

Suppose We Had a Real Democracy in the United States? A Time for Imagination

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Being a Distinguished Visitor takes some getting used to, I must admit. It seems to be a sign of age, like needing to have the menu read to you when you misplace your glasses, or having the grocery clerk call you “sir,” and looking around to see if perhaps your grandfather is standing behind you. But this invitation to share some thoughts with you—distinguished or not—is a fine antidote to the AARP membership card that will arrive for me in late August, so please accept my thanks at the outset.

When I was asked to give a topic for this talk a few months ago, my hosts assumed I would want to focus on civil liberties and human rights in the United States and around the world, particularly their state in the aftermath of the attacks of September 11, 2001, since those have been my professional pre-occupations at the American Civil Liberties Union, PEN American Center and Human Rights Watch, and a leading concern of my current institutional home, the Open Society Institute. But as I thought it over, I wanted to both broaden and narrow the topic. I’d like to raise some questions about the state of democracy here in the United States, where we like to think of ourselves as the world’s model. It hadn’t occurred to me months ago that I would be talking to you on the day after the New Hampshire Presidential Primary, and the week after the Iowa Caucuses, where the occasional messiness and unpredictability of a certain aspect of democracy would be on display, but I want to say a few words about that, too.

I intended to provoke, and even possibly annoy potential listeners with the title I chose, so let me deconstruct it a little for you before I proceed. “Suppose we had a *real* democracy in the United States?” is the question I’ve asked. I’m not suggesting we have sham elections in the U.S, as in Cuba or in Saddam Hussein’s Iraq, where the fearless leader is returned to office with 99 percent of the vote. I am suggesting we are reaching a state where, increasingly, we have the form but not the *reality* of democracy—not just in the usual measures of campaigns and voting, but in the even more fundamental measures of true citizenship and participation.

We have federal agencies and institutes devoted to promoting the spread of democracy in other countries, and since we are having trouble finding weapons of mass destruction in Iraq, it now seems that the principal reason we went to war last year, at a continuing daily cost in death and injury to our soldiers and to Iraqis, was to establish democracy there and elsewhere in the Middle East. And yet democracy at home, like our schools, our health care system and so much else, is in deep disrepair, especially for the poorest among us.

The subtitle of this talk, “A Time for Imagination,” is even more deliberately chosen. People like me, who consider themselves progressive—what liberals became, I think, around 1988—have been in the posture of criticism for so long, have had to spend so much time fending off attacks on hard-won gains, and on values and institutions we hold dear, that we have virtually lost the capacity for political imagination. We can’t see the forest we would like to dwell in because we are trying to protect tree after tree from the buzzsaw. With few exceptions, it has been that way for at least thirty years. But as George Lakoff, professor of linguistics and cognitive science at the University of California at Berkeley has said, “You don’t win by using the other guy’s terms and putting a ‘not’ in front of it or a ‘stop’ in front of it.” We need, as he might put it, a positive frame.

When most people think of democracy, they think of voting and elections. But when Alexis de Tocqueville assessed the state of the young American democracy in the 1830’s, his eye, ear and pen took in a range of things: social conditions, the role of local government, judicial power, constitutional rights and relationships, political parties, freedom of the press, nongovernmental associations, and race relations, among other things. Those are the right measures for determining the health of a democracy, then and now, and I want to touch on all at least briefly. But let’s start with elections.

The primaries and caucuses are on everyone’s mind. We cover them like sporting events, and congratulate ourselves, at times like this, on how the actual voters can confound the expectations of political pundits and insiders. But no one sitting down to design from scratch a system for choosing a Democratic—or, in other years, a Republican—presidential nominee would decide to give such power to two small states, Iowa and New Hampshire, where, among other things, virtually no people of color live and vote. We used to have party nominees chosen by party bosses in proverbial smoke-filled rooms. Now we have them chosen by a handful of voters in quirky, unrepresentative states. Sure, they see the candidates more often than many of us see our parents or our children, but our early and critical presidential primaries have taken on the feel of one of the ubiquitous “reality” shows, lacking only Paris Hilton and the Osbourne family. Everyone—including the candidates, like Howard Dean both years before and days after his setback in Iowa—knows the system is no way to choose a leader, but on this political “Fear Factor,” no one has the courage to change it.

