

J. BYRON MCCORMICK SOCIETY FOR LAW AND PUBLIC AFFAIRS LECTURE

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This is in many ways a very difficult time to talk about broken or dysfunctional government because we face as serious a set of short-term and long-term challenges as I think we have seen in our lifetimes.

In the short run, we continue to teeter at the edge of an economic abyss and are looking for ways to get out of our economic ditch. We clearly need something that observers increasingly say requires a jump-start, whether it is by the Federal Reserve (“Fed”) or even more, as the Fed has indicated their weapons are limited, through the rest of government and fiscal policy, to get us out of what is clearly not a typical recession. Economists have indicated very clearly—especially Carmen Reinhart and Ken Rogoff, in their magisterial book, *This Time Is Different: Eight Centuries of Financial Folly*¹—that when you are in this kind of a downturn caused by a financial crisis, you are not going to explode out of it in a year or two, as inventories are depleted and everybody is ready to start again. You have this enormous period of time when individuals, businesses, financial institutions, and even governments have to deleverage—the worst possible thing to do when you are trying to jump-start an economy. The lost decade in Japan is the best example of how difficult that can be.

And now we are discovering that it is not just us. Our financial crisis, triggered by the collapse of the housing bubble and the misuse of securities in 2008, is being replicated in Europe, and we could very easily see a domino effect with Greece, followed now by Italy, Spain, Portugal, Ireland, and even France. And given that almost half of our money market funds have exposure to European

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1. CARMEN M. REINHART & KENNETH S. ROGOFF, *THIS TIME IS DIFFERENT: EIGHT CENTURIES OF FINANCIAL FOLLY* (2009).

bank debt, along with well over a trillion dollars of our banks' assets themselves, the European crisis could have even more severe reverberations in the United States.

At the same time, we know that we have a challenge in the short term because, in this kind of economic downturn, you do not get a sharp reduction in unemployment. And we now have a sizeable core of people who have been unemployed for longer than even during the Great Depression. We know that especially for young people—who are just entering the workforce—that if they are knocked off the ladder, they may never rise again to the rung that they might have otherwise. So there is a real challenge to move as expeditiously as we can to give people work experience.

Now that would be a set of daunting challenges in and of themselves. But when you consider that the process that got us into this deep ditch began from a pretty deep ditch itself because of our debt and the deficits, it is clear that we need to pivot smartly and sensibly toward a serious long-term resolution of deficit and debt problems. We need to do that both expeditiously and with good timing because, in the short run, we are going to add to that debt to try to avoid suffering from deflation or an even worse economic period. It has to be a credible plan to do something over ten years, and you want to do it without damaging investments in the future—whether in education or research and development—and without damaging public safety. It is very easy to take a meat ax to government and damage things like food inspection or our ability to deal with an epidemic that might flow from that through the Center for Disease Control or Homeland Security. But these cuts would bring much larger costs in the long run as you try to get spending under control.

Now, all of those things would be immensely difficult and daunting if we had a political system that was operating on all cylinders—if we had it at peak performance, where the best and brightest amongst us were working together to try to solve those problems. But the fact is that, in the 42 years that I have been in Washington, immersed in the corridors of Capitol Hill and up the avenue to the White House, I have never seen it this dysfunctional.

And that is saying something because we have had plenty of periods of very serious dysfunction. I have been there during impeachments of Presidents, through difficult wars, through enormous upheavals, through shutdowns in government, and the like. This is simply qualitatively different.

Now lots of people think it is not and say, “Hey, we’ve been through periods of tumult in our history before. The nature of the American political system is such that you are going to have ideological combat and partisan differences. You are going to have harsh language. Look at the nineteenth century.” I have had many people say to me, “Hey, why is this different from the period leading up to the Civil War?” And I say, “Okay, I will acknowledge that. Do we really want to be compared to the period leading up to the Civil War? Not really. No, thank you.”

It is driven, of course, by current, dramatic partisan, and ideological polarization. Now, it is not necessarily unique, but it is unique in our adult

lifetimes and in many ways unique in our lifetimes. The root of a lot of this problem is basically that we now have parties that have become so homogeneous and distinct that they are behaving like parliamentary parties. But we do not have a parliamentary system. And we have “parliamentary parties” trying to operate in a nonparliamentary system, not just without the structures of a parliamentary system—where you have a majority and a minority, and the majority acts and the minority opposes, but you get that action and it is clear who is accountable—but also in terms of culture.

