

**Sandy Lakoff/ Osher, UCSD/ “Bled White and Blue: What Ails American Democracy?” --
Lecture 5, November 26, 2014**

Renovation or Decay: the New American Dilemma

In 1944 the Swedish social scientist Gunnar Myrdal published a book entitled *An American Dilemma*. It focused on the contradiction between the persistence of racism and segregation and “the American creed.” He was confident this dilemma would be overcome because of the strong belief of the American people in the ideal of equal rights. Thanks to the heroism of ordinary citizens like Rosa Parks, to leaders like Martin Luther King and Lyndon Johnson, and to the hold of the American creed, great strides have since been made to deal with that problem, just as Myrdal was confident would happen. Tensions such as are being experienced in Ferguson, Missouri, are certainly real but they are less a function of racism than of the persistence of de facto segregation and the pathologies due to low income, dysfunctional families, poor schooling, and a culture of drug use and gun violence.

Today we face another American dilemma. Its most immediate symptom is the partisan gridlock which has paralyzed our government, especially its legislative branch. When Myrdal’s book appeared, there was an attitude of can-do optimism in the country, stemming from our success in confronting the Great Depression and then the Second World War. In the 1950s, many keen observers thought that Americans had reached a phase of history in which their characteristic pragmatism had trumped ideological constraints. Rugged individualism and distrust of government were thought to be obsolete inhibitions. We were ready to adapt to changing circumstances, sticking to our basic values but using innovative means to keep them relevant.

There were nay-sayers who said America was about to decline just as other great empires of the past. But **Max Lerner**, a journalist/academic who had a finger on the nation’s pulse, thought otherwise when he published his magnum opus, *America as a Civilization*.

I summed up his response to the prophets of doom in my biography of him in 1998. Thanks to a pioneering spirit, a cascade of great inventions, and waves of immigrants eager to work for a better life, Lerner believed, we had become a great nation. Spread all across a fertile continent with abundant natural resources, we had advanced from agriculture to industry, from the farming community to the megalopolis; from boom-and-bust buccaneer capitalism to the managed economy and the Welfare State; from despoiling the wilderness to environmental stewardship; from isolationism to world leadership as the arsenal of democracy; from toleration of slavery to the celebration of inclusiveness. In the process, we had turned the flotsam and jetsam of impoverished and ill-educated immigrants – the “wretched refuse” of Europe -- into the most productive and creative society – no, civilization – the world had ever seen. He called our

formula for progress a process of “extended genesis” -- or in other words constant rebirth and renovation. This is how I paraphrased his view:

“America would triumph, he thought, because it was not backward looking but forward looking, not mired in the past but eager to embrace the new and uncertain. The secret to the success the country had already achieved and the reason it would exert continuing influence was that it had become the social equivalent of the natural process by which biological evolution assures the survival of the species. For Lerner, America was an example not of natural selection but of continuing adaptation, or what he called ‘extended genesis.’ It could not be imprisoned in tradition, because its tradition was one of constant innovation. It was not rigidly governed from the center but was in effect a network of forces, including those of business and technical elites and those exerted by the tastes and choices of ordinary people. Whereas the individuals in it would inevitably pass through the ‘life cycle’ from birth to senescence and death, the society itself would constantly be reborn.”

(*Max Lerner: Pilgrim in the Promised Land*, University of Chicago Press, 1998; from chapter six commenting on his magnum opus, *America as a Civilization* [1957])

Now, nearly 60 years later, some of our keenest observers are taking a far more jaundiced view of the country and its condition. They are saying we are suffering from institutional decay, just as other nations before us have. **Francis Fukuyama** became famous a decade or so ago for suggesting that with the fall of communism the world had reached what Hegel foresaw as an “end of history” – in other words that the West’s combination of democracy and the free market economy had triumphed and was becoming universally accepted. He has recently published a very perceptive lament for our country in *Foreign Affairs*. In it he decries not just the polarized partisan gridlock we are experiencing in our politics but what he calls the systemic failure of our system of government that lies behind it.

Here is some of what he has written:

Polarization is not the end of the story . . . Democratic political systems are not supposed to end conflict; rather, they are meant to peacefully resolve and mitigate it through agreed-on rules. A good political system is one that encourages the emergence of political outcomes representing the interests of as large a part of the population as possible. But when polarization confronts the United States’ Madisonian check-and-balance political system, the result is particularly devastating.

Democracies must balance the need to allow full opportunities for political participation for all, on the one hand, and the need to get things done, on the other. Ideally, democratic decisions would be taken by consensus, with every member of the community consenting. This is what typically happens in families, and how band- and tribal-level societies often make decisions. The efficiency of consensual decision-making, however, deteriorates rapidly as groups become

larger and more diverse, and so for most groups, decisions are made not by consensus but with the consent of some subset of the population. The smaller the percentage of the group necessary to take a decision, the more easily and efficiently it can be made, but at the expense of long-run buy-in.

* * *

The U.S. political system has decayed over time because its traditional system of checks and balances has deepened and become increasingly rigid. In an environment of sharp political polarization, this decentralized system is less and less able to represent majority interests and gives excessive representation to the views of interest groups and activist organizations that collectively do not add up to a sovereign American people.

...The government then doesn't perform well, which confirms people's lack of trust in it. Under these circumstances, they are reluctant to pay higher taxes, which they feel the government will simply waste. But without appropriate resources, the government can't function properly, again creating a self-fulfilling prophecy.

The explosion of interest groups and lobbying in Washington has been astonishing, with the number of firms with registered lobbyists rising from 175 in 1971 to roughly 2,500 a decade later, and then to 13,700 lobbyists spending about \$3.5 billion by 2009. Some scholars have argued that all this money and activity has not resulted in measurable changes in policy along the lines desired by the lobbyists, implausible as this may seem. But oftentimes, the impact of interest groups and lobbyists is not to stimulate new policies but to make existing legislation much worse than it would otherwise be. The legislative process in the United States has always been much more fragmented than in countries with parliamentary systems and disciplined parties. The welter of congressional committees with overlapping jurisdictions often leads to multiple and conflicting mandates for action. This decentralized legislative process produces incoherent laws and virtually invites involvement by interest groups, which, if not powerful enough to shape overall legislation, can at least protect their specific interests.

For example, the health-care bill pushed by the Obama administration in 2010 turned into something of a monstrosity during the legislative process as a result of all the concessions and side payments that had to be made to interest groups ranging from doctors to insurance companies to the pharmaceutical industry.

Fukuyama is right and perceptive but our problem is not just institutional decay. It is at the same time -- in an even deeper and more comprehensive dimension -- the loss of the sense of common purpose and common striving for betterment that made the American experiment an example to the world. Racial tensions still fester because the economic difficulties and social pathologies of our ghettoized central cities have been neglected. A sub-culture of immigrants, most of them here illegally, remains unabsorbed by the communities in which they live, "strangers in the land," even more so than the immigrants of the nineteenth and early twentieth centuries who were mostly legally admitted. The relatively affluent have health care and pre-school care for their children; even the working poor often have neither --although the expansion of Medicaid coverage and the \$5.2 billion child care voucher law are important steps in the right direction. The violence all too common in our inner city neighborhoods and in our schools and the flight of the relatively affluent into gated communities are both symptoms of the same basic dissolution of the social bond. Perhaps most troubling of all is the rise of extreme economic inequality, which, coupled with the lifting of limits on campaign spending, increases the political power of the wealthy few at the expense of the middle class that is the bulwark of democracy everywhere.

What then needs to be done to address the new American dilemma? More needs to be said about this issue than could be possibly be covered, even in outline, in one lecture (though in written form this will be longer than most). Here I want to frame an answer in terms of seven problematic categories and review some remedial ideas of my own and others -- notably my department colleague Arend Lijphart, who is a world-renowned expert on electoral systems. These are the categories:

- 1. Economic and political inequality.**
- 2. Civic, economic, and scientific illiteracy.**
- 3. Elections.**
- 4. Congress.**
- 5. The presidency and administration.**
- 6. The Supreme Court and the judiciary.**
- 7. Community and civility.**

I am under no illusions that most of the ideas to be reviewed here will be widely accepted and acted upon, especially in view of the results of the recent election. Many of the problems, as will be noted below in the section on Congress, stem from the radicalization of the Republican Party, and its recent electoral victory probably makes it an even more obdurate barrier to the reforms that will be proposed here. But the reforms need to be put on the table and maybe some of them will eventually prove persuasive.