Political conventions, of course, decide nothing anymore. For years now they have been multi-day, prime-time infomercials for the two major parties. All too rarely, as with Pat Buchanan’s nativist, homophobic rant at the 1992 Republican convention, some form of truth upsets the script and gives potential voters something to think about.

As we head toward November, we will be reminded frequently that the debacle of the 2000 presidential election in the state of Florida was a giant wake-up call for many of the failings of our voting system. Most of those failings were not quirks of a backwards—or, more to the point, tightly controlled state, but systemic: they could happen virtually anywhere. And most are far from rectified as we head toward another national vote that could very well be close. The despised punch-card system, with its famous hanging chads, is going the way of the eight-track cassette. But the electronic voting machines that are being substituted in many jurisdictions raise extremely troubling questions. For one thing, they are not sufficiently safe from hackers, endangering the confidentiality of the ballot. Needless to say, they are also tempting targets for those

contemporary versions of LBJ— and Coke Stevenson, his opponent in the disputed 1948 Texas Senate race chronicled by Robert Caro—whose 2004 version of stuffing the ballot box is the manipulation of a computer program. And since electronic machines leave no paper trail unless required by states to do so, a recount is impossible. Add to that the fact that the president of Diebold, Inc., the leading manufacturer of electronic machines, is a Republican fundraiser “committed to helping Ohio deliver its electoral votes to the president,” and you have a calamity waiting to happen, with no chads, hanging or otherwise, available to examine.

What was revealed when the rock was lifted in Florida was not a pretty sight, showing us things about the way we conduct our elections that we prefer to look away from. The Advancement Project, a new civil rights organization, looked at the 2000 election in Florida and seven other states and concluded that we have a system of what they called “structural disenfranchisement” —the modern equivalent of the poll taxes, grandfather clauses and literacy tests employed to keep people of color from exercising their hard-won right to vote in the 19th and 20th centuries. Less blatant, the Project reported, but just as insidious, are the cumulative effects of failures to comply with the Motor Voter law, legislative gridlock over funding for broken election systems, poorly-trained poll workers, failure to process registration cards, inaccurate voter rolls, overzealous purging of the rolls, dauntingly long lines, inaccurate ballot translations, a desperate shortage of translators for non-English speaking voters—the list goes on and on.

When Congressman John Lewis, the civil rights hero, got to his Atlanta polling place on Election Day 2000, he found it closed. When it opened a half-hour late, more than half of the 13 voting machines did not work. In famous Cook County, Illinois, in some inner-city precincts, almost four out of ten votes cast for President were discarded. In six polling places in New York City, where I live, the Chinese translations for “Democrat” and “Republican” were reversed.

It will come as no surprise to anyone familiar with the story of systematic discrimination and exclusion in America that all these examples are drawn from communities where poor voters of color predominate. It is shameful enough that we are inured to a situation where the quality of teaching and schooling, housing and police protection, sanitation and public amenities, is highly correlated with the wealth and skin color of a neighborhood’s residents. If it is also the case, as it seems to be, that the quality of democracy is linked to those factors as well, it is no wonder that we live in a country where the rich get richer and the poor stay poor.

Nowhere are these structural barriers to voting more stark than in the case of what has been called “felon disenfranchisement:” the laws in most states that strike from the voting rolls those with prison convictions. In a number of places, those who go to prison lose the right to vote while behind bars. Getting it back in states where that is possible is almost always an arduous task. In 12 states—including Alabama, Mississippi, Florida, and Virginia—the ban is permanent. In all, 4.65 million Americans have lost the right to enter the polling booth because of a felony conviction. Six hundred thousand alone are in Florida—more than a thousand times the margin of George W. Bush’s official victory in the state. Nearly a third of black men in that state, and similar numbers in Alabama and Mississippi, are banned from voting for life on these grounds. Perhaps that is what Carter Glass, a delegate to the Virginia Convention of 1906, had in mind when he urged

felon disenfranchisement as a means to “eliminate the darkey as a political factor in this state in less than five years, so that in no single county ... will there be the least concern felt for the complete supremacy of the white race in the affairs of government.”

