

EXPLORING THE SOURCES OF DEMOCRATIC DISCONTENT.



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The current global economic crisis is exposing a concomitant yet deeper governability crisis in the developed world. As anti-incumbent sentiment sweeps Europe, Americans are recovering from a relentlessly destructive Republican primary season is over and bracing themselves for the upcoming election season, which may arguably be the most important in our lifetime. The federal government is paralyzed by deep and irreconcilable views on how to solve the problems of huge sovereign debt, a gaping budget deficit, the cost of health care and immigration reform, to name some of the most salient issues. Controversial federal and state legislation aimed at solving these problems is increasingly being challenged at the Supreme Court, where nine unelected judges will determine their constitutionality.

Globalization has produced a special set of challenges: an open world economy has forced governments to maintain fiscal stability over the long term in order to maintain the value of their currencies and stock markets, as well as access to credit. At the same time, advanced democracies are facing the limits of the welfare state, as well as demographic pressures as baby boomers retire; and immigrants (who could provide part of the solution to some of those problems) are less welcome today than ever.

Trust in politicians, elected officials and major institutions, has declined steadily over the last twenty-five years; it is not by coincidence that this spreading disillusionment with the democratic order affects not only Europe but also the United States. The recent turnover of governments in Europe, and the polarization of American politics reveal an alarming lack of confidence in democracy and its institutions.

This cynicism is growing: indeed, the question is no longer whether the government is sufficiently responsive to the demands and interests of citizens, but whether, in a context of global pressures, it is in fact capable of effectively solving the current problems. In the United States, widespread skepticism now extends to all formal institutions of governance, not only elected ones but even unelected ones. This sentiment is especially problematic and indicative of a very entrenched distrust that will not be easily dispelled.

Only ten years ago, political scientists found that in spite of disenchantment with politicians and elected officials, Americans still had a strong respect for the Armed Forces, the Federal Reserve Bank and the Supreme Court. They had concluded that this was due to the fact that these bodies were insulated from populist pressures and the omnipresent poll. More recently, however, studies by Ronald Inglehart and others have found a severe decrease in public confidence in the Armed Services, the Judiciary, police, civil service and state legislatures. It is one thing for people to blame the current government for economic crisis; it is quite different if this skepticism extends beyond incumbents to the formal institutions of governance. Today, Americans are challenging the very constitutional premises on which the country was founded, namely, diffusion of power and checks and balances.

The perceived (and factual) decline in capacity of political agents to act on behalf of citizens' interests and demands is due mostly to the forces of globalization and interdependence which have led to reduced effectiveness in public policy. Incongruence between the *diktat* of international markets and domestic needs has put constraints on political agents' actions.

But there are other factors that need to be considered as well, namely, failure in political leadership, bad judgment on the part of voters and elected officials, the deterioration of social capital and a media that provokes rather than informs.

How are politicians and political parties responding to this rising trend of dissatisfaction and anger? By following every poll, seeking lobbyists' approval and changing their positions daily to adapt them to the latest voters' opinions. This is weakening representative democracy and distorting the democratic process. Congressional inability to compromise and solve the problems results in the judicialization of politics as the two ideological camps increasingly rely on judicial review as the alternative. This in turn leads inevitably to the politicization of the Judiciary. The whole Constitutional architecture that was built around diffusion of power, checks and balances and fear of accumulation of power in any one branch of government is now being challenged by the protections given to individual interest groups and by ceding too much power to unelected, nominally non-ideological Supreme Court judges.

Unfortunately, the current Supreme Court under Chief Justice Roberts has made its mark on politics early on by its *Citizens United v. Federal Electoral Commission* decision, which has allowed indirect, unlimited political contributions by corporations and unions, thereby further entrenching corporate power into the political system. Another good example of the judicialization of politics is the bitter debate surrounding the Patient Protection and Affordable Care Act passed by Congress in 2010, before the legislative election deprived Democrats of the ability to pass any other significant piece of legislation. In a cumbersome process that involved hundreds of lobbies from the grassroots as well as health insurance companies, hospitals and doctors, the administration was able to hammer out a compromise that met some of the basic requirements of patients and consumer groups, as well as the market-based method preferred by the rest of the coalition. The result was a law that was passed in spite of the negative vote of all Republicans in both Houses. It is based on a central pillar to reduce national health care costs: every citizen not covered by an employer or government plan must buy health insurance (so as to avoid the free rider problem of consuming without paying). The constitutionality of this law, main parts of which have not yet entered into force, was immediately challenged by 27 states as well as other organizations and individuals, and is now under Supreme Court review. The complexity of the issue and the polarized atmosphere surrounding it may well sway judges to exert their (ideological) "will" rather than their (objective) "judgment", to paraphrase Hamilton's warning, thus delivering an important political victory for Republicans this summer, at the height of the presidential campaign season. Conversely, a virulent anti-immigrant law passed by the state of Arizona is also being challenged before the Supreme Court. In this case it was the other side, the Justice Department, which sued over the right of states to pass immigration legislation, which is generally construed as a federal policy. Immigration will be a central issue in the coming presidential election, so the Court's ruling will again inevitably have political ramifications.

In the XIX and XX centuries, The Leviathan state managed the process of modernization and industrialization and represented a shift from culturally- based decentralized institutions, whose legitimacy emanated from tradition, to state institutions deriving their authority from rational-legal instruments. Today we are experiencing a decline of state authority in a new context of globalization and open societies, and the trend is again toward decentralization of authority, focus on individual rights and less hierarchical, more market-oriented societal practices, that have yet to produce a new political order. Unfortunately, the "intermediary associations" of civil society that Alexis de Tocqueville identified as the main repository of democracy in America, are becoming less active, due to the increased post-modern individualism, itself reinforced by the technological revolution and by a cultural anarchy that demands the "democratization of everything" (think Wiki leaks, hacking, intellectual property piracy).

An authority system linked to a stable culture which in turn is anchored on a moral code, breeds trust and generates internalized support. The current economic crisis, in the context

of the highest income inequality in the history of the United States, has led to a revival of ideological rhetoric and endless partisan conflict, which erodes faith in the system as a whole. It is in moments like this that civil society becomes most relevant. Extreme capitalism has led to extreme individualism and lack of societal solidarity. Abundant resources allowed the social balance to tilt in favor of individual rights and entitlements and away from social responsibility. The present crisis may help restore that balance as individuals realize that the state has exhausted its capability for further entitlements and that society will have to rebuild its social capital to fill the void.