If you have ever been to Britain or watched the C-SPAN airing of the country’s parliamentary proceedings, and watched *Question Time*, you hear the kind of sharp, no-holds-barred rhetoric that is still rare for us on the floor of Congress, but it is part of the culture that you accept and understand in a parliamentary system. And there is a broad acceptance, in parliamentary societies, by and large, that when the majority acts and the minority uniformly opposes, those actions are legitimate. That is what you expect to have.

It is not what we expect in our American system. It is a dangerous phenomenon when you get significant policy accomplishments, but they happen atypically, and in a manner in which, I think, the Framers did not expect in our political system. The Framers expected lengthy periods of debate, discussion, and deliberation, but then ultimately broad bipartisan leadership consensus, so that the public in our large, variegated, and extended republic is willing to accept the judgments that are made. Instead, actions are being taken today where half the political system opposes and then works overtime to delegitimize those actions. We now have what I have come to call, “tribal politics,” which is very different from what I saw when I first came to Washington, or even what we had until the last five or ten years.

Today is different. I used to have members of Congress say to me, in reference to those on the other side of the aisle, “They are my adversaries. My adversaries one day can be my allies the next.” Often they were allies. And you would look at them and understand a point of view. Now part of the frustration that I have and the sadness I feel is, while we have sharp ideological differences, there actually is an enormous amount of common ground in most of the policy areas that we want to deal with, and when you get outside groups forming bipartisan commissions or coalitions, they come to very similar conclusions, tradeoffs, ability to find things, and clear areas where data show that some things work and some things do not. But now it is not *what* idea it is, it is *who* is expressing it that resonates. And if it is the wrong person, or at least the wrong institutional affiliation, you are going to oppose it automatically or reject it and delegitimize the person making the argument.

It is qualitatively different than what we have seen before. And much of it is driven, of course, by the phenomenon that we know of as the “permanent campaign”—also something very different than what I saw during much of my time in Washington. When I first arrived in 1969, it was very clear that there were seasons in the political arena. There was a season of campaigning. A campaign is a zero-sum game. There is a winner and a loser. You do not say, “Gee, that was so close, you serve a year and then I’ll serve a year, or we’ll split a vote.” You need

to crush your opponent into the dust. Campaigns use metaphors of war. And, of course, there were pollsters and consultants working in those campaigns. But, the campaign would end and the winner would be declared and the pollsters and the consultants would melt away, and you would not see them again for another 18 or 20 months.²

And then, after a brief transition, there would be a season of governing. Governing is an additive process. You are looking to find a coalition that can prevail. Now, there is a lot of social science literature and economic literature that looks to minimum winning coalitions, which, of course, makes some logical or rational sense. Why would you want to expand a coalition beyond what you barely need because then you have to dilute the outcome that you are going to achieve? But in the real world of human relationships and the world of unpredictable politics—and that larger sense of what is required in our democracy—the coalitions that are usually sought in governing are much broader ones. You gain more legitimacy the broader the coalition. Part of the reason for that is a simple fact of human nature, as I see it, which is that nobody likes to accept the certainty of short-term pain for the elusive promise of some long-term benefit. I reflected on this a couple months ago on the evening before my colonoscopy, and it was an unpleasant evening, a very unpleasant evening. And I thought, “Why am I doing this?” And, of course, I was doing this because I accepted the legitimacy of my gastroenterologist, who told me that if I did not do this, far worse pain would emerge for me and for my loved ones down the road. And the same thing happens when we sit in the dentist chair.

We tend to trust our physicians and our dentists, at least to a considerable degree. But in our society, we have never trusted our politicians. A part of what is built into American political culture—going back to the beginning and the rebellion against political authority, and the theories that our Framers used to get there, and the realization or the belief that absolute power corrupts absolutely—was that we must have some distance from our political figures. Our humor, for 200 years, has been built around that. We can trace it all the way up through Mark Twain—who said, “[T]here is no distinctly native American criminal class except Congress”³—and Will Rogers, all the way up to Jay Leno and even Stephen Colbert.

And so getting people to accept what public policy means—which is almost inevitable short-term dislocation and pain for a benefit that will accrue to you or your family or future generations or the rest of society—almost always has required broad bipartisan leadership consensus. It is a point that the late, great Senator Daniel Patrick Moynihan made very frequently when he said that no social

2. See Norman J. Ornstein, Response, *Fixing Congress*, BOS. REV., May–June 2011, at 20.

3. MARK TWAIN, FOLLOWING THE EQUATOR: A JOURNEY AROUND THE WORLD 99 (Dover Publ'ns 1989) (1897).

change occurs in our governing process without that broad bipartisan leadership consensus.⁴

Well, we tended to move toward that when we had that season of governing, and there were all kind of rules and even informal norms. Nobody serving in Congress would go into the district of somebody from the other party to campaign against them. You tried to avoid things that would cause permanent breaches in personal relationships. You worked actively to build relationships across party lines, including familial relationships. But over the last 30 years, I have seen a gradual and then total takeover of the process by what we call the “permanent campaign.”