When our foundation gave a grant to Human Rights Watch and the Sentencing Project several years ago to document the numbers of former prisoners shut out of elections because of their criminal history, we did it to make a point about the impact of mass incarceration in America—about the way the prison system, now at two million inmates larger than any in the world and half-filled with black men, serves as the successor to Jim Crow as a means of marginalizing and controlling the descendants of slaves. But their research and that of Christopher Uggen and Jeff Manza has told a larger story, one of political impact with historic consequences. Given what we know about voting patterns, does anyone seriously believe that had even a fraction of the hundreds of thousands of black men forced to sit out the 2000 election in Florida had gone to the polls, George W. Bush would be President today? Something to think about as you contemplate deep cuts in education and social services, and the daily death toll in Iraq. Exclusion has consequences.

In fact, when you look at it closely, the story of voting in America becomes large part a story of efforts to exclude, starting with the limited franchise for white male property owners enshrined in the original Constitution, and courageous struggles by those excluded to claim their place in the political fabric. At the Sundance Film Festival in Utah last week, I saw the premiere of *Iron Jawed Angels*, a new HBO film that tells the story of the women who fought for suffrage in the second decade of the 20th century, centering on Alice Paul, one of the founders of the National Women’s Party (NWP), which broke with the National American Women’s Suffrage Association over how to go about getting the vote for women—NAWSA favoring a state-by-state approach, the NWP camp taking the more audacious and sweeping route of a constitutional amendment. They got it in 1920.

The story the movie tells very much needs telling. Many women fought courageously and suffered for the right to vote, and few people alive today have any sense of what it took. (The most difficult scenes to watch show Paul being force-fed when, jailed for protesting in front of the White House in wartime, she goes on a hunger strike.) Many of the tactics of organizing, peaceful protest and civil disobedience that we associate with Gandhi or the civil rights and antiwar movements were used earlier by Paul and her allies, and the suspension of civil liberties in wartime (which led to the founding of the ACLU in 1920) has an uncomfortable resonance today. It’s astounding to hear the bigoted contemporary objections to voting by women, and even more so to hear their echoes today in the arguments of those who oppose marriage equality for gay people.

Fast-forward almost a century. As The White House Project, an organization whose non-partisan goal is to elect more women to high office in the United States has noted, “most people are shocked to hear that women are only 13 percent of the Senate and 14 percent of the House of Representatives, or that women represent only 11 percent of all guests on the Sunday morning political talk shows.”

And in a country that is 12 percent black, there is not a single African-American governor or senator in office—not even in states where the minority population approaches one-third. Do women earn 38 cents to every dollar earned by men, and are

more black men in prison than in college because so few people holding political power look like them? Or is access to political power in the first place sharply constricted by economic circumstances and the continuing legacy and practice of discrimination?

Whatever the answer, there's no denying that money talks in our democracy, first determining who can even think about running for office and then determining who has the ear of those who make it there. As Gore Vidal has written, "Organized money has long since replaced organized people as the author of our politics." Most of the money spent in our vastly expensive elections comes in chunks of \$1,000 or more, yet less than one-tenth of one percent of the American population can afford to contribute at that level.

Those who can get a good return on their investment. In their 1999 book *Money and Politics: Financing Our Elections Democratically*, Janice Fine, David Donnelly and Ellen Miller point out that the 213 members of Congress who voted to spend an additional \$493 million on Northrop Grumman's B-2 stealth bombers received an average of \$2,100 in campaign contributions from the contractor, while the 210 voting against got an average of \$100. Perhaps, they suggested, "welfare mothers should start a political action committee or bundle a portion of their dwindling benefits checks to contribute to the re-election efforts of the chairs of the human resources committees in our state capitols. But how many corporate executives" they ask, "need to choose between making a political contribution and buying food for their children?"

I don't have the time, expertise or inclination here to wade deeply into the arcana of campaign finance reform. The recent McCain-Feingold law, the first significant federal campaign regulation since the 1974 post-Watergate reforms, is an important step in the right direction, since it tightened up the soft-money loophole that has been so abused in recent election cycles. But any reform can be gamed by those who want their money to buy influence, and even modest and rare campaign finance reform demands continuing scrutiny and tinkering.