1. Inequality: A *RISING TIDE LIFTS ALL YACHTS*

We no longer lead the advanced industrial world either in shared prosperity or in socio-economic mobility. We are experiencing a degree of economic inequality that hasn't been seen here since the post-Civil War Gilded Age. It used to be said that a rising tide lifts all boats. Now, as has been said, it is more the case that a rising tide lifts all yachts. With rising economic inequality have come the corruption of our legislatures and courts, and the coarsening of our political discourse.

Steven Rattner, the Wall Street businessman who led the successful bailout of GM and Chrysler) wrote this about the issue in the New York Times of November 17:

Before the impact of tax and spending policies is taken into account, income inequality in the United States is no worse than in most developed countries and is even a bit below levels in Britain and, by some measures, Germany.

However, once the effect of government programs is included in the calculations, the United States emerges on top of the inequality heap.

That's because our taxes, while progressive, are low by international standards and our social welfare programs — ranging from unemployment benefits to disability insurance to retirement payments — are consequently less generous.

...

All told, social spending in the United States is below the average of that of the wealthiest countries. And other governments help their less fortunate citizens to a greater extent than we do in ways that are not captured in the income statistics. The United States, which is the only developed country without a national paid parental leave policy, also has no mandated paid holidays or annual vacation; in Europe, workers are guaranteed at least 20 days and as many as 35 days of paid leave.

...

Critics from the right argue that doing more to level the income pyramid would hurt growth. In a recent paper, the International Monetary Fund dismissed that concern and suggested that a more equal distribution of income could instead raise the growth rate because of the added access to education, health care and other opportunities.

While some believe that the recent elections will stimulate both parties to make progress on the mound of challenges, in my view, that's a bit of a fantasy.

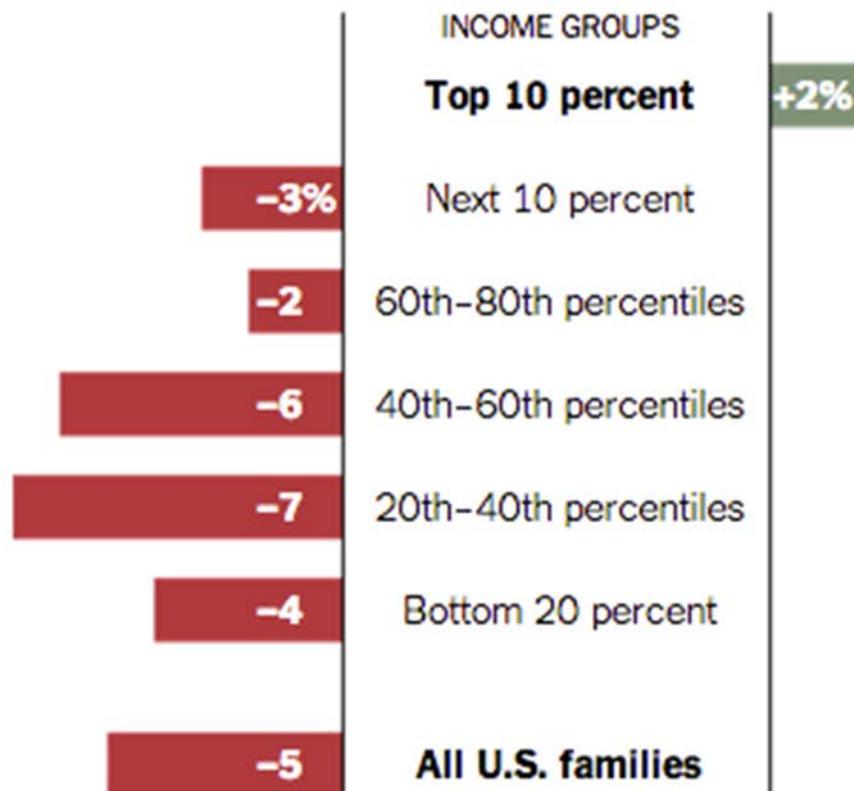
But we can't stop talking about the problem of inequality, because then there really would be no hope.

(SEE THE APPENDIX FOR THE COMPLETE TEXT.)

To illustrate his point he supplied these graphs:

Declining Incomes, But Not at the Top

Percent change in median family income, 2010-2013.

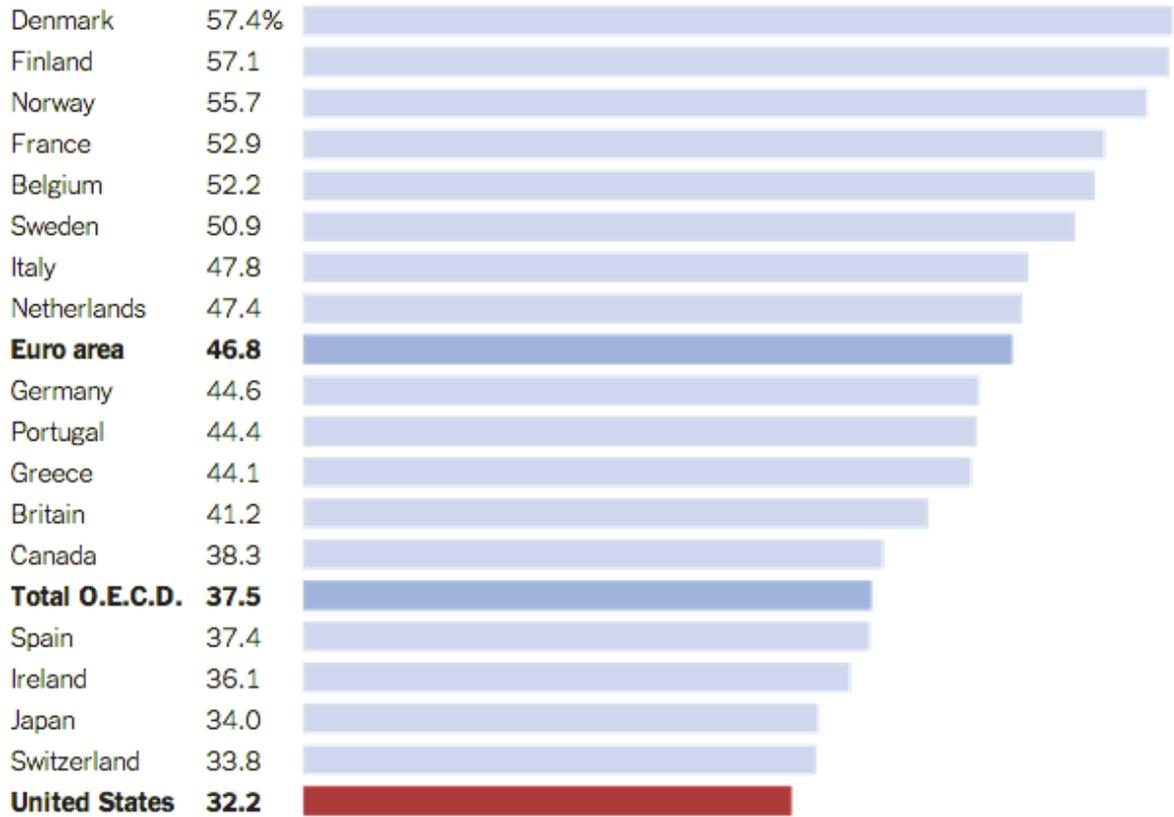


Figures are change in median pretax income in each percentile range. Adjusted for inflation.

Source: Federal Reserve

Bottom of the Heap

U.S. tax revenues, as a percent of G.D.P., are the lowest of O.E.C.D. countries.