First, instead of seeing the consultants and pollsters melt away after a campaign, they began to stick around longer and longer and became an integral part, even supplanting the staff in many cases, in the process. We began to see a different trend develop, and it is a trend that became far more significant with the 1994 elections, when Republicans took a majority in the House of Representatives for the first time in 40 years. It ushered in an era, under which we are still living, where the majorities are up for grabs every single election. This has raised the stakes enormously.

A permanent campaign means that it is all about winning and losing, and the other side is not the adversary. It is the enemy. And, of course, we are seeing this metastasizing on the state and local levels almost everywhere in the country. It took a while for that to happen, but I have seen it even in my native Minnesota, which was a model for a different kind of politics. There, Republicans in the legislature shut down the government over small differences that they simply would not bridge, and in a desire, at least presumably, to bring government under control, added immensely to deficits by keeping it shut for a long period of time.

Now what evidence do I have of this kind of dysfunction and of the utter takeover of the permanent campaign? Let me just give you a few statements from this last year by what is now the minority parliamentary party in Congress and by its representatives; many of them come from Mitch McConnell, the Senate Republican leader, who has been remarkably candid in his statements and analyses of how he sees things going. Of course, there is the most famous statement that has been repeated multiple times. Mr. McConnell has said, without any qualification, “[T]he single most important thing we want to achieve is for President Obama to be a one-term president.”⁵ Now when McConnell first made that statement, I thought, well, that is pretty stupid, at least the way he framed it. Surely what you mean is your number one goal is to get our economy moving, to get people back to work, to get our education system going, to make sure that we can prevail against our adversaries abroad. And to accomplish that goal, we need to make Barack Obama a one-term President. But when he was prodded, McConnell said no, my

4. See Norman Ornstein, *Snowe Falls, but More Obstacles Remain for Health Care Legislation*, ROLL CALL (Oct. 21, 2009, 12:00 AM), http://www.rollcall.com/issues/55_44/-39698-1.html.

5. Michael A. Memoli, *Mitch McConnell's Remarks on 2012 Draw White House Ire*, L.A. TIMES (Oct. 27, 2010), <http://articles.latimes.com/2010/oct/27/news/la-pn-obama-mcconnell-20101027>.

number one goal is to make Obama a one-term President. Now that is when you know that the permanent campaign is now the mindset, the prism through which everything goes.

After the midterm elections, McConnell mused to a reporter from *The Atlantic* about the previous two years⁶—two years in which there was not a single minority vote for the health care plan, the financial regulatory reform, and most other priorities, and only three in the Senate, none in the House, for the new administration's initial priority, the stimulus package. McConnell said, of course, that the Republicans were not going to work with President Obama because if they had worked with him and he had accomplished policy goals that were popular—and they were seen as bipartisan—that would not have served the party's interests.⁷ Now that is a very different mindset than what I have seen before.

Then we have a couple of statements from the debt limit debacle. I found one comment that McConnell made particularly striking. This was a comment made just a few days before they sat down at the 59th minute of the 11th hour to reach a deal—a deal that because of the tumult that had been caused beforehand basically prompted Standard & Poor's to downgrade the United States' credit rating. (Of course, what they said is it does not matter that you have actually reached a deal. The process that you have used to get here gives us no confidence in your ability to resolve these issues in the future.) McConnell said, basically, "You know if we reached a debt limit, for the first time in our history, calling into question the full faith and credit of the United States, it could cause economic chaos and we will get blamed for it. That is what happened in 1995, when we had a shutdown of government." And he said, and I quote, default "destroys [the Republican] brand." And, for that reason, McConnell said they could not let it happen.⁸

I was struck that McConnell stepped up to the plate and that they reached a deal, and that deal is now moving forward: \$900 billion in deficit reduction over the next ten years. Now a super committee is moving toward its deadline of November 23, which may be our only hope of resolving some of these issues. But the reasoning that was used to get there, frankly, gave me a chill.