In the end, something more fundamental has to be done. The most promising model so far is the full public financing of elections adopted so far in Maine, Arizona and Massachusetts. Candidates who choose to go the "Clean Money" route after raising a minimum number of \$5 contributions to demonstrate a base of support, eschew private contributions once they accept public funds. There is a ceiling on overall campaign costs and a shorter campaign season. These laws have only been in effect a few years, but there is already evidence that different kinds of people may now think about running for office, and some have been elected.

Of course, another reason that minority and female voices don't count for more in our political system is the indefensible way we stack political districts to assure the perpetuation of those in power. According to the Center for Voting and Democracy, in 2002 only four incumbent members of the House of Representatives lost to non-incumbent challengers—fewer than at any time in U.S. history. Eighty percent of those seats were won in a landslide, with an average victory margin of almost 40 percent.

The *New York Times* has pointed out that four states evenly divided between Democrats and Republicans—Florida, Ohio, Pennsylvania, and Michigan—Republicans in control of the state legislature drew district lines in such a way that 51 of 77 seats are Republican, a two-to-one edge way out of whack with the true division of the electorate.

Why did Texas Democrats flee the state a few months ago when Tom DeLay, the Texas Republican who is House Majority Leader, mobilized his troops in the Texas State

Legislature to take the extraordinary step of redistricting for a second time in a decade? Because they saw, as he did, that new Republican majorities in the Texas House and Senate could be deployed to manipulate Congressional district lines to assure the election of several more Republican members of Congress—to lock in the party’s domination for years to come. I don’t have to translate that into real-world impact on taxes and budgets and social programs. So the Texas Democrats, outnumbered but determined, fled to New Mexico. But they couldn’t stay there forever, and the DeLay plan in time went through.

Redistricting, like campaign finance reform, is an eye-glazing topics for many. Yet it too has profound consequences. As historian David Garrow has written, “The House has become uncompetitive, sclerotic and immune to change. The culprit is the gerrymandering of Congressional districts. If reform is not enacted soon, democratic choice will be sapped out of the House altogether.”

Perhaps the Supreme Court, which is considering a challenge to partisan redistricting, will save us—though let us not forget that it is the same Supreme Court that intervened in the Florida election in 2000 and gave us *Bush v. Gore*. Perhaps we will find the political will, as the *Washington Post* has urged, to follow the example of Iowa, which assigns redistricting not to the legislature, but to a non-political bureau that uses apolitical demographic criteria, resulting in districts that are far more competitive than the national norm.

Incumbents have always tried to distort the decennial redistricting required by the Constitution to protect themselves. Elbridge Gerry lived two hundred years ago, and that is, after all, where we got the term “gerrymander” from. But today they are more brazen than ever before, and have increasingly sophisticated technological tools at their disposal. In recent years, as the Voting Rights Act has forced attention to representation of racial and ethnic minorities, some districts have been drawn to make it more likely that a black or Latino representative will be chosen. But these “safe” minority districts have been achieved through a whitening of the remaining electorate that is at its worst a kind of institutionalized electoral separatism, with a controlled number of virtually all-black districts and white officeholders freed of any accountability to minorities.

For that reason, civil rights advocates like Lani Guinier have been advocating a fresh look at the very way we organize elections, and urging abandonment of our current winner-take-all system in favor of the kind of proportional representation that the new South Africa and many other democracies use. Voters choose a party, and seats are allocated in proportion to the percentage of overall votes that a party receives. Alternatively, there is citywide or countywide cumulative voting, where the voter registers a choice not just for one seat, but as many as are available for election.

As Guinier wrote in 1999 of the current system, “The winner need not recognize or take into account legitimate, dissenting views of those in the minority ... whoever wins the most votes gets all the power.” A year later we had a sharp lesson in that political calculus. Many hoped that the razor-thin margin that put President Bush in office would cause him to govern from the center, forcing him to pass over, for example, judicial candidates from the far right of his party. No such luck. In American democracy, particularly when, for inexplicable reasons, the opposition party decides to give you a wide berth, 50.1 percent can be as good as a landslide.

This catalogue of barriers to voting, from registration to what kind of choice you have or don’t have when you enter the polling booth, has a parallel list of remedies, some

of which I have touched on, some of which I will return to at the end of this talk. With the will that has been sorely lacking, even in the wake of the Florida scandal, we could fix much of what is broken with the process of democracy. But true democracy, in any country, is about far more than what happens at the polls and in legislative chambers. As Hannah Arendt once wrote, the voting booth cannot be the ultimate democratic symbol, since it has room enough for only one. It is about whether citizens are well-informed enough to govern themselves, and free enough to try. Let me turn briefly to those topics now.