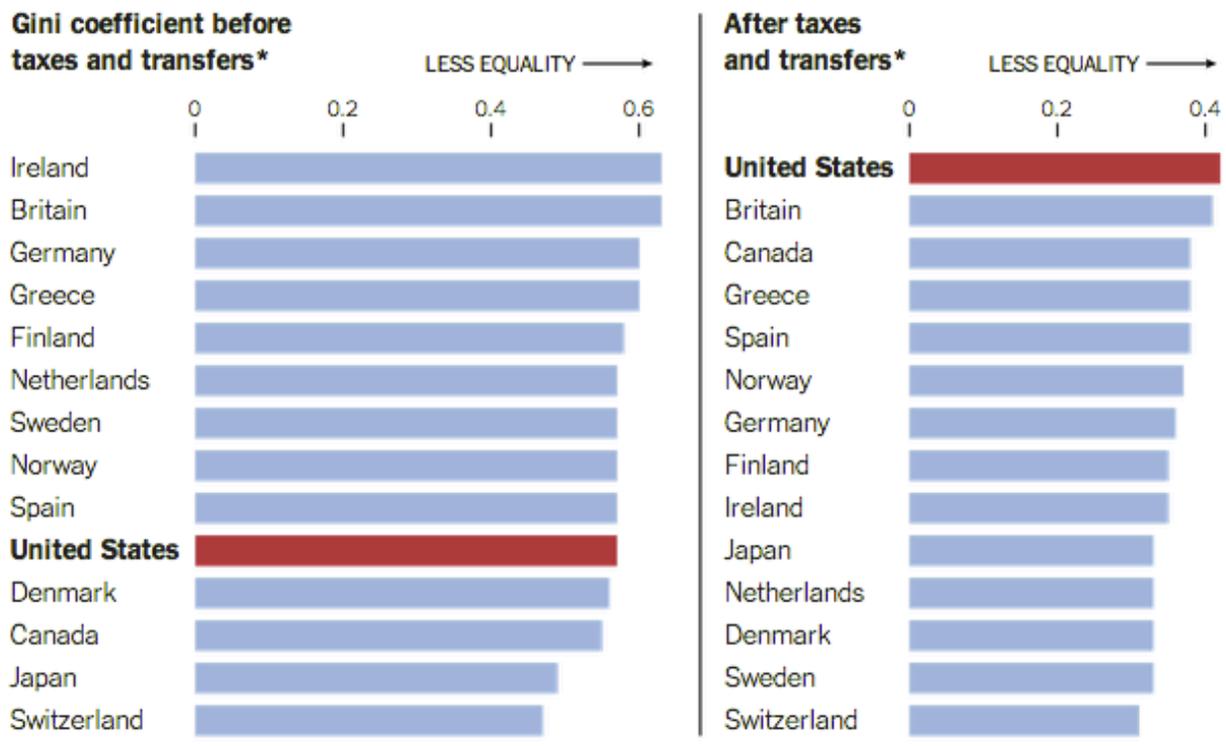


Includes taxes and user fees collected by all levels of government.

Source: Organization for Economic Cooperation and Development

Doing Less to Redistribute Income

The U.S. ranks favorably in the Gini coefficient, a measure of inequality — until taxes and government transfers are factored in. Then, among these countries, it is the worst.

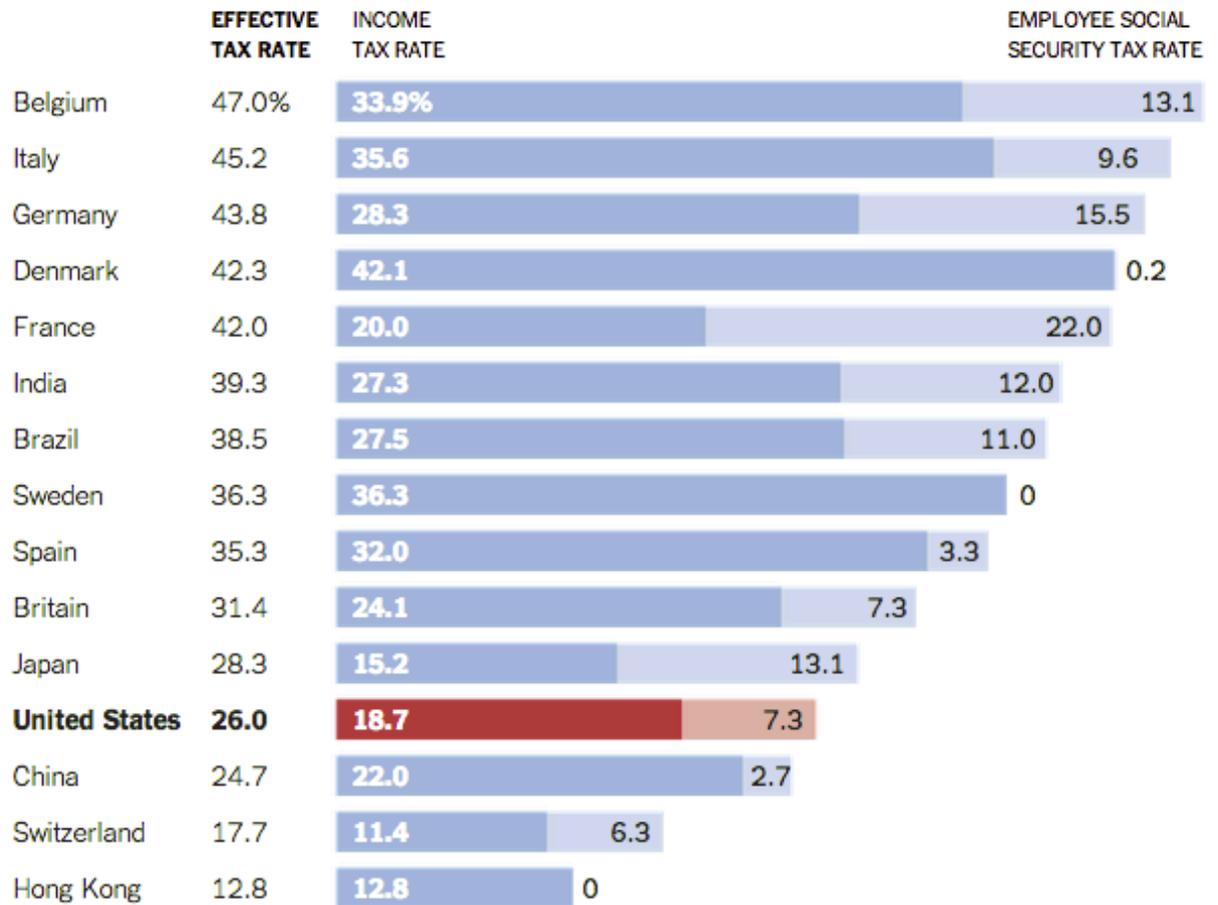


*Transfers include programs such as Social Security, unemployment insurance, food assistance and housing allowances.

Source: Janet Gornick, Luxembourg Income Study, 2013

The Low American Tax Burden

Effective tax rates on gross income of \$100,000 in 2012.

