

Practice Makes Imperfect: Why Aren't We Better At Democracy?

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November 10, 2014

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By way of introduction, let me briefly tell you two stories. One I lived and the other we all remember, although you were physically closer to the events than I was.

Two years ago at Thanksgiving, my wife and I witnessed a terrible accident. A car flipped over several times going down a steep mountain road. Several cars immediately pulled over, and more than a half-dozen people ran to the wreckage to see what could be done. We quickly talked to each other, and within moments divided responsibilities and developed an action plan. We checked the passengers, who were trapped inside the wreckage, and found that one was beyond our help, but the other, a young girl, was alive but seriously hurt. We immediately formed a team to extract and help her, while others directed traffic, got supplies, and called the police and an ambulance. No one was the boss, and no one tried to give orders; we talked and figured out what we needed to do, and we did it. By the time the Highway Patrol arrived, there was nothing for them to do. This tragic incident showed democracy at its best. People voluntarily banded together as equals, to discuss and decide what to do, without any need for government assistance or supervision.

The second story is one we all know well—the story of Flight 93. After terrorists hijacked the plane on 9/11, passengers gathered at the rear of the cabin and debated what they should do. They decided that their only chance was to rush the cabin, and they took a vote, which was unanimous. They knew that the odds were against them, but their only chance was to act together. They breached the cabin using a food cart as a battering ram, forcing the terrorists to crash the plane into sparsely populated Stonycreek Township and saving hundreds of other innocent lives. The passengers of Flight 93 died not just heroes, but democrats.

The common thread of these two stories is this: as Americans, democracy is the dominant theme of our history and our culture. It would not surprise me to find that our attachment to democracy is hard-wired into our DNA at this point. It is as natural to us as breathing.

So why aren't we better at democracy? Part of the answer is that democracy is inherently a messy process, and the mess usually seems much worse than it really is. In some important ways, however, our democracy is getting worse, rather than better. You do not have to look far to see looming existential problems: venal and cynical politicians, chronic political gridlock, hyper-partisanship, government secrecy and surveillance, and chronic official corruption that has become so commonplace that it does not even surprise us anymore.

There is an unprecedented nastiness among the political classes, and perhaps more worrisome, widespread alienation, apathy, and paranoia about government among the rest of us. Signs like "I love my country but I fear my government" are not just the crazy slogans of a few random nutjobs at gun shows; they are evidence of deep-seated paranoia and alienation that is worrisome.

Yet despite our troubles, the vast majority of non-crazy Americans retain a deep underlying commitment to democracy. We still think of ourselves as the greatest and best democracy in history, and many of us still accept on faith that we remain the shining city on a hill and an example the rest of the world. We are proud, and perhaps a bit smug, about our status as the world's senior democracy. I suspect it is one of the reasons why we routinely irritate every other country on the planet.

Our pride is understandable, but counter-productive. Part of our current troubles stem from the fact that we take democracy for granted. We have been at it for so long and it seems so natural to us, that we have stopped thinking about it in any sort of systematic or critical way. We all know that eternal vigilance is the price of liberty. But to a worrying degree, we studiously avoid the sort of blunt, critical, and even harsh self-reflection that is necessary to fix and rejuvenate our political system. It is much easier to chant "USA, USA" mindlessly along with Stephen Colbert, than it is to take a long, hard, look at ourselves in the mirror of democracy.

Old countries and old universities (cough—Chicago—cough) tend to become smug and staid and content to glide along based on long-dead achievements. Reputations that stopped being fact years ago are replaced by a self-affirming delusion of eternal greatness. And we all know that this sort of thing will not end well.

It is time to get back to basics. We need to re-examine democracy—not just our own democracy, but democracy in general. We need to break democracy down into its component parts, and then carefully put everything back together again. It is time for a complete overhaul and upgrade. By re-examining how democracy can—and should—work, we can reinforce what works, fix what is broken, and figure out new ways to renew and reinvigorate our political system. Tonight, I propose to break democracy down into its seven basic dimensions, and then to use these categories to evaluate and grade American democracy.

THE SEVEN DIMENSIONS OF DEMOCRACY

If you ask an American to define liberty, she will give you a pretty good definition of liberty. If you ask an American to define freedom, he will give you a pretty good definition of liberty. Americans have always conflated liberty and freedom, but they mean different things.

1. Liberty

Liberty is the right to be left alone; the right to be an autonomous individual, to think and do what you want to do, without undue interference.