De Tocqueville wrote of the American press in the 1830's that "three quarters of the enormous sheet are filled with advertisements, and the remainder is frequently occupied by political intelligence or trivial anecdotes; it is only from time to time that one finds a corner devoted to passionate discussions like those which the journalists of France every day give to their readers." That sounds familiar.

But he goes on: "The Americans have nowhere established any central direction of opinion...the number of periodical and semi-periodical publications is almost incredibly large ... there is scarcely a hamlet that has not its newspaper."

Let's look at the picture today. As Jerrold Starr and many other analysts of media concentration have chronicled, about a dozen corporations—Time Warner, CBS/Viacom, News Corporation, Bertelsmann—control more than half of all communications enterprises. Six companies account for more than 90 percent of domestic music sales. Four major studios account for half of the movie business. There are 2,500 book publishers, but five produce most of the revenue. Barnes & Noble and Borders control nearly half of U.S. retail book sales, with independents accounting for less than 20 percent, falling every day. Wal-Mart's share, as in everything else, is steadily climbing. And by the way, 50 percent of Americans have purchased no more than two books since high school.

At the close of the Second World War, 80 percent of daily newspapers were independently owned, usually locally. Now the figures are reversed. More than 7,000 cities and towns have no local paper.

What are the consequences of newspapers, television stations, radio stations all owned by a handful of large national and multinational corporations? It's a homogenization of the news, with less and less content that is not interchangeable from one place to the other. Eager to cut costs, absentee owners have steadily shrunk the space and resources devoted to news that most affects communities. It is easier to track the ups and downs of J-Lo and Ben, Demi and Ashton, than to learn what happened at the City Council hearing on affordable housing. You're more likely to read or hear about the most sensationalistic crime—even if the crime rate is, as in many American cities, lower than in many years—than about the cuts in youth programs that will drive that rate back up in time. Years of assault on the role of the federal government have increased the power and significance of state legislatures, but from Sacramento to Austin to Albany, capitol bureaus are smaller, and newly-empowered state legislators go uncovered. When citizens don't know what is going on about issues that most affect their lives, there can be no meaningful self-government.

At the other end of the spectrum, only a handful of news organizations maintain a significant international presence, and foreign news in recent years has been increasingly rare, and even then focused on only a handful of places like the Middle East, Russia and

Great Britain, and more likely to focus on earthquakes and floods than political developments. The millions who asked after September 11, “Why do they hate us?”, might have had a better idea of the answer if we were better served by a robust and wide-ranging press. When I was visiting Haiti for the first time a few years ago, I couldn’t help but note how ardently many Haitians listened to the radio. Mentioning this to the U.S. ambassador at a reception one night, he said that Haitians were remarkably well-informed about world events, particularly U.S. policy. As a small country with little influence on the big powers, they would almost have to be. The average Haitian street vendor, he suggested, knows more about the world, and about the U.S. role in it, than the average American college graduate. Knowing more U.S. college graduates than Haitian street vendors, I have no doubt that is true.

If we want a truly functioning democracy, we have to make sure that all points of view are heard. We have to work to encourage dissent, particularly in challenging times like the post 9-11 period where there is such a powerful impulse to security and conformity. Yet that has not been our history. And it has been repeated with a vengeance in the last two years. Attorney General Ashcroft even suggested, in the wake of mild congressional criticism about the so-called USA PATRIOT Act, that dissent is unpatriotic: “To those who scare peace-loving people with phantoms of lost liberty,” Ashcroft warned, “my message is this: Your tactics only aid terrorists.”

So the chill is on. According to the ACLU, which has risen forcefully in these challenging times to claim its historic role as the leading champion of American freedom, there are dozens of examples of police censorship at presidential appearances around the country, initiated at the behest of the Secret Service. Some protesters were herded into “designated free speech zones” behind six-foot chain link fences, and others into “protest zones” a half-mile away from media and public officials.

