

Why There Will Be No Revolution in the US: A Reply to Daniel Lazare

In recent years, Daniel Lazare has emerged as one of the most provocative and insightful critics of the us federal constitution and the superstitious reverence for it which is cultivated by the American political establishment. In his brilliant polemic *The Frozen Republic* (1996), Lazare subjected American political arrangements to the kind of analysis from which they are usually exempt.¹ In 'America the Undemocratic',² Lazare builds upon arguments he made in his book.

Many of Lazare's criticisms of particular features of the US constitutional order—the grotesquely malapportioned Senate, for example, or the crazy quilt of local jurisdictions—are justified. So is the iconoclastic ridicule he heaps upon the cult of the Founding Fathers. Unfortunately, Lazare's case against the American constitutional tradition is seriously weakened by his socialist ideology and his majoritarian theory of democracy. The American tradition of constitutionalism deserves to be criticized—but not because it has proven to be an impediment to socialism or simple majority rule.

Marx Versus Madison

Lazare shows the extent of his divergence from the mainstream American Centre-Left when he cites ‘Marx and Trotsky’ as preceptors and looks to ‘Russian social democrats’ in the ‘polyglot Czarist empire’ as models for American reformers.³ Writing in the tradition of the European radical Left, Lazare associates ‘modern’ and ‘democratic’ politics with a secular society, economic socialism or comprehensive social democracy, and centralized government, preferably under the control of a working-class-based socialist or social-democratic party. For thinkers in this tradition, societies such as the United States that have not evolved in these directions are aberrations that must be explained.

Needless to say, if one does not believe that all societies are evolving in the direction of what the economist Robert Heilbroner has called ‘a slightly imaginary Sweden’, one will be inclined to conclude that there may be multiple and equally legitimate paths to ‘modernity’ and ‘democracy’. There is no *Sonderweg* because there is no single way. To American liberals in the tradition of Herbert Croly and the two Roosevelts, the question ‘Why no Marxism in America?’ is about as interesting as the question, ‘Why no positivism in America?’. Both Marxist socialism, in its several denominations, and Comtean positivism were pseudoscientific nineteenth-century secular religions. Versions of each were adopted by modernizing élites in peripheral countries, such as Russia, China, Brazil and Mexico—whose leadership put the Comtean motto ‘Order and Progress’ on the flag. Just as Comte’s ‘science of society’ never had much influence in the United States, so Marxist socialism never gained much of a foothold beyond the beach-heads established by European immigrant minorities such as the German, Scandinavian and Russian–Eastern European Jewish diasporas in the North-East and the prairie states.

The Non-Saliency of Class

Perhaps the favourite topic of the marginal American radical Left has been the absence of class-based parties in the United States, Lazare’s contribution to this debate is to assert that the adoption of proportional representation in the US after the Civil War—a reform that was actually proposed by one Reconstruction Republican congressman—‘might have provided the opening wedge for a genuinely interracial socialism—not just a socialist movement, one might add, but a disciplined, unified socialist party’ uniting ‘educated Northern workers, immigrants, and barely literate Southern blacks’.⁴

¹ Daniel Lazare, *The Frozen Republic: How the Constitution is Paralyzing Democracy*, New York 1996.

² NLR 232, November–December 1998, pp. 3–40.

³ *Ibid.*, p. 21.

⁴ *Ibid.*

Perhaps; but almost certainly not. The replacement of plurality voting by PR in the 1860s or 1870s would not have reduced the hostility between largely Catholic immigrant workers and their black competitors in Northern cities; at best, it would have strengthened the anti-Southern Bourbon alliance of Northern Protestant élites, Southern blacks and some white Southern populists. The enduring cross-class alliances between the élite in one section and non-élites in the rival section are the result of deeply rooted conflicts of interest and identity among American groups, not artefacts of either the constitutional structure or the electoral system.