2. Freedom

Freedom is the right to participate in politics. It is the right to be part of a democratic community.

Which of these two fundamental rights you prefer makes all the difference in the type of democracy you prefer. Americans prefer liberty, which usually results in a liberal democracy. Liberty is the primary right, with an emphasis on individualism, limited government, and government by consent. Government is accountable to the people, but the people are not the direct deciders—elected representatives make the big decisions on their behalf.

A preference for freedom results in a free democracy, where there is an emphasis on community, political participation, and direct democracy. Examples include ancient Athens, American townships, and the Swiss Landsgemeinde system.

3. Rights and duties

Rights are what the government and others owe you; duties are what you owe to the government and to others. There are three main questions to answer:

- a. How to balance rights and liberties?
- b. How to balance negative and positive rights?
- c. How to balance individual and group rights?

4. Participation and representation

The main issue here is whether the political system emphasizes direct democracy or representative democracy. Is it a “do it yourself” democracy or do citizens vote for others to do their job on their behalf? The former emphasizes freedom and community; the latter prefers individualism and the privacy of a voting booth.

5. Inclusion

The fifth dimension deals with a single factor: who gets to participate? Historically, most democracies have been exclusive, limited to significantly less than 50% of the adult population. In Athens, about 12% of the adult population had the right to participate in politics. In eighteenth-century America, the franchise in most places was limited to white males. The shift to inclusive democracies is a

recent phenomenon, dating from the early-twentieth century, but they are now the rule rather than the exception.

6. Equality

There are two distinct types of equality, political-legal and socio-economic. Political-legal equality includes whether individuals have an equal vote, an equal voice, and equal standing before the law. Socio-economic equality looks at whether a society has a social class system (e.g., India's castes or the British class system), and the nature of income/wealth equality and issues of poverty (social wealth concentrated in the middle classes vs. a polarized wealth pattern).

7. Power

Does power flow from the bottom up, like smoke? Or from the top down, like water? Is the state a creature of law or power? Where does power come from—a sovereign people or a sovereign state?

The second major issue is whether there are any limits on state power, and if so, what the nature of those limits might be. Is the state unitary or federal? What other checks and balances—including constitutionalism, separation of powers, and commitment to the rule of law—exist in theory and in practice?

GRADING U.S. DEMOCRACY

Using the seven dimensions outlined above as a scorecard, how does American democracy stack up?

The ancient Athenians would not have considered the United States to be a democracy at all. In their eyes, elections and representative government were signs of aristocracy, not democracy, because as a practical matter, only wealthy people—or avatars bankrolled by wealthy people—can afford to run for office. To the ancient Athenians, elections mean that, either directly or indirectly, elite rule.

Others have their doubts, as well. Most modern Europeans have little respect for American democracy. The general view from across the Atlantic is that the United States remains violent, selfish, corrupt, and uncivilized. Even those who admire American democracy tend to think that the U.S. is unique, and what works here is not readily applicable elsewhere. Much of this dismissive attitude, however, is just customary Old World snobbery, combined with Europeans' desire to cover up their own political problems through deflection and misdirection.

1. Liberty

Liberty is America's leitmotif. Our attachment to individual autonomy, and the principles of limited government, self-determination, free speech, free press, privacy, and the right to travel are deeply

embedded in our consciousness. We are, at heart, a “leave me alone” culture. Our unofficial national motto is, “Give me liberty or give me death.” Or, perhaps more ominously, “Don’t tread on me.”

There are countless advantages to liberty, and we have a lot to be proud of for advancing its cause for more than five centuries. But it is worth remembering that there are some troubling side-effects to liberty, most notably selfishness; an “I’ve got mine, Jack” lack of empathy, and a worrisome tolerance for extreme wealth and political inequality.

There is also a worrisome exception to our attachment to liberty, and that is our obsession with national security. We live, increasingly, in a surveillance state, where the idea of Big Brother watching us has become comfortable, and what was once an exception to our attachment to liberty threatens to become the rule: give us security or give us death. Still, liberty is kind of our thing, and we should never forget it.

Liberty (at least for now): A-

2. Freedom

Americans have nothing against freedom; we just do not take it very seriously. As a consequence, we have much liberty, but little freedom. The phrase “We the people” does not really mean much, beyond offering a symbolic nod to the unrealized idea of popular sovereignty. The Preamble’s words are memorable, but largely devoid of substantive meaning; the phrase is not a binding part of the Constitution, and has no legal weight.