It is one thing if you say, "If we reach the debt limit, it will cause economic chaos and we cannot let that happen." But when you say, "It will bring economic chaos and we cannot let that happen because it will damage our brand," it is not much of a leap to say, by implication, "If it will damage *their* brand, bring it on." While I do not think that Mitch McConnell is anything other than an extraordinarily accomplished and wily leader, in addition to a natural legislator, what his statements said to me was that a mindset that I had not seen before, except in odd iterations, has become the rule of the day.

6. Joshua Green, *Strict Obstructionist*, ATLANTIC, Jan.–Feb. 2011, at 64, 66.

7. *See id.*

8. Felicia Sonmez, *McConnell Warns Default Could 'Destroy' GOP Brand*, WASH. POST (July 13, 2011, 4:54 PM), http://www.washingtonpost.com/blogs/2chambers/post/mcconnell-warns-default-could-destroy-gop-brand/2011/07/13/gIQAPZT-wCI_blog.html.

After the deal was reached, McConnell said that the debt limit is great to use as a hostage, and it will now become a regular process where we use the debt limit as a hostage.⁹ From 1960 until this most recent set of votes, we increased the debt limit 79 times. We are one of only two significant democracies that have a separate vote on the debt limit, and it is a really stupid thing to do.

You are not actually increasing your debt when you increase the debt limit. You are acknowledging and paying for debts that you have already incurred. When the debt limit itself was first brought in as a vote, around 1917, it was to make it easier to act because, before that, every time that there was a point—especially with a war looming—where Congress might have had to increase the debt, it would have to get permission to issue treasury bonds. So it was a way to bring about efficiency. Now it has become a political football. Just under roughly 50 of those occasions were with Republican presidents, just under 30 with Democratic presidents. Interestingly, you would see a constant kind of farcical behavior where people would switch smoothly, as the presidency changed, from saying, “I am going to take a stand against the profligacy of the government and vote against the debt limit,” to, “Well, of course we have got to vote to increase the debt limit. It is the responsible thing to do.” And we would have votes where it looked pretty close going right up to the moment of the vote. But I have been around those votes often enough to know it was a game and everybody knew it was a game. And every time everybody knew they were not really going to play with the full faith and credit of the United States and there were votes in reserve, if necessary. You could let your individual members cast the votes they needed to for their own political purposes. This is different. Using the debt limit as a hostage and using hostage-taking as a core part of a governing strategy is simply nothing I have seen in all my time in Washington.

I want to mention just two other comments. One to *Politico*, from what it identified as a senior Republican leadership aide, when the gang of six—three Democrats and three Republicans in the Senate, ranging from the liberal Dick Durbin to the conservative Tom Coburn, working informally—finally reached a deal on a plan to resolve our debt problem and stabilize the debt over ten years that President Obama pretty much endorsed. The aide said, essentially, “That’s the kiss of death. If he’s for it, we’re against it.”¹⁰ And then a comment in an e-mail from a senior House aide on the jobs bill when it first emerged: “Obama is on the ropes; why do we appear ready to hand him a win?”¹¹ Now, again, this is a mindset. It is not evil people perpetrating evil deeds; it is not something that is simply relegated to one party. Right now, it is asymmetric, but it is a reflection of a kind of political dynamic that makes it very hard to find that process that allows for broad bipartisan agreement, which the Framers understood when they created a system

9. Alex Seitz-Wald, *Mitch McConnell Vows to Hold Debt Ceiling Hostage in the Future: ‘We’ll Be Doing It All Over,’* THINKPROGRESS (Aug. 1, 2011, 7:30 PM), <http://www.thinkprogress.org/politics/2011/08/01/285025/mcconnell-vows-to-hold-debt-ceiling-hostage-again>.

10. Mike Allen, *POLITICO Playbook*, *POLITICO* (July 20, 2011, 7:34 AM), <http://www.politico.com/playbook/0711/playbook1485.html>.

11. Marin Cogan & Jake Sherman, *GOP Grumbles About Jobs Plan*, *POLITICO* (Sept. 11, 2011, 11:13 PM), <http://www.politico.com/news/stories/0911/63214.html>.

that was going to make it very difficult to reach an agreement. When the Framers created what they saw as an extended republic—a huge expansive country with people coming from radically different viewpoints with radically different interests, from areas remote from the rest of any part of civilization to densely packed urban areas with radically different backgrounds—they understood that the only way to reach decisions that could provide a consensus was to have people come together. And they created a congress, which comes from the Latin word meaning “coming together,” not a parliament, which has as its root the French word *parler*, “to talk.” It was coming together face-to-face, working together, over time understanding the other person’s point of view, over time understanding that while you may not prevail, you had your chance to make your case, and then reaching that broad agreement. And now it is becoming much, much more difficult and even impossible to do so. So now we have hostage-taking and ransom as a *modus operandi*. We have obstructionism as a core tactic.

