to observe and participate in government in novel ways. Some of these reforms are now so widely accepted (e.g., the enfranchisement of women and minorities) that they are ingrained in the very definition of democracy. But in other cases, modern reforms have had ironic and unintended consequences.

Consider, for instance, the problem of rising American political partisanship. One source in the Republican Party is the threat that party activists, with the backing of Super PACs and other independent spenders, pose to mainstream incumbents in party nomination contests. The party base is most influential during nomination contests. Examples include not only the Tea Party's victory over Republican Senator Robert Bennett in Utah's 2012 caucus but also the Left's primary challenge to Democratic Senator Joseph Lieberman in 2006. Party caucuses and primaries are typically low-turnout events. Moderate and independent voters do not participate at the same level in these contests, thus enabling the party activists, who are more ideological and motivated, to exert more control over the nomination.

Ironically, party caucuses and primaries were meant to democratize the political parties and to take power away from party bosses and elites. But that only works if the electorate as a whole participates. The implicit reform assumption was that they would. But when that assumption fails, it produces

an unintended centrifugal effect, pulling candidates away from the general median voter in order to satisfy the primary median voter. Moreover, the pressures extend beyond the occasional extreme candidate to the strategies of more mainstream candidates. Mitt Romney's 2012 presidential campaign, for instance, tried unsuccessfully to execute a centripetal November turn away from his centrifugal primary drift.

Populist assumptions underlie decades of campaign finance reforms as well. The increasing professionalization of American political campaigns exposed the inefficiency of the Buckley-era campaign finance regulations. The so-called hard money system encouraged individual donors to contribute directly in limited and disclosed amounts to candidates in the interests of small donor democracy. But this system was inefficient because most incumbents could win re-election easily. During the 1990s, so-called soft money shifted to the political parties for party-building activities, which in many cases included campaign ads for and against individual candidates. The reform community coalesced around blocking the party soft money path by passing the McCain-Feingold campaign finance law. Although warned that soft money could then flow to independent groups and that there was nothing that could be done to prevent this, the reform forces went ahead with their legislation anyway.

When the Supreme Court allowed corporations to spend independently and an appellate court ruled that individuals and groups could make unlimited money donations to independent Super PACs, both rulings added fuel to the independent-expenditure fire. The cumulative effect was fractured campaign spending, which enabled highly ideological and concentrated interest groups to leverage their influence considerably. From a party-pluralist perspective, it would have been better to funnel the money through establishment party hands where extreme influences could be better offset and neutralized. But the ideal of small individual donors had a strong hold over the reform community. It seemed more consistent with the individual-citizen populist ideal underlying the electoral system.

THE NEGLECTED PLURALIST TRADITION

The drift toward reform populism is understandable. As I will discuss in greater detail in Chapter 2, the other alternatives – pluralism and apolitical inoculation – seem less democratic, and hence less appealing, to the American mindset. Ironically, even apolitical inoculation has more adherents than pluralism. The idea that policy making can be a pure science or that the courts can neutrally referee political contests has articulate advocates in economic and legal circles (Issacharoff, 2011; Owen, 2013). The same cannot be said of the