Significantly, the Constitution itself contains no general or specific guarantees of freedom, beyond the right to trial by jury. In particular, there is no protection of anything like the New England township system, or even a guaranteed federal right to vote. This is a sin of omission—freedom is not actively suppressed, but neither is it articulated, guaranteed, or protected at the federal level.

As a consequence, American freedom withered on the vine soon after Alexis de Tocqueville’s memorable visit in 1831. The freedom of the township system quickly shriveled and faded, until it became a pale shadow of what it once was, and free participation rights are virtually nonexistent.

You might be surprised to learn that there is no federal constitutional guarantee of the right to vote. Voting rights are left largely to the states; the Supreme Court has repeatedly confirmed that states may eliminate citizens’ rights to vote in federal elections entirely— for example, by empowering state legislatures, rather than the people, to vote for president.

On the positive side, the right to vote has expanded over two centuries, so that by the mid-twentieth century it included almost all adult citizens. Universal suffrage and contestation rights are well-established and secure, and the United States has not missed an election in almost 250 years.

Additionally, the federal jury endures, offering citizens limited but important freedom. The jury’s power and scope, however, have been significantly eroded in the name of modern “tort reform.”

Moreover, American courts have restricted the right to trial by jury by tying it exclusively to litigants' rights; there is no corresponding participatory right to serve on a jury.

Direct democracy is, for the most part, better protected at the state level. Unlike the federal government, most states allow at least some form of initiative, proposition, and referendum process. At the federal level, however, America does not put power in the hands of the people; it puts power in the hands of the people's representatives, which is not the same thing. In the final analysis, we have a system of indirect, representative democracy—democracy once removed.

Free Institutions: C

Free Participation Rights: C-

Direct Democracy:

Federal: D

States: B

3. Rights and Duties

The United States values negative rights and individual rights, over positive and group rights. Negative rights—leave me alone rights—are tied to liberty, and are mostly focused on individual rights. Positive rights are tied to freedom and community. The United States has always been a country focused on negative and individual rights, and pays only scant attention to positive and group rights.

Negative Rights: A

Individual Rights: A

Positive Rights: D

Group Rights: D

As for duties, the Constitution lists only three, all implied: to obey valid laws, pay taxes, and serve jury duty when called. Duties, to the extent that they exist, consist almost entirely of “thou shalt not” injunctions, rather than laws requiring positive action—“thou shalt” duties.

Duties: C

4. Participation and Representation

The U.S. has a first-past-the-post electoral system and a stable two-party system. It has a representative democracy, and relies heavily on indirect representation in institutions such as the Electoral College, the federal judiciary, and the Senate (until 1913, when the 17th Amendment required the direct election of senators).

America's bipolar electoral system tends to be less representative of diverse, smaller interests than proportional representation (PR) systems. For the same reason, however, it tends to encourage more centrist governments than countries that rely on proportional representation. Unlike PR systems, first-past-the-post elections tend to result in smaller fringe parties being either co-opted or ignored, as the two

major parties fight to control the center of the electorate, which is usually the key to victory in a first-past-the-post system.

There are some problems with the American system of representation. First, there has been a general decline of political parties and party discipline since the late 1960s. Second, it has become prohibitively expensive to run for national office. Third, there has been a growing tendency among state legislatures to create uncompetitive electoral districts, which has resulted in uncompetitive elections and low turnover rates among elected representatives. All of this has created an increasingly insulated and unresponsive system of government.

Worryingly, voter turnout has been in gradual, long-term decline. Presidential elections usually see about 50% of registered voters at the polls, whereas off-year elections typically average 30-40%. Both figures are significantly lower than average among developed democracies.

Representation: B/B-

Turnout: C-

5. Inclusion

American democracy is highly inclusive, with near-universal adult suffrage and open contestation for elective offices. The only significant populations that are excluded from voting are non-citizens and felons (in all but two states, the exclusion of felons is temporary).

Inclusion: A

6. Equality

- Political and Legal Equality

Political equality means having an equal vote and an equal voice in political decisions. The United States fares poorly by either measure.