The filibuster, through most of its history, was rarely used. Throughout most of the early part of the twentieth century the filibuster was used only one or two times a year or, in some eras, as seldom as one or two times a decade. Obviously we had an uptick in the 1950s and 1960s during the Civil Rights Movement, when predominantly Southern Democratic senators took to the floor to filibuster related bills. And there would be one or two or three filibusters every year that would bring the place to a halt and go round the clock for weeks. And you might have six, or eight, or ten cloture motions to bring that debate to a halt or sometimes bring the debate to a halt before you actually had a filibuster to make sure you had enough votes to do so. But, in the last ten years, and in particular the last five, we have seen a dramatic spike—even an explosion—in the number of cloture motions and the number of filibusters threatened. This is a two-way process. A party is going to use more filibusters. The other party will call for more cloture votes and will find ways to stop debate and move it forward. That includes things like filling the amendment tree so you deny the minority even an opportunity to offer its amendments and to speak. Whether those amendments are aimed at political embarrassment or not, that is the minority’s right.

And so you had a lot of tension between the two parties and you had majorities, at different times, complain bitterly about them. We could go back to when Bill Frist was the Senate Majority Leader and George W. Bush was the President, and there were issues about getting judicial nominations through and talk about blowing up the whole rules process because of obstructionism. The last two or three years have seen something very different. We have not seen a focus on a smaller number of judicial nominations, or one or two or three bills of great national significance. When we had filibusters in the past, it was when you had intense minorities picking out issues of great national significance and who were willing to bring the place to a halt to have their say and to try to rally the public behind them. But recently, we have seen the filibuster used as a tool even for issues and nominations that got unanimous support because under the rules, if you start a filibuster process, it takes days to do the cloture motion. Once you have succeeded with the cloture motion, you can have, in many instances, a second and even a third bite at the apple because you can do it on the motion to proceed and then you can do it on the bill itself. You can do it on amendments as well. You can

do it on a conference report. And, with each one, once you finally accomplish that goal, you get 30 hours of debate. And the way the rules operate, you do not even have to be on the floor and you do not even have to debate. You can just take up the time. So what we have seen over the last few years is that filibusters are used to just throw molasses onto the road to keep anything from happening. And at the same time, we have seen far more than just a handful of nominations held hostage or blocked by individuals threatening filibusters because they can use all that time. And it has wreaked havoc in the executive branch because there are positions that are not filled. It has also caused enormous problems for the judiciary.

Now this year we are seeing a new development, which you could almost call the “new nullification,” a term coined by Tom Mann of the Brookings Institute. It is now playing out with a couple positions—one of them in particular, the Consumer Financial Protection Bureau, enacted as part of the Dodd–Frank financial regulation. It is now the law of the land. It was passed by the House and Senate and signed by the President. Republicans in the Senate have said that they will not confirm anybody to the post, no matter their qualifications. And actually, in a confirmation hearing, they praised the current nominee to the skies for his depth, qualifications, and integrity, but said that they do not like the law, and are not going to allow the executive to implement the law.¹²

We have seen the same thing with the Centers for Medicare and Medicaid Services—the position that is the key to implementing the Affordable Health Care Act, the health care overhaul bill. Again, I have never seen anything like this before. I have seen plenty of nominees held hostage, despite their qualifications or often when the senator doing so did not even know the individual, as bait for something else. I have seen them held for extraneous purposes or to try to extract something out of a cabinet officer, or a White House official, or to gain their attention. To say that you are going to distort the confirmation process and advice and consent, to block the implementation of a law because you do not like it, to me, is a hallmark of dysfunction that is troubling.