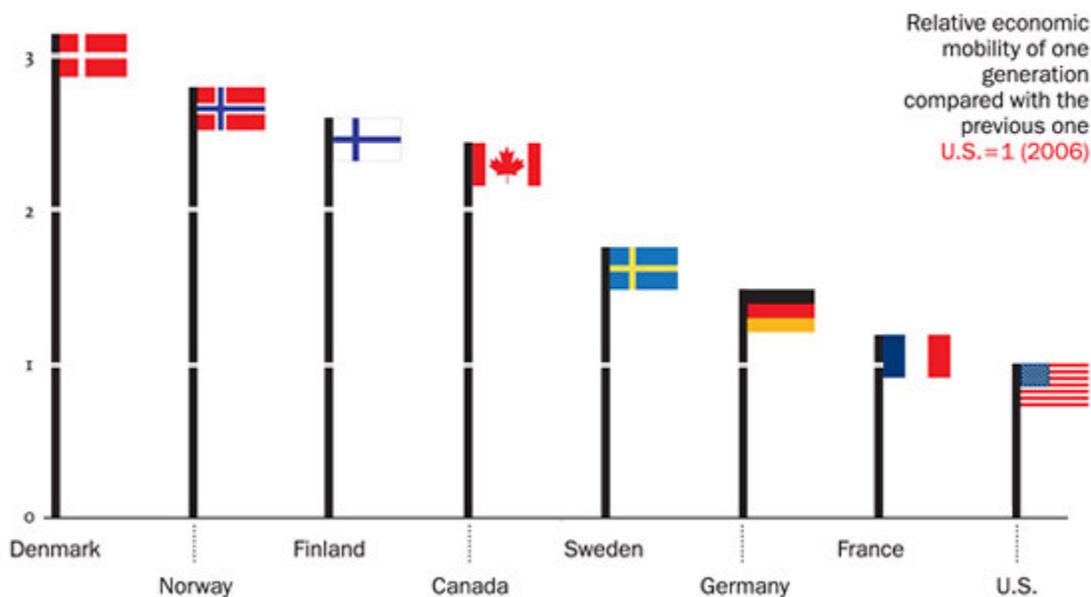


Source: KPMG

And here is one more chart comparing social mobility from Time Magazine. Bear in mind that mobility is a measure of equality of opportunity, a cardinal American belief.

Why We're Falling Behind

The U.S. trails other Western industrialized nations in many of the key areas that influence a person's prospects for economic mobility



Why is it extreme inequality bad for democracy? Here is my view:

Our socio-economic system permits a considerable degree of inequality, to allow for rewards to risk-taking, talent, thrift, meritorious service, and diligence, as determined by job performance, market forces, and sheer luck. But it need not and should not shelter undeserved great wealth that is either inherited or acquired by manipulation of the regulatory rules and the tax system. As the Fed chair Janet Yellen recently reminded us, we need to be concerned about the moral incompatibility of extreme inequality with the democratic ideal of social justice. And we also need to beware of the danger that rising inequality will revive the turmoil that led to the downfall of democracy in Europe in the 1920s and '30s.

That kind of turmoil could conceivably result from the rise of movements like the nativist/populist parties in Europe and both the libertarian/ populist Tea Party and the more evanescent left-wing/populist "Occupy Wall Street" protest in the United States. In the late nineteenth century here and in the 1930s in Europe, extreme inequality produced major protests here and the overthrow of democracy in Germany and Italy. Today, as before, resentment leads to political extremism, making compromise seem like betrayal and fraying the bonds of civility and citizenship by promoting cynicism about the efficacy of democracy. Both on the left and right, suspicion grows that government is in the hands of some ill-defined "power elite" that acts

to protect its own privileges by supporting “crony capitalism.” Those on the left see government as the “executive committee of the ruling class,” in the phrase once favored by Marxists. On the right, populists and libertarians see rising tax revenues creating ever more intrusive, dictatorial government, enhancing welfare dependency, and lowering barriers to immigration that cause unemployment and a loss of cultural homogeneity. Separatist movements also batten on the same suspicion that controlling centripetal forces, either national or global, are conspiring to prevent indigenous autonomy.

Such movements erode one of the greatest virtues of democracy, which is that it provides a non-violent safety valve for discontent and promotes pragmatic compromise. So long as people angry over a policy or unhappy with social conditions are free to associate with each other and press their case through the ballot box, they are less likely to conspire against the state and seek its overthrow. Paranoid fantasies will always lead to the formation of fringe groupings among those who imagine that they are authorized by God or some cause to resort to unlawful means, but so long as the political system allows for dissent and peaceful change, they are unlikely to sway the majority. Alternatives to democracy, such as the “guardian states” of Singapore, China, and Islamist Iran, may be able to “get things done” more expeditiously than democracies but they inevitably suppress dissent, sometimes brutally, and promote elite corruption.

When that perception becomes endemic in a democracy, as a direct or indirect result of extreme economic inequality, it is bound to have similarly corrosive effects. Whether resentment does or not rise to a fever pitch, extreme economic inequality weakens the political process by undermining the ties of citizenship – the sense of common interest, the recognition of a duty to participate, and the willingness to respect electoral outcomes, judicial rulings, and political compromise -- that are critical to democracy.

A society with extreme economic inequality, as Larry Diamond has observed, becomes a “predatory society” which is “the inverse of the civic community.” One result is a loss of confidence in government. A June Gallup poll reported that confidence in government had reached an all-time low: 30% in the Supreme Court, 7% in Congress, and 29% in the president. Low electoral turnout – 59% of eligible voters in 2012, 36% in 2014 – is another indication. (As Stanley Faer has pointed out, Eric Cantor, the former Republican House Majority Leader, lost his seat in a Republican primary in Virginia in which only 13.7% of the party’s voters bothered to vote. In an election like that, a very small faction – in this case about 8% of the district’s Republicans -- can determine the outcome.)

Democracy is supposed to mean majority rule. Increasingly it is becoming minority veto. When great wealth is allowed to play a role in campaigns, it is inevitably corrupting. As Fukuyama observes, “It becomes highly problematic . . . when the economic winners seek to convert their wealth into unequal political influence. They can do so by bribing a legislator or a bureaucrat, that is, on a transactional basis, or, what is more damaging, by changing the institutional rules to favor themselves -- for example, by closing off competition in markets they already dominate, tilting the playing field ever more steeply in their favor.”

What can be done about inequality?

As Rattner suggests, raising the minimum wage and the earned income tax credit would help. *Both should be indexed to economic growth and the wage structure.* That would go part of the way toward reducing extreme inequality of income.

- * Income taxes on the super-rich should be raised. (There is no excuse, for example, for making “carried interest” by hedge fund managers – which is essentially the income they earn from managing investors’ accounts – taxable as a capital gain rather than as ordinary income. That change alone would net the U.S. treasury tens of billions of dollars over the coming years.)

- *The cap on the amount of earned income subject to Social Security taxation should be raised – though that could be circumvented by turning more of executive pay into stock options.

- * Inheritance taxes on wealthy estates are another way of reducing inequality.

- * More public funds need to be devoted to helping workers (and whole communities) hurt by globalization to develop new skills and find new sources of income. Tax incentives similar to the enterprise zones once championed by Republican congressman Jack Kemp to relieve inner city decay would be one technique.

- * Big corporations need to adopt some fairness standards to link workers’ wages to those of managers. (Some companies, like Costco, already do this, with good results in employee morale, loyalty, and performance.)

- * Instead of providing blanket tax relief for mortgage payments to homeowners, Congress might at least limit the amount of interest that is tax deductible.

- *Assuring access to education, not only k-12 but college and specialized technical training, is essential to enable all Americans to compete effectively in a globalized economy in which unskilled labor can no longer even find rungs on the ladder of employment. It is critical that support for education include pre-school programs vital to childhood development.

- * If the 11 million illegal immigrants were given legal status, wages for all workers at the bottom rungs of the economic ladder would be significantly increased, because the immigrant workers must work in the underground economy, where wages are lower, driving down all wages. Large employers subject to checks on the status of their work force cannot now employ them.

2. Civic, Economic, and Scientific Illiteracy

America once pioneered universal education because it was understood, from Jefferson onward, that if people were to be expected to be self-reliant and self-governing, they would all need to be educated. The universities, Jefferson said, would nurture the “natural aristocracy” that would provide the country’s leadership; primary education would give every citizen “the information he needs for the transaction of his own business” and the moral and civic instruction “to understand his duty to his neighbors and country” and “to know his rights, to exercise with order and justice those he retains; to choose with discretion the fiduciary of those he chooses; and to notice their conduct with diligence, with candor, and judgment.” Our institutions of higher education are now collectively the best in the world but our system of popular education now lags badly in comparison to many other countries not only in the STEM areas but in the humanities and social studies as well. As we still fight the battle of whether evolution can be taught in the schools and the incoming chair of the Senate Committee on the environment writes

a book claiming that climate change is a “hoax,” the rest of the civilized world can only look on with dismay. Conservatives are having a field day because an economist who was among the authors of Obamacare has admitted that the bill had to be designed to get around the economic illiteracy – he called it “stupidity” – of the American voter. But was he altogether wrong about the economic illiteracy of most Americans? Why else would the voters of Kentucky oppose Obamacare but favor Kynect, which is exactly the same thing by another name? As H.L. Mencken once said, “No one ever went broke betting on the ignorance of the American public.”