In voting, some people are more equal than others. In particular, voters from the least populous states have significantly more influence over Senate and presidential elections. In Senate elections, states, not people, are equal. Two senators represent thirty-eight million Californians, whereas the thirty-eight million people who live in twenty-two other states have a combined forty-four senators to represent their interests in Congress. Because of the Electoral College system, presidential elections are almost as bad in terms of vote inequality. Even in the House of Representatives, districts were often grossly unequal in terms of population, until the Supreme Court's *Wesberry v. Sanders* decision established the one person, one vote standard in 1964.

In terms of political voice, not only are some people more equal than others, but some "people" are more equal than others. The biggest single factor in being able to influence public policy is wealth: rich political donors, sponsors, and lobbyists are greatly advantaged when it comes to accessing the corridors of power and finding the ear of public officials. Lobbyists, individual and corporate, have far

greater influence in political decision-making than ordinary citizens. There is an old government joke that warns, “If you aren’t at the table, you’re on the menu.”

Unfortunately, political inequality is getting worse, rather than better. The Supreme Court’s disastrous ruling in *Citizens United v. FEC* is arguably the Court’s worst political decision since *Plessy v. Ferguson*. In ruling that money is speech, and corporations are people, the Court has fundamentally reshaped the political landscape in a surrealistic way, to favor the wealthiest Americans.

First, money is not the same as speech. In ruling otherwise, the Court has left no billionaire behind, allowing big-money interests to control the political process to an unprecedented extent. In *Davis v. FEC* (2008), and *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett* (2011), the Court struck down both federal and state efforts to equalize campaign spending, despite the fact that neither law limited speech or campaign spending in any way—they simply tried to level the playing field, by allowing less-well financed candidates a chance to match the funds available to wealthy, self-financed candidates.

Second, corporations are not the same as people. Unlike real people, corporations are unlimited in their size and power, and they are immortal.

As a direct consequence of these decisions, it has become incredibly expensive to run for federal office. The average amount spent on congressional elections is more than \$1.4 million, more than \$9.8 million for a senate seat, and more than \$1 billion to wage a competitive presidential campaign.

Political equality at the state level is better, ironically thanks to the U.S. Supreme Court. In 1964, the Warren Court required one-person, one-vote rules for all state legislatures. All fifty states directly elect their governors. The Supreme Court giveth, and the Supreme Court taketh away.

Political Equality: D (Federal)

B (States)

In contrast to political equality, the principle of legal equality is well established, and relatively robust. Americans expect to be treated equally before the law, and the system generally works as well or better than in other mature democracies. Legal equality is enforced through the use of free public defenders in the criminal cases, and through the use of contingency fees in civil cases. Money still talks, and the rich can often afford better lawyers and investigators, leading to significant advantages in both criminal and civil proceedings. Still, the United States does a better job of leveling the playing field in the legal process than most other comparable democracies.

Legal Equality: A-

- Social and Economic Equality

Americans do not have a class society in the sense that hereditary aristocracies do. But by almost any measure, the United States fares poorly in terms of socio-economic equality. This is, perhaps, a

predictable side-effect of Americans' attachment to individual liberty and liberal democracy: we promote individual initiative and responsibility, and as a corollary we tolerate a high degree of socio-economic inequality.

It was not until the New Deal that the United States systematically attempted to address the issue of absolute poverty—empowering the government to ensure that people did not starve to death or die from exposure or easily treatable diseases. The government remains reluctant to take the next step, to address relative poverty in the way that social democracies routinely do: by limiting the extremes of wealth and poverty and consciously building a solidly middle-class society.

As a consequence, the United States has a highly polarized wealth distribution curve. The Gini index, which measures countries' wealth inequality, ranks America on a par with Third World countries like Iran in terms of wealth inequality. Interestingly, there has to date been little public outrage about this, and little popular pressure to address this issue and strengthen America's middle class.

Socio-economic Equality: D

7. Power

The United States has the world's oldest national constitution. Thanks in part to the notion of a living constitution, it has proved itself remarkably adaptable and effective, especially when it comes to defining and limiting government power. Among the American constitutional principles that have influenced other democratic constitutions: limited government, separation of powers, federalism, the rule of law, and government transparency.

First, government is considered a creature of law, not will. Americans accept the principle of government limited by law, and this has helped to channel and proscribe government power. Second, America's system of separation of powers has proved effective at both limiting and stabilizing government power. In some respects it has perhaps proved too effective, and resulted in divided government and political gridlock. In this sense, a parliamentary system, where ultimate responsibility clearly rests with the majority political party or coalition, might be more efficient in terms of government focus, efficiency, and responsibility.