Now just a few words on how we got here. Part of it is long-term secular trends. When I first got to Washington, the Democratic Party was 15 years into what became their 40-year consecutive majority in the House—a stranglehold on the body that actually, in a lot of ways, went back 70 years—and 15 years into what became 26 in the Senate. They were able to do it because they had two forces in operation, two legs that made their majority table. They had the Southern Democrats, with a stranglehold on the South that had gone on for many decades, for obvious historical reasons, almost uniformly Democratic and they were mostly conservative, mostly rural. We used to call them “boll weevils” for the insect that infects cotton. The Republican Party, in the minority, had about 25% to 30% of its members, mostly from the Northeast and the West Coast, who were moderates and liberals. We called them “gypsy moths,” for the insect that infects hardwood trees mostly in the Northeast. But the rest of the Democratic Party, from the rest of the country, Northern, mostly urban, and very liberal, had one thing in common with those boll weevils, which was they could work together and make a majority. And

12. Jim Puzzanghera, *GOP Senators Block Bid of Consumer Agency Nominee*, L.A. TIMES, Dec. 9, 2011, at B1.

they made it work, in part, because they could keep Southerners by making sure, through the seniority system, that they could have most of the important power positions.

But as I got there—when about 40% of the Democratic Party was from the South—changes were already underway. And if you wanted to pick one seminal moment, it was probably that moment in 1965 when Lyndon Johnson signed the Voting Rights Act, and turned to his then-aide, Harry McPherson, and said this is going to cost the Democratic Party the South for generations to come. Of course, that had already been underway with what we saw in the 1964 presidential election, when Barry Goldwater was trounced in most parts of the country but won several Southern states, which had been uniformly Democratic long before then.

Now, as that was happening, there was another set of changes triggered, in part, strangely enough by a technological change, air-conditioning. Now why air-conditioning? Before the advent of air-conditioning, it was not feasible for a lot of senior citizens to leave the frigid North and move to sunny climes because the summers were brutal in the deep South. As the late political scientist Nelson Polsby pointed out, once you had air-conditioning and you could live in places year-round, it provided the key, not just for seniors to move South and West, but also for businesses to move industrial plants and other kinds of businesses into places like Atlanta or Miami and move middle managers there. And we began to see a serious regional and demographic sorting out of the country that also included ideological sorting out. We also saw a different kind of pattern in California, Washington, and Oregon: different kinds of people, like Mexican Americans, Asian Americans, and those who wanted to find “self-actualization” in places like California or Oregon.

All of that meant that you had a Democratic Party that used to have almost equal parts of conservative and liberal members, with a large number right near the middle that became more homogenous and moved left, while the Republican Party, with a significant number of members in the middle, lost most of them and became more homogenous and moved sharply right. And that was the beginning of a process where we saw the collapse of the center. It was exacerbated by structural changes, and the rise of the primaries, that actually began, in part, because of the Vietnam War and the turmoil, as you saw in 1972, when George McGovern arose because the rules had been changed, by McGovern, after the tumult in Chicago in 1968. But all that which brought in a new era of mass involvement in nominating candidates for Congress and for the presidency, meant a new, larger role for ideological activists. Redistricting, over three or four decades, exacerbated that process as well. And we have now a new dominance of ideological activists. A relatively small group of people in each party has a dominant effect on who is chosen, and once they are chosen, for many of them, they are going to stay there unless they're hit in a primary. And that means even those whose inclination might be to move to the center have electromagnets pulling them toward the extremes.

There were policy changes, including the U.S. Supreme Court's misguided *Citizens United*¹³ and *Arizona Free Enterprise*¹⁴ decisions that caused the role of money—which was already growing and changing the nature of how people would approach politics, what kinds of people would run for office, and how the two parties would act in this process—to move in a very different direction.

Now money dominates in a way that we have not seen before. I can tell you, from being inside the belly of the beast, that it is thoroughly corrupting, and corrupting in both directions. It is lawmakers and other public officials who now need to raise money not just for themselves, but also for their teams. They shake down donors and donors have no protection. You cannot say, "I maxed out." There is no maximum anymore. And at the same time, there are enormous efforts to come in and use big money to change and shape the policy process, often writing bills directly and making sure that they get enacted, or using that clout to get rid of people you do not like, including many in your party. For example, there is a quite remarkable article by Jane Mayer in *The New Yorker* recently about a fellow named Art Pope in North Carolina who made sure he purged his Republican Party of moderates to help to accomplish his goals.¹⁵ It is no way to run a political process.

Then, there are cultural changes, including the coarsening of the culture where if you lie now or say outrageous things, your punishment is that you can either become a national celebrity and get your own show on cable news, or you can become a presidential candidate. And, of course, a lot of that is driven by the changes in the mass media, which have created a new business model. It is quite striking that Fox News—created and shaped by Roger Ailes, a business genius who previously had been a political genius—last year earned a net profit of \$700 million for Rupert Murdoch. This year it will likely be \$1 billion, making it the crown jewel—the single largest profit generator in the Murdoch empire, with more net profit than all three network news divisions combined. When you live in a world where, because of technological changes, a network with an audience of 2.5 to 3 million people can make more money than networks with audiences of 30 million people, it tells you something.