* The Union of Concerned Scientists has launched a program called Science and Democracy, thanks to an initiative by our UCSD colleague and retired Harvard professor Lewis Branscomb. Every college campus should have a program aimed at promoting scientific literacy not just among students but in every community in the country.

* Other states should follow Oregon in adopting its Citizens’ Initiative Review (CIR), an exercise in deliberative democracy. It puts 24 randomly selected voters into a fair public hearing to listen to campaigners, learn the issues, and separate fact from fiction on ballot measures. These panels of voters have no vested interest in the outcome of a CIR. Like a jury, the idea is to perform a public service. For each measure on the ballot, a different panel of 24 voters sorts through the political spin and then summarizes its findings for the voting public to use as they choose on election day.

*The League of Women Voters, Common Cause, and Public Citizen have all launched voter education programs. These efforts should be intensified, especially among recent immigrants not used to voting or democracy.

*More states need to follow California’s lead in reinstating civic education.

3. Campaigning and elections

In 2008 the percentage of negative ads was 9%. In 2012 it was 70%. It was probably even higher in 2014. In 2014 90% of those sponsored by the chamber of commerce were negative. The Superpacs and “dark money groups” are now major factors in our elections. Much of the spending comes from undisclosed donors. What might be done?

* Now that the Supreme Court’s Citizens United decision has opened the floodgates, we will need a constitutional amendment to allow Congress and the states to exercise some control. Thus a proposed amendment:

Neither the First Amendment nor any other provision of this Constitution shall be construed to prohibit the Congress or any state from imposing reasonable limits on the amount of money that candidates for public office, or their supporters, may spend in election campaigns.

Retired Justice **John Paul Stevens**

So far 16 state legislatures have passed resolutions in support of a constitutional amendment. All blue states, however.

* Short of such an amendment, voluntary public financing such as has been adopted by several states, might be a good idea. (Candidates agree in advance to raise a limited amount of money from contributions or their own resources in exchange for receiving public funds.)

* Campaigns should be shortened by law. This would advantage incumbents but they are advantaged anyway.

* Primaries should all be held on the same day.

* Television time should be allotted for presentations and debates, and commercial-style advertising should be severely restricted.

* Registration should be the responsibility of the government, not the individual, and should be automatic.

* The primary system should either be abolished or reformed, to be made open to all voters, as in California, with the two leading candidates elected in a run-off. Presidential primaries, if they are to be allowed, should be held on the same day in the various regions of the country, to minimize the expense of campaigning.

* The initiative process should be restricted to those approved by the legislature. The present California system invites special interests to draft misleading propositions, pay signature gatherers to get them on the ballot, and use TV advertising to manipulate voter perceptions.

* Prohibit lobbyists' contributions. This has actually been proposed by the notorious lobbyist Jack Abramoff:

Instead of limiting the size of every American's political contribution, we need to entirely eliminate any contribution by those lobbying the government, participating in a federal contract, or otherwise financially benefiting from public funds. If you get money or perks from elected official – be 'you' a company, a union, an association, a law firm, or an individual – you shouldn't be permitted to give them so much as a dollar. It does no good to ban Jack Abramoff from giving \$23,000 to Congressman Badenov, but allow the members of his law firm to pick up the slack. If you choose to lobby, if you choose to take money from our nation, if you choose to perform federal contracts, or if you draw your compensation from any entity which does, you need to abstain from giving campaign contributions. It's your choice either way. But you have to choose one, not both.

* Voting should be encouraged, not discouraged. This could be done by holding elections on weekends rather than a Tuesday, or for longer periods, by encouraging the use of mailed ballots, and in time over the internet.

A number of other proposals have been put forward by Professor Arend Lijphart of UCSD:

** There is broad agreement on the diagnosis that extremism is fostered by the primary system, because primary elections tend to have low turnout and the more committed and ideologically extreme voters are much more likely to turn out to vote than more moderate voters. If primaries are the problem, one logical solution is to get rid of them and to return the function of nominating candidates for office to the formal party organizations. Since primaries were originally instituted in order to make the political system more democratic, the proposal to abolish them looks undemocratic. What has happened, however, is that low levels of voter participation have made them a means for small minorities, especially more extreme minorities, to wield undue—and undemocratic—influence. Moreover, it is hard to argue that elections without prior primary elections are undemocratic because no other democracy has anything similar to American primaries. A few may have voting procedures that are called “primaries” but that are limited to formal dues-paying party members or that parties adopt on a voluntary basis. American-style primaries have four distinctive characteristics (with some variations from state to state): they are imposed on the parties by the state; they are conducted by public officials; they allow any voter who declares himself or herself to be a member of a party to vote in that party’s primary; and they apply pervasively to almost all elections. The United States is unique in this respect; primaries are clearly not a necessary ingredient of democracy.*

** Automatic Registration. Low voter turnout is a serious democratic problem, because it means unequal turnout that is systematically biased against less well-to-do citizens—and hence also against progressive parties and in favor of conservative parties. Compared with other democracies, voter turnout has been especially low in the United States, and the gap between more and less privileged citizens especially wide. The main culprit is the American rule of voter registration as an individual responsibility, combined with burdensome requirements for individuals to get registered. It contrasts with the many other democracies where voting is also voluntary but where voter registration is the government’s responsibility. The obvious solution would be for the United States to adopt this more usual and more democratic practice—and thus, by raising the total turnout, to lower the relative share of the votes received by the increasingly extremist Republican party.*

Some political scientists have argued that low and unequal voter turnout does not make much of a difference with regard to the relative success of left-wing and right-wing parties. The overall evidence does not support this position and, significantly, politicians clearly do not agree with it. Calls for abolishing compulsory voting in Australia and Belgium have come mainly from conservative parties and have been opposed by progressive parties. In the United States, Republicans have been trying to improve their electoral fortunes by suppressing the right to vote. I do not know of any other instance of such efforts at voter suppression in advanced industrial democracies. It is a unique American phenomenon—and one more deficiency of American democracy. The big problem

is the decentralized system of election administration in the United States. Nationwide rules for voter registration and other election rules would be the best solution.

** Mandatory voting. An even better method to guarantee high—indeed, almost universal—turnout is to make voting participation compulsory. It is the one solution that can effectively level the playing field between more and less privileged citizens and between progressive and conservative parties: it would completely eliminate the unfair advantage that Republicans have derived from low and unequal voter participation. I have advocated this solution for many years and I am pleased to see that Mann and Ornstein too, include “making attendance at the polls mandatory” among their proposals. Their phrasing also means that we agree that mandatory “voting” does not entail any obligation to cast an actual vote. The only obligation is to go to the polls; at that point, citizens can make use of their right not to vote, to refuse accepting a ballot, and to go home. Mandatory voting is relatively rare—Australia and Belgium are the main examples—and many democrats have an instinctive (although not really rational) dislike of it.*

** A lottery might be adopted as an incentive to vote. A potentially useful, although so far untried, alternative suggested by Mann and Ornstein is “a lottery—an election PowerBall with a large prize, in which a person gets a ticket in exchange for a voting receipt. Lottery mania could enhance turnout substantially.” (In addition to mandatory voting, I find myself in agreement with several other Mann-Ornstein proposals, such as Instant Runoff Voting, nonpartisan districting commissions, limits on filibustering, and proportional representation.)*

** More voluntary public financing of elections. If unequal voter turnout is a help to conservative parties, unequal participation in terms of financial contributions is even more of a true boon. The Supreme Court’s Citizens United decision has already helped the Republican Party and its most extreme wing a great deal. All kinds of halfway solutions, like rules requiring disclosures by donors and recipients, would be of some help, but the only solution that can truly level the playing field is the public financing of elections.*

** In lieu of abolishing primaries, adopt the Open Primary/ Top Four Proposal. A proposal that would reform, instead of abolish, primaries, but that would also decrease the influence of extremist minorities is the Top Four method advocated by the Center for Voting and Democracy (2012). Like California’s Top Two system, all candidates must run against each other in a single primary election, but instead of only the two candidates with the most votes advancing to the general election, the top four candidates qualify. Fair Vote further proposes that in the general election “ranked choice voting” (which I shall describe more fully in the next paragraph) be used to determine the eventual winner. Two advantages: First, about 20 percent support in the primary is sufficient to*

advance to the general election, which is therefore likely to have a broader spectrum of candidates, including more moderate and independent-minded candidates. Second, moderate candidates stand a better chance of election in the higher-turnout general election than in the low-turnout primary.