Section 215 of the PATRIOT Act, under which the government can search your home without notification, get a list of the books you have obtained from your library and your local bookstore and require your local librarian and bookseller to keep this hidden from you, keep a file on how often you go to church, which churches you attend and the medications you use—even if these activities have nothing to do with the fight against terrorism, has stifled legitimate political activity in Muslim and immigrant communities. Community centers are losing funds because members are afraid to write checks; service organizations are afraid to keep records. Humanitarian groups working with Kurdish refugees in Turkey and Tamil residents of Sri Lanka sued the government, arguing that the antiterrorism act was so ill-defined that they had stopped writing political material and organizing peace conferences for fear of prosecution. And just Monday a federal judge here in Los Angeles, Audrey Collins, struck down parts of the law on First Amendment grounds.

A whole talk, whole conferences indeed, could be devoted to the civil liberties consequences of the government’s response to the September 11 attacks—to how the national security and police agencies exploited terror and fear to drive through a package of restrictions and practices that do little to make us safer but send a chilling message to immigrant communities. For too long after September 11, with few exceptions, few voices were raised in protest. Only one U.S. senator voted against the PATRIOT Act. But the tide may be turning. Over 200 U.S. communities have passed resolutions calling for repeal of the act, and some federal judges, acting with the protection of the life tenure

that the founders wisely conferred on the judicial branch to assure its insulation from political winds, have drawn the line against hysteria-driven incursions on liberty.

I want to end with some thoughts about reviving democracy. I don't make the mistake of thinking that this is just about tinkering. There's a reason we have made it difficult to vote in this country, why we are narcotized by infotainment media, why minorities and dissenters have seen more of the nightstick and the prison cell—those who have held power find it useful, whatever they may say. This changes only incrementally, and only with vigilance and struggle.

Having said that, there are a number of measures, large and small, that need to inform and advance our vision.

We could encourage voting and turnout by adopting in every state a full panoply of pro-democracy measures such same-day registration, weekend and mail voting, and making election day a holiday.

We could have strong federal uniform election policies requiring ballot access, and affirmative programs to educate and assist voters.

We could restore voting rights to those convicted of crimes—not just after, but even during their time in prison, as Maine and Vermont do.

We could provide full public financing for elections at every level of government.

We could turn redistricting over to independent nonpartisan commissions.

We could explore alternatives like proportional representation and cumulative voting, finally allowing voters in the political or racial minority to claim their fair share of representation.

We could consider the airwaves a public resource and work to assure that the radio dial and the cable box bring us a rich diversity of cultural and political perspectives by limiting media cross-ownership, making public broadcasting truly public and independent, and restoring public interest and access obligations to other broadcasters.

We could repeal the Patriot Act.

I have tried to stress that the health of democracy depends on more than voting, and also requires open media and staunch protection of civil liberties. Those are prerequisites. But where imagination comes in is that we need to infuse all key institutions of our society with the democratic habit—dormant or long-dead in many—in order for democracy to really take root again.

We need much more citizen involvement in between elections. But we have few models for it. As Harvard professor Archon Fung has noted, “Robust democratic government depends not just upon the machinery of formal politics but also upon aspects of social organization such as networks that connect people to one another.” One encouraging approach, he has reported, is the electronic town hall meeting used by the Lower Manhattan Redevelopment Corporation with 4,300 participants convened to review the six plans submitted by contractors for the World Trade Center site. Through careful and inclusive deliberation, aided by the latest technology, these engaged citizens caused planners to rethink their ideas for the site, including the design of an appropriate memorial.

Think what a different country we would have if we opened more processes of government and other institutions to greater participation and deliberation. We could give parents and children a greater role in the governance of their schools—the units of society with which students have the earliest, and their parents, very often the deepest

engagement. We wonder why we raise poor citizens, unengaged in the world around them, when we send them to schools which are increasingly authoritarian, where the Bill of Rights is virtually suspended and where they have no say about their own education.

Just imagine what would happen if nonprofit organizations—including activist groups and foundations that promote democracy—tried a bit of it themselves. Or if more churches opened up to the voices of congregants, labor unions to rank and file members, and service organizations to the communities they serve and the people on the front lines of serving them. Universities I leave to you.

If we can imagine that and work to translate it into practice, perhaps one day we will have a real democracy in the United States.