That business model is a golden one, and it is one that has now been adopted in large part by the ever-struggling MSNBC, which was very close to being axed by General Electric. And in struggling to find some business model—any business model—CNN, decided to pick somebody from one side of an argument to scream at somebody from the other side of the argument to convince us all that the only people out there are at the extremes. Or they pick a spinner from one party to argue against a spinner from the other party to convince us that it is all cynical and that none of it is on the level anyhow. That does not make it any easier for policymakers to convince voters that they should trust them because this will hurt now but it will work in the long run.

13. *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876 (2010).

14. *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011).

15. Jane Mayer, *State for Sale*, *NEW YORKER*, Oct. 10, 2011, at 90.

Now, I want to mention a few things about how we can deal with all of this. First, let me say one thing in the category of what not to do. Do not succumb to the siren song, as some of our best commentators like Tom Friedman and Matt Miller have, of a third party or an independent force taking over the center. Given the nature of our political process, with electoral votes choosing a President, with individual members of Congress elected in a first-past-the-post system, a third party is going to be a spoiler, which could very possibly throw the election to the House of Representatives, where they vote by state—which is a nightmare none of us would ever want to see—or at a minimum, undercut the legitimacy of whoever does get elected along the way.

What to do? There are structural reforms, but I am sad to say we should not expect much from them because this is now a larger cultural problem that is not going to be altered in any dramatic fashion by a set of changes in structure. But certainly there are things we need to pursue and pursue vigorously. Redistricting reform is one of them.

The independent-commission model that Arizona has provided is a direction we need to see more of in other states. The more I have watched politicians draw their own lines, choose their own voters, instead of the other way around, the more nauseated I get. And it does not mean that you just get one party dominating and disadvantaging the other party. Almost as often you get the two parties getting together to disadvantage everybody else by creating safe districts for themselves. That will help, but we also have to recognize that Bob Bennett was denied the ability to even run for re-election for his Senate seat in Utah, but not because he had a district that was drawn badly. He was a Senator. Arlen Specter did not leave the Republican Party because of redistricting. He left because he could not possibly win a primary in the party he had been in for so long. Lisa Murkowski did not lose in a primary because of redistricting in Alaska. We keep moving to the extremes and eliminating people. So redistricting is not a panacea. Bob Bennett lost primarily because, as one of the five most conservative-by-voting-record members of the Senate, he had had the temerity in this era of the permanent campaign to work with liberal Ron Wyden to do a health care plan—which by the way, was a far superior plan to what passed. In the end, Bennett did not even vote for his own plan—indeed, he did not vote for any health care plan—but they blocked him from winning renomination because he slept with the enemy. Actually, because he did not vote for any of those plans, he got to first base with the enemy, but that was enough. That just tells you that redistricting, as a problem, is not the only problem; the enhanced role of ideological extremists is another.

Another way to try to reduce the impact of ideological extremes is open primaries. Arizona may expand the way with open primaries, where California did before. And we are going to have to see how these experiments play out, but I am increasingly convinced that having open primaries—where you have more opportunities for centrist candidates to emerge—maybe combined with a form of preference voting—which is something that deserves a lot more study—might help.

Now frankly, if I had my druthers, I would go a lot further. I would throw the long bomb. I would like to adopt a version of the Australian system of

mandatory attendance at the polls. In Australia, you do not have to vote. You can show up and cast a ballot for none of the above, but if you do not show and you do not write a letter with an excuse—I was traveling, I was sick, whatever it may be—you are subject to a fine of about \$15. Now that may not seem like much, but it turns out that small incentives or disincentives, as has been shown, quite persuasively can have an enormous effect on behavior. In the District of Columbia now, you need to pay five cents for a bag at a grocery or drug store. *Five cents*. And it is absolutely hilarious to watch people walk out of a store juggling cans because they will be damned if they are going to pay five cents for a bag.