** To replace primaries, use instant runoff voting. In Australia, this method has been used since the 1920s for elections to the House of Representatives. (It is basically the same method as ranked choice voting, and is often also called the alternative vote or preferential voting.) The voters are asked to indicate their first preference, second preference, and so on among the candidates in a single-member district. If a candidate receives an absolute majority of the first preferences, he or she is elected. If there is no such majority, the candidate with the lowest number of first preferences is dropped, and the ballots with this candidate as the first preference are transferred to the second preferences. This procedure is repeated by excluding the weakest candidate and redistributing the ballots in question to the next highest preferences in each stage of the counting, until a majority winner emerges. It has the same advantages as Fair Vote's Top Four proposal—better chances for moderate candidates to participate in the general election and for them to get elected in this higher-turnout election—and in addition it saves the money that would need to be spent on primary elections.*

** Remove the unfair Republican advantage in House elections. Republicans won a clear majority in the House of Representatives in the 2012 election in spite of the fact that Democratic candidates won about 1.4 million more votes than Republican candidates. The 1996 House election had a similar outcome. It is entirely normal in plurality single member district elections that the parties' seat proportions do not correspond to their vote proportions. Usually, large parties win disproportionately many and small parties disproportionately few seats (roughly according to the so-called cube rule). But it is very rare that a party winning the most votes receives fewer seats than the runner-up. The main examples in other plurality SMD elections are the British 1951 election, won by the Conservatives even though Labour had won more votes, and the 1978 and 1981 elections in New Zealand, won by the conservative National party although the Labour party won more votes in both of these elections. The 1951 outcome in Britain was very controversial and the 1978 and 1981 results in New Zealand even more so: it eventually led to the abolition of plurality SMD and the adoption of a proportional representation (PR) system. The spurious Republican majority in the 2012 House election was the result partly of gerrymandering and partly of the natural concentration of Democratic voters. In all five of these instances, the conservative parties were the spurious winners, at least partly due to the tendency of left-wing voters to be concentrated in urban areas. Congress could take action to prevent gerrymandering by mandating impartial commissions to draw election districts in each state or ideally by establishing a single national commission, and the courts could put constraints on excesses of partisan gerrymandering. In order to make sure that no spurious majorities can ever occur, additional seats could be awarded to the*

party winning the popular vote to give it a legislative majority. This is a solution that has no empirical precedents anywhere, but in proportional representation (PR) systems it is often used to make the outcomes more purely proportional .

The importance of this one factor can be seen in the hypothetical situation of the Democratic party having won the 2012 House election. The Republicans would have been the same extreme right-wing party, but it would not have mattered much: no or much less gridlock, no threats to shut down the government or to default on the country's debt. Polarization would have been manageable.

** Use Proportional Representation for House elections. More radical than the above reform of the plurality Single Member District system would be the adoption of PR for House elections. The most likely result would be a system of about four main parties (and a few small ones); the major parties would be liberal Democrats, more centrist Democrats, moderate Republicans, and extreme right-wing Republicans. Winning voting coalitions would probably consist of mainly centrist Democrats and centrist Republicans—which would diminish the power of extreme parties, especially what is now the extreme wing of the Republican party. Getting rid of plurality SMD would not be a radical move in comparative terms: among the advanced industrial democracies, only the United Kingdom and Canada still use this electoral system.*

**Reduce the Republican advantage in Senate elections. The Republican advantage in House elections does not always or inevitably lead to a spurious majority. Their advantage in Senate elections is much greater. Small states tend to the Republican side, and the equal representation of the states gives the Republican party disproportionate power. This problem is harder to solve because the Constitution sets the equal representation of all states, large and small, in unamendable stone. The extreme voter inequalities that are the result plus the obstacles to change them are the main reason why Robert A. Dahl) judges the United States to be democratically deficient in his *How Democratic is the American Constitution?* In principle, however, the solution would be to make the number of seats somewhat more proportional to the population of the states, as in the Senates of Canada and Australia, or much more proportional, as in the similar federal houses in Germany, India, Austria, and Belgium .*

** Full representation for the District of Columbia. An additional violation of democratic principles that helps the Republican party is the denial of representation (except in presidential elections) to the District of Columbia, which is solidly Democratic and which has a larger population than Vermont and Wyoming. A single DC voting representative in the House would not make much difference, but two more Democratic Senators would entail a significant boost to the Democratic party in the often closely divided Senate.*

** Use PR for Senate elections. The Australian example suggests a possible reform of Senate elections that would not require a change in the equal state representation rule. Australian Senators are elected in multimember districts (six states and two territories) by PR. If, in the United States, each state's two Senators would similarly be elected simultaneously—that is, in two-member districts—by PR, it would be more likely for the minority party to win one*

of the seats; slightly more than a third of the vote would be sufficient. This would generally help Democrats in the smaller states and Republicans in the larger states. On balance, it would decrease the Republican advantage to some extent. This system would work better if the number of Senators per state would be increased to three or four; with four seats at stake, the minority party would be to win a seat with about 20 percent of the vote. It would obviously require an increase in the total membership of the Senate to 150 or 200 members—a major change in American but not comparative terms: second chambers in other bicameral legislatures are generally smaller in size than first chambers, but also generally larger than 200 members.

5. Reforming Congress

The gridlock in Congress is, most immediately, the result of what has happened to the Republican Party. Thomas Mann and Norman Ornstein, two long-time students of Congress have put the case bluntly:

We have been studying Washington politics for more than 40 years, and have never seen them this dysfunctional. In our past writings, we have criticized both parties when we believed it was warranted. Today, however, we have no choice but to acknowledge that the core of the problem lies with the Republican Party.

The GOP has become an insurgent outlier in American politics. It is ideologically extreme; scornful of compromise; unmoved by conventional understanding of facts, evidence and science; and dismissive of the legitimacy of its political opposition.

It may well be that we will continue to suffer from political paralysis until and unless the Republican Party either becomes more centrist and more interested in governing and not just opposing government, but other remedies should also be considered.

* The most radical cure for the gridlock would be adopt the British system of legislative-executive fusion. That way gridlock would end and voters could hold the party or coalition in power responsible. But we are hardly likely to give up our political system – and doing so would require a constitutional amendment.

* We might be well advised to adopt a constitutional amendment to have elections for Congress take place every four years, along with election of the president. Or, at the very least we could make Congressional terms co-terminous with the presidency and keep the six-year term for the Senate. Eight years for the Senate would probably be considered too long.

*Majority rule in the Senate would be strengthened by eliminating the overuse of the filibuster. The framers never anticipated the President and the majority party would face the need to override a supermajority routinely. In the current context, it is worth emphasizing that the filibuster gives even more influence to the smaller states and therefore to the Republican Party. The filibuster has now been eliminated on judicial appointments. It could be altogether

eliminated or restricted. Mann and Ornstein suggest that only one filibuster on any bill should be allowed. "Each stage for a single piece of legislation is currently subject to a separate filibuster." They also propose changing the cloture rule to 3/5 of those present and voting. Even better would be to require 41 votes to continue the debate, not 60 to end it. In exchange, amendments should be allowed to the minority.

- * Reduce the number of appointments requiring senatorial confirmation and simplify the forms nominees have to fill out.

- * Require up or down votes within 60 days after an appointee is reported out of committee.

- * A bi-partisan policy center headed by two former Senate majority leaders, Tom Daschle (Democrat) and Trent Lott (Republican), has proposed a package of other reforms:

- The House and Senate should adhere to fixed five-day work weeks to provide enough time for legislative business on a schedule of three weeks in Washington, one at home per month.