Third, the principle of federalism is well established, with strong, semi-autonomous states helping to check and balance federal power. Over the long run the growth of federal power has come, at least in part, at the cost of local power and control, but the individual states remain a key element of American political life, and have, at least occasionally, proved to be an effective check on the federal government—although not always for the better.

Fourth, the rule of law is a central aspect of American identity, and it is another well-established principle of political life. On the whole, the government accepts the core rule of law principles, including: the law should reflect the will of the people, minority rights are at least as important as majoritarian rule,

the judiciary should be impartial and apolitical, all individuals are equal in the eyes of the law, the government should always respect the law, that we are a government of laws and not people, and that no one is above the law. The biggest problem with the American system of justice is, arguably, that wealth remains such a pervasive influence shaping legal outcomes in both civil and criminal cases.

Finally, government transparency is better than average among mature democracies. There is a widely accepted—though often poorly defined—principle of “the people’s right to know.” The federal constitution requires public trials, which ensures that justice is not only done, but seen to be done. Laws like the Freedom of Information Act help to enforce the people’s right to know. At the state level, laws like California’s Brown Act requires the people’s business to be conducted in full public view.

Governments do not necessarily want to let the public see what they do or how they do it, and the instinct to guard official secrets applies to democratic as well as authoritarian governments. The most common excuse for governments to turn the lights out on public transparency and accountability is the questionable—and often spurious—claim of national security. This has been a longstanding problem in the United States, exacerbated by a series of political crises, including two world wars, the Cold War, and 9/11.

Constitutionalism: A

Separation of Powers: A

Federalism: B

Rule of Law: B

Transparency: B-

CONCLUSION

American democracy has considerable strengths, but also some significant limitations and weaknesses. The most notable problems involve the relative lack commitment to freedom, political and socio-economic inequality, and a problematic electoral system—where money has a pervasive and perverse influence, and the turnover rate among elected representatives is significantly lower than the embarrassingly paltry voting rate. The overall grade for American democracy can only be: needs to improve.

The American Constitution was a revolutionary document in a conservative world that, in time, became a conservative document in a revolutionary world. It imposed a progressive, even radical, but unmistakably eighteenth century view of democracy on the country, a vision that remains embedded in our national psyche.

In some ways, this has been a blessing, but in other ways it has become a hindrance—an archaic way of looking at democracy that has limited our ability to adapt to changing times, and frustrated

progressive reforms. Progress has been hindered by Founder worship and our enduring but narcissistic fascination with the idea of American exceptionalism. Moreover, too many Americans have become alienated and disengaged from politics. Politics and government have become epithets, rather than being embraced as the way that democracies get things done. We have become arrogant, and more than a bit lazy, when it comes to thinking critically about our own democracy.

The task of updating and improving our democracy will be the continuing challenge of this generation. Previous generations have improved some things, but have failed to improve or maintain sound democratic practices in other respects. My own generation, the Baby Boomers, challenged the status quo in the 1960s and 1970s, and helped to make the political system more inclusive and more transparent. But we failed to change or improve things as much as we thought we would. We allowed the emergence of a more powerful centralized government, with a stronger executive and an increasingly dysfunctional Congress. In our desire to challenge the status quo, we helped to create today's hyper-partisan political atmosphere. We have failed to take adequate care of the poor and weak, and perhaps most troubling, we have utterly failed to stem the influence of moneyed interests in our political system.

It is natural, if perhaps a bit too easy, to blame previous generations for all of our current problems. Like presidents, who invariably seek to condemn the previous administration for current problems, each generation curses their predecessors for leaving things in such a mess. The responsible thing to do, however, is to take up the challenge, dig in, and make things better.

In the next few years, the burden of shaping our democracy will begin to fall to the millennials. It will be interesting to see how you do. Personally, I am optimistic. No matter how bad things have seemed in the past, America has always managed to overcome every crisis and meet every challenge, and in time has emerged stronger and better than ever. I do not see any reason why you cannot rise to the occasion.

But you cannot be good stewards of democracy unless you understand how democracy works, and fails. You need to start thinking about democracy more carefully, systematically, and critically. You need to study alternative forms of democracy, so that you understand all of the options open to you in updating and improving our political system. If you take the time to understand the nature of democracy, and if you seek reasonable solutions to reinforce what works, improve what can be made better, and fix what is broken, then there is hope for you, and a bright future for our country.