Over seven decades in Australia, a \$15 fine has meant that they get a 97% turnout, about 3% or so voting for none of the above. And it is now inculcated as a value; it is part of your responsibility to vote. Now I am not advocating this because of the intrinsic value of high turnout. The former Soviet Union had 98% turnout, which was not a signal of political health. There are times in Chicago when we've seen 120% turnout (just kidding). But if you talk to Australian politicians, what they will tell you is this: If you know your base is going to be there, and you know their base is going to be there, you do not have to spend an enormous amount of time and money activating and energizing your base or scaring them to death about what the evil people on the other side will do, much less suppressing the votes of those on the other side, wherever you can. You focus on the voters in the middle, and it changes the issues on which you focus. They do not talk as much in their campaigns about same-sex relationships, or guns, or abortion. They talk more about debt, deficits, the climate, and the world. And they do not use the same kind of rhetoric in their campaigns as politicians do in the United States to activate their base voters because, in Australia, harsh language and attacks can turn off the swing voters who really matter. So you can change the dialogue and the incentive. But I am realistic. We do not like mandatory anything in America, and the notion that you would require somebody to vote is anathema to many people.

Now on this trip, driving in from the airport, with the wonderful Steven Golden and his son David, David mentioned an idea I had not thought of before. His idea was to change our electoral system, so that electoral votes are granted and allocated based not just on the population of the state but the turnout of the voters. This could have an enormous incentive for states to actually increase their turnout and broaden the voting base without necessarily going to a mandatory vote. That would require a constitutional amendment, which is not going to be easy, but it shows that there are some inventive, outside-the-box ideas out there that might be worth thinking about.

Now along with that, we need to do something to try to change the culture inside Congress and move us away from tribal politics. It used to be that most members and their families lived in Washington and interacted together. And believe me, if you had gone to dinner with colleagues and their spouses, or if you stood next to them at a soccer game with your kids, it is a little harder to demonize them on the floor the next day. But that does not happen anymore. Not a single new member of the 112th House moved his or her family to Washington. That is not good.

It used to be that we had junkets, as we called them—congressional trips—where members of both parties, often with spouses, would travel, and where they would have extended periods of time together to get to know one another. That does not happen now. Now, as a part of the tribal politics, most of the big trips are done with partisan groups. We had four major trips, two to Europe and two to Israel during this last August break. Almost all Democrats, or almost all Republicans, attended each of the four of them. So, they are reinforcing the tribal notion rather than the opposite. I would like to move a congressional schedule to three weeks in Washington and one week off, 9:00 a.m. Monday to 5:00 p.m. Friday in those three weeks, which provides a real incentive for people to move their families to Washington, and they would still have a week each month to get home to bond with people back in the district. I would combine that schedule with some incentives for less expensive housing. If you are a member of Congress without any capital, you are competing with second-year associates in law firms for housing, and if you have family members and children and you need something in relative proximity to the Capitol and schools, it is very hard to do when you are maintaining a second household. So I would like to build apartment buildings on the sites of the old Congressional Hotel and Carroll Arms Hotel and rent them at cost, with substantial number of bedrooms, child care facilities, and public dining facilities or an open dining facility to provide a real incentive for members to move.

Then in those three weeks when they are on, the members would not be allowed to engage in fundraising. They would still have 15 days a month to raise the money. Now, what you see is every spare moment—even when they are in session—if they are not immediately voting, is that they are running off the campus to do call time, to prostitute themselves, and embarrass themselves to raise money for themselves and for the team. Now, this proposal will also be very hard to implement.

And more generally, I will just close by saying we have to try to focus at least as much on changing our culture and trying to move away from the current incentives to have the kinds of viciousness in campaigns with the costs that are involved, where members have to protect themselves against some alien predator group parachuting in behind their lines even late in the campaign with \$20 million or more dedicated to ads stripping the bark off their reputations. Members now have to raise money to combat this threat and maybe have to go off preemptively to do the same thing to their opponents, which delegitimizes everybody and creates an awful climate.

Part of that means we have to listen less to those negative campaigns, instead of believing everything. We have to find incentives for different kinds of people who understand how you make coalitions. That means politicians. When I hear Herman Cain say, “I don’t talk politician,”¹⁶ and that moves him to the top of the polls, it makes me despair because what we are seeing is that the more dysfunction we get, the more people who will contribute to the dysfunction emerge

16. *Cain’s ‘Impossible Dream’ Resonates with Voters*, FOXNEWS.COM (Oct. 15, 2011), <http://www.foxnews.com/politics/2011/10/15/cains-impossible-dream-resonates-with-voters>.

as leaders. And the more people that can help to solve the problems are either forced out of the process, or decide that they do not want to risk their reputations and run for office to have a job where they are going to struggle to make ends meet and spend all of their time on airplanes or begging for money. Somehow we have to find ways to change those incentives and change the business model on cable television. It will not be easy and it will not be quick. I do want to end on an upbeat note: My business could not be better.

Thank you very much.
