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### January 9, 2016: Lessons from New York

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Title: Lessons from New York

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1/9/2016 -- Greetings from the annual meeting of the American Association of Law Schools. I have been here a few days, which has limited my blogging.

The annual meeting of a powerful and influential organization can teach lessons about the state of American political life, as well as about the morale of the law profession. In terms of law schools, this meeting illustrates the small recovery going on among law schools. The sense of panic from a couple of years ago is absent. A few more frills have returned to the meeting. On the other hand, the experience of the economic downturn in law schools has sharpened class divisions within legal academia. There is an undercurrent that perhaps some law school should close and perhaps other law schools should be teaching students for lesser legal activity. The opening session, for example, expressly dealt with the role of "leading" law schools.

Another lesson from within legal academia is the bourgeois and conventional aspect of American law professors. So, for example, in a session entitled *On Resistance and Recognition*, which was the session title for the important constitutional law section, I expected to hear about illegal activity undertaken to promote a constitutional and/or political vision of some kind. I expected to hear about Occupy Wall Street and the current armed occupation in Oregon of federal property. I expected to hear about classic examples of civil disobedience.

But I heard about nothing of the kind. The closest one got to resistance was something like the celebrated dissent by the late Chief Judge of the New York Court of Appeals, Judith Kaye, in New York's gay marriage case a few years ago.

The political lessons from the annual meeting are two: the recognition of the decline of American public life into political polarization and paralysis and the growing economic inequality in society.

The best example of the recognition of the decline of American public life came in that same constitutional law session. Josh Blackman, a professor of law at South Texas College of Law, even joked about recent surveys that show the decline of Americans' opposition to interracial marriage by their children. Years ago, there was overwhelming opposition but now just 5% or so. In contrast however, years ago only around 5% of Americans objected to the marriage of a child to a member of a political party other than that of the child's parents. But today, around 43% of Americans object to such a marriage.

But no one wants to think about why this is has happened.

The best example of the growing concern about income inequality is a topic yesterday at the parallel meeting of The Federalist Society, which takes place every year at the meeting of the AALS. One session aimed to consider "to what extent the disproportionate increase in income among the very wealthy is due not to market forces but to rent seeking and government policies that are the product of rent seeking. It will also discuss possible solutions."

So conservatives – – The Federalist Society is very much the embodiment of a certain form of conservatism – – are worried. And I would judge that this worry is not just concern about a political problem of spin. I would judge that it represents a genuine concern with the phenomenon of inequality itself and its implications for democracy and the fear, conscious or not, that capitalism and democracy might not be so compatible after all. How very reassuring then to conclude that active government, rather than the market, is the source of the problem.