- Leaders on both sides of the aisle should maintain hotlines so they can head off open conflicts (as Daschle and Lott did).

- The leaders should hold monthly meetings with the President.

- The two parties should occasionally hold joint caucus meetings, not just with their own partisan.

- Committees should be reactivated rather than circumvented as they are now.

- Filibusters should be outlawed on motions to proceed.

- Each party should be guaranteed an equal number of amendments upon initial consideration of a bill.

(Thanks to Christine Sullivan for bringing these bi-partisan recommendations to my attention,)

5. The Presidency and administration

While there has been much controversy over the use of Executive Agreements in lieu of treaties and of Executive Orders that may trespass on Congress's legislative powers, we have come to expect that the president will be the focal point of our government. The president – along with his vice president, in effect a president in waiting should a replacement be needed --is the one office holder directly elected by the people. He is responsible for government agencies

employing thousands of civil servants and directorial political appointees who deal with everything from weights and measures to the size, equipment, and readiness of the armed forces to health care and social insurance. As the commander-in-chief of the armed forces and our “diplomat-in-chief” as well, he or she is now primarily responsible for national security and foreign policy at a time when these are at least as critical as domestic policy.

But the actual power of the presidency is determined by the effectiveness with which he uses its “bully pulpit” and is severely constrained in domestic policy because Congress holds the “purse strings.” A president is therefore only as effective as its occupant is able to use the powers of the office to appoint skilled administrators and advisors, mobilize public support, and work with Congress to enact a legislative agenda. Obama’s mixed record on these scores may therefore not reflect failings of policy so much as the difficulties he has had selling his programs to the public and overcoming the extreme partisan hostility he has confronted in Congress.

It follows that no reforms to the institution of the presidency are vitally needed. What is needed is for the electorate to choose a president likely to perform these tasks as effectively as humanly possible, with the understanding that both foreign enemies and domestic opponents are not likely to make the job any easier.

The question of the role of government in our lives is another and more complicated matter. It is an open question how big a role government should play in disbursing benefits, managing the economy, and regulating other activities. All but the most radical of conservatives now accepts the need for a social safety net. Social Security, Medicare, and Medicaid are now firmly accepted in principle, though controversy remains over eligibility, how they should be financed, and whether the private market in health insurance should be given more emphasis than it is now through the use of tax subsidies. (My own view is that not enough is being done to punish fraudulent purveyors of medical services, but at the same time that judicial standards should be modified to allow for much lower medical liability premiums.) OSHA and the EPA are regularly denounced by some business groups, but they have done a great deal to clean up environmental degradation and assure workplace safety. There are periodic calls for the abolition of the IRS, especially in April, but unless some simplified tax collection system like the flat tax were to be adopted, it would only have to be reinvented, like the Post Office, if it were to be abolished. No one calls for the privatization of the armed forces, or the CIA and the NSA, though some call for private administration of prisons and certain security services. The role of the relatively politically independent the Federal Reserve is challenged by radical libertarians but accepted by everyone else as a mainstay of fiscal safety. It is now well recognized that only a government agency can afford to undertake the pioneering missions of NASA and to provide funding for basic research that has too long and uncertain a payoff to expect private investors to support. Similarly, we want federal agencies not controlled by special interests to set standards for health, safety, and the environment.

The private sector is often thought to be more efficient and conservatives therefore call for as much privatization of public functions as possible. We are divided on the question of public schooling versus charter schools, on privately run prisons versus public facilities. Critics have called attention to the \$2,000 hammer and the \$30,000 coffee pot purchased under military procurement. (It turned out that the hammer story wasn’t true and that the coffee pot purchased for a military transport cost no more than the same device purchased for a civilian airliner.)

But the private sector is less efficient because it serves only the single goal of profit-making. We expect government agencies to provide services but not necessarily to turn a profit, and we do not allow them to pay whatever it takes to attract the best managers. A private company can cut corners and use salaries and stock options to attract the best qualified employees; a federal bureau has to follow publicly established procedures and civil service pay scales. It cannot let contracts without competitive bidding. It must give preference to veterans in hiring and follow civil service rules in firing incompetent employees. The government workforce, Peter Schuck contends, is “demoralized, poorly equipped, marginalized, publicly scorned and [literally] undisciplined,” because it is virtually impossible to suspend, demote, or fire a civil service worker.” Civil servants have weaker incentives to perform well and less authority to override structural and rule-based hurdles. Deregulation can have both benefits and cost, as we have discovered with respect to the airline industry, the telephone system, and electricity. Some accounts of “waste, fraud, and abuse” turn out to be true, like the scandalous waste of aid money in Iraq and Afghanistan, and are regularly exposed by the federal government’s own Government Accountability Office. (The Commission on Wartime Contracting in Iraq and Afghanistan has estimated that between \$31 billion and \$60 billion was lost to waste and fraud during U.S. operations in these countries. U-T November 28, 2014.) The president’s Office of Management and Budget is also a very efficient agency in assuring agency accountability.

The best that can therefore be expected is that government agencies will be well-staffed and administered, that the scientific work they do will not be censored or politicized, and that inefficiencies and shortcomings will be brought to light and reformed, as has happened lately in the Veterans Administration. Within limits, administrators probably need to be given more discretionary authority, especially in areas like school administration, where they are apt to be hamstrung by publicly set standards and resistance to change by teachers’ unions. Otherwise, however, slow-moving, rule-bound bureaucracy is simply a necessity of life in a pluralistic democracy.

6. The Supreme Court and the Judiciary

* Reforming the Supreme Court by changing the rules of tenure. Again Lijphart:

The U.S. Supreme Court has been systematically favoring the Republican party in recent years. The Citizens United case and the invalidation of a key part of the Voting Rights Act are the most recent, but not the only examples. Mann and Ornstein lament the retirement of Sandra Day O’Connor, which changed “the political and ideological complexion of the Supreme Court . . . Had O’Connor not retired, Citizens United either would [have been a narrower decision] or would have been decided 5-4 the other way.” But it was O’Connor who paved the way for this development by casting the crucial vote to elevate George W. Bush to the presidency in 2000. Had Al Gore been elected president, it is very unlikely that John G. Roberts and Samuel Alito would be on Court now. The current rules governing the composition of the Supreme Court—its small membership of nine justices, their sequential appointment when a vacancy occurs, and life tenure—do not necessarily or permanently guarantee a conservative majority. However, the example of the German Constitutional Court—the closest equivalent to the U.S. Court of a powerful and assertive supreme judicial body among the advanced

industrialized democracies—shows that alternative rules can promote broader and more balanced representation: its larger membership of sixteen justices (eight elected by the Bundestag and eight by the Bundesrat); the twelve-year term limit; the requirement that justices retire at age 68; and the fact that usually two or more justices are elected at the same time, virtually guaranteeing that the new justices do not belong to the same side of the political and ideological spectrum. Justices appointed by Republican presidents have been in the majority since the mid-1970s—with an average lopsided advantage of about 7 to 2 until 2009 (Blow 2013). Making the composition of the Court more balanced and less Republican-friendly would take away another advantage that the Republican party has unfairly enjoyed.

* Abandon or disparage the simple-minded idea that we can rely on the original meaning the framers had in mind.

The idea that judges can interpret the constitution simply by looking at the original meaning of the text is laughable. The framers had absolutely no idea that we would have had huge corporations and billionaires and they would be freed by the First Amendment to spend millions of dollars to buy elections. They would have been horrified by that idea. Nor could they have anticipated that campaigns would be run on TV using negative ads. Neither did the second amendment anticipate that we would have a standing army rather than need to call up militias or that arms protected would include assault rifles capable of firing dozens of rounds of ammunition. They had no idea that mores would change so that Americans would come to accept gay marriage or a woman's right to abortion. Abortion is not mentioned in the constitution. Does that mean that the court was wrong in *Roe v Wade* even though 75% of the American people support the right to an abortion? Or whether there would someday be an internet let alone one that was net neutral or not. It is obvious the constitution must be interpreted in such a way as to allow it to changing circumstances and social mores. If the constitution is to be interpreted literally, Hillary Clinton could not take the office of the president because the constitution uses the masculine gender in describing the holder of that office. Although it has been amended to allow women to vote, it has never been amended to indicate that the president could be a she as well as a he.

The country often has to balance competing claims – the right of a defendant to a fair trial versus the freedom of the press to interview jury members or publish grand jury leaks. The need for national security versus the right of the defendant to know his accusers. The court should also balance the need for fair elections against the right to spend money in campaigns.

Republicans like to say that applying ideological litmus tests to Supreme Court started when the Democrats rejected Bork. The truth is that in the nineteenth century more than 20% of judicial nominees were rejected by the Senate, mostly on ideological grounds. And the same happened later. In 1932 the Senate rejected a judge nominated by Hoover because of his anti-labor views. In 1969 the senate rejected two of Nixon's nominees because of their anti-labor and anti-civil rights views. When Samuel Alito was no nominated by President Bush, everybody in the country knew he would be another Scalia. And the reverse was true with Sonia Sotomayor. Their coaches all told them to say as little as possible so everyone could pretend they would be neutral on everything. At the confirmation hearings of David Souter and Clarence Thomas in 1990 and 1992 both men said they had not thought about the abortion issue and had no views on

it. Patricia Ireland, then president of NOW, quipped that there are two adults in the country who did not have views on abortion and they are both on the Supreme Court.

The constitution is very hard to change, so judges should be very careful in claiming they are going to adhere to its original meaning. It obviously needs to be adapted.

Judges should be guided by the vision of the framers, not always by their specific language.

7. Community and Civility

NATIONAL SERVICE

As one very general response to our loss of a sense of common purpose, we have discussed the possibility of opening a program of national service such as was once introduced by Senator Sam Nunn but failed to pass. It is favored by both liberals and conservatives (including the late William F. Buckley) and is in force in other countries, such as Switzerland. The Teacher Corps and Peace Corps are partial versions. It would probably have to be a voluntary one-year program with incentives rather than penalties. It might give enrollees grants for education, for example, like those of the GI Bill after World War II. Young people could do national service either after high school or after college. They would be given pay and a housing allowance and offered a variety of choices (such as school programs, hospitals and care institutions, reclamation projects, etc.) Those who chose military service would serve for two years and receive the same education benefits afterward. These benefits might be used to pay for tuition, repay student loans, or in approved vocational apprenticeship programs such as Germany has used successfully. Medical students might be allowed to do their service in the form of residencies in underserved communities. A national commission should be established to consider the options and make a recommendation.

GUN CONTROL

Another general response – this one directed at the epidemic of gun violence – would be a constitutional amendment such as has been proposed by former Justice John Paul Stevens to clarify that the Second Amendment protects the right of citizens to bear arms – as the original amendment intended – only while they serve in state militias. The framers never imagined that we would have automatic weapons rather than muskets and a standing army, navy, marines, and coast guard, in place of militias. An amendment would recognize the right and duty of Congress and the states to regulate the ownership of firearms. This is the amendment Justice Stevens proposes:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms when serving in the Militia shall not be infringed.

Concluding Thoughts

The proposals made here are put forward to stimulate thinking. Some of them would require major changes that are unlikely to be adopted, at least at present, and would remake our political system in ways that many Americans would find uncomfortably “European.” It may be that some of the problems that provoke these proposals will be alleviated when, as, and if the Republican Party comes to see itself as a governing party, not as an exclusively obstructionist party bent on opposing a Democratic president. In a two-party, winner-take all system such as we have, both parties have an incentive to move to the center, wherever that may be at any given time. It is also possible that a groundswell of public opinion – notably with respect to the need to curb the influence of big money contributions to campaigns – could force both parties to pass a constitutional amendment authorizing regulation. If there is enough public pressure, more state legislatures might come to approve it. There is also some indication from public opinion surveys that the American public is moving toward acceptance of the need to deal with climate change, though the control of Congress by “climate change deniers” will block near-term implementation of public concern. Nothing on the immediate horizon suggests that public opinion is ready to support serious efforts to reduce our rising economic inequality. And for the time being, major changes are also unlikely with respect to elections, the Supreme Court, national service, or gun control. A domestic reform agenda highlighting some of these issues, could, however, be a galvanizing force in the 2016 presidential election. Our federal system enables the states to take important actions (including highway repair, for example) even when the federal government is paralyzed. Our economy has recovered better than others from the recent recession, thanks in no small part to timely and effective action by the Federal Reserve and the stimulus program promoted by the Obama administration. But gridlock and institutional decay at the federal level severely limit what can be accomplished locally.

The American people have shown resilience and a pragmatic spirit in the past which have enabled us to overcome no less serious problems. Now that much of the developing world is trying to decide whether our way or that of authoritarianism is best, we have an additional reason for making reforms that will make us once again a beacon of liberal democracy to the rest of the world.

APPENDIX: Steven Rattner’s op ed in the New York Times (November 17)

To only modest notice, during the campaign the Federal Reserve put forth more sobering news about income inequality: Inflation-adjusted earnings of the bottom 90 percent of Americans fell between 2010 and 2013, with those near the bottom dropping the most. Meanwhile, incomes in the top decile rose.

Perhaps income disparity resonated so little with politicians because we are inured to a new Gilded Age.

But we shouldn't be. Nor should we be inattentive to the often ignored role that government plays in determining income distribution in each country.

Here's what's rarely reported:

Before the impact of tax and spending policies is taken into account, income inequality in the United States is no worse than in most developed countries and is even a bit below levels in Britain and, by some measures, Germany.

However, once the effect of government programs is included in the calculations, the United States emerges on top of the inequality heap.

That's because our taxes, while progressive, are low by international standards and our social welfare programs — ranging from unemployment benefits to disability insurance to retirement payments — are consequently less generous.

Conservatives may bemoan the size of our government; in reality, according to the Organization for Economic Cooperation and Development, total tax revenues in the United States this year will be smaller on a relative basis than those of any other member country.

And income taxes for the highest-earning Americans have fallen sharply, contributing meaningfully to the income inequality problem. In 1995, the 400 taxpayers with the biggest incomes paid an average of 30 percent in taxes; by 2009, the tax rate of those Americans had dropped to 20 percent.

Lower taxes mean less for government to spend on programs to help those near the bottom. Social Security typically provides a retiree with about half of his working income; European countries often replace two-thirds of earnings.

Similarly, we spend less on early childhood education and care. And another big difference, of course, is the presence of national health insurance in most European countries.

All told, social spending in the United States is below the average of that of the wealthiest countries. And other governments help their less fortunate citizens to a greater extent than we do in ways that are not captured in the income statistics. The United States, which is the only developed country without a national paid parental leave policy, also has no mandated paid holidays or annual vacation; in Europe, workers are guaranteed at least 20 days and as many as 35 days of paid leave.

To his credit, President Obama has succeeded in keeping income disparities from growing even wider, by such measures as by forcing tax rates on the wealthiest Americans up toward fair levels.

Meanwhile, on the programmatic side, among the many meritorious aspects of the much-maligned Affordable Care Act are its redistributionist elements: higher taxes on investment income and some health care businesses are being used to provide low-cost or free health care to a projected 26 million Americans near the bottom of the income scale.

But much more can and should be done — like raising the minimum wage nationwide and expanding the earned-income tax credit (a step supported by Republicans).

Helping those in the middle, whose incomes have been battered by globalization, will be harder and take longer. Expanded training programs and better education should be the centerpiece of any strategy to improve the lives of the middle class. A more robust economic recovery will also help the middle class, as will pro-growth policy initiatives like investment in infrastructure.

Critics from the right argue that doing more to level the income pyramid would hurt growth. In a recent paper, the International Monetary Fund dismissed that concern and suggested that a more equal distribution of income could instead raise the growth rate because of the added access to education, health care and other opportunities.

While some believe that the recent elections will stimulate both parties to make progress on the mound of challenges, in my view, that's a bit of a fantasy. But we can't stop talking about the problem of inequality, because then there really would be no hope.