At the end of the twentieth century, we now have enough examples of democratic régimes to know that parties based on class affiliation rather than other aspects of identity—regional, ethnic, linguistic, religious—are the exception, rather than the rule. American politics has often revolved around ‘culture war’ issues like abortion or prohibition, which have symbolized clashes between ethnic groups, races or subcultures—Protestant ‘drys’ versus Catholic ‘wets’, evangelical conservatives versus secular feminists. Similar patterns are familiar in other democracies. In parliamentary Canada, the party system is Balkanized along regional and linguistic lines, not class lines. Regional partisanship is important in European democracies such as Italy and Germany and Asian democracies, for example, South Korea. Even in Britain, with its Labour and Conservative parties, the pattern of partisan alignment has as much to do with region and ethnicity—the Celtic periphery versus the English ethnic core—as with socio-economic class. Since most democracies are parliamentary régimes with PR voting, and since few democracies have consistent and competitive ‘labour parties’, the reason for the absence of one in the US cannot be that the federal constitution or the plurality voting system is an impediment.

Primordial Ties and Wishful Thinking

In many democracies, then, class alignments are fairly weak, compared to ‘primordial’ ties, particularly where there are deep and enduring cleavages among sub-national communities defined by race, religion, region or other non-economic factors. Marxists may wish that most democratic party systems were organized around debates over the means of production, but they are not, and it simply will not do to dismiss all of the non-economic concerns of real voters in real democracies as trivial diversions by ‘bourgeois’ parties—particularly given the fact that many of the intellectuals and activists of ‘proletarian’ leftist parties are so seldom proletarians themselves. Confronted with the fact that the majority in most democracies, including a majority of the working class, rejects radical leftism, middle-class leftists often console themselves with the thought that the ‘people’ have been brainwashed by ‘the capitalists’ or ‘the interests’. Of course, if the people are really so stupid and vulnerable to propaganda, one must wonder whether they are capable of self-government at all.

Indeed, it can be argued that there is a method in the madness of communal politics. After all, one's class membership is more easily shed than one's ancestry or one's accent. An upwardly mobile Scot may no longer belong to the working class—but she is still a Scot. It is not unreasonable, then, to base one's political affiliation on identities more stable and clear than class or vocation, particularly in modern societies, in which class identification is so baffling—is a salaried middle manager with little personal wealth a member of the 'bourgeoisie' or a white-collar 'proletarian'?⁵

Determined to attribute most of what the radical Left dislikes about American society and American culture to the federal constitution, Lazare makes some implausible, if ingenious, arguments:

Popular sovereignty was stillborn as a result [of the federal constitution], and the US was prevented from modernizing itself constitutionally or politically. Or, to put it more precisely, it was encouraged to seek out economic and geographical expansion as a substitute for political modernization. This explains why, two centuries later, amid all the subdivisions and shopping malls, America is home to so many Christian fundamentalists, heavily-armed militia members, creationists, and other rebels against modernity.⁶

Scots-Irish Immigrants and Militia Movements

This account of US history is puzzling. In exactly what way was 'geographic expansion' into Florida, the Louisiana Territory, Texas and California and the South-West a 'substitute for political modernization'? In what way were plantations and ranches in former French, Spanish, Mexican or American Indian territory 'substitutes' for, say, the adoption of improved voting techniques in seaboard cities? Alexander Hamilton, who was nothing if not a modernizer, favoured US territorial expansion into French and Spanish territory to the South and West—by force, if necessary. Another modernizer, Lincoln's Secretary of State William Seward, favoured American expansion and speculated that ultimately the capital of the enlarged United States would be Mexico City! The fact that the North was the home both of American industry and of American anti-expansionism was a coincidence. The chief influences on nineteenth-century

⁵ In *The Next American Nation: The New Nationalism and the Fourth American Revolution*, New York 1997, I tried to clarify the confusion by popularizing the term 'overclass'—a word introduced into English from Swedish by Gunnar Myrdal—for the credentialled managerial-professional élite. This useful neologism has been ruined, however, by unsystematic uses of 'over class' to refer not only to managers and professionals but to the hereditary, moneyed upper class, the affluent in general, or even liberals and leftists—the American Right uses 'overclass' as an epithet for its ideological rivals.

⁶ *Ibid.*, p. 27.

Northern opposition to expansionism were political (fear that enlargement would augment the power of the South) and moral—thanks to the cultural legacies of Puritans, Quakers and Teutonic Pietists, the American North has consistently been more hostile to military establishments and foreign wars than the American South.

Nor can the US constitution be invoked to explain why ‘America is home to so many Christian fundamentalists, heavily-armed militia members, creationists, and other rebels against modernity’. The actual reason is the fact that the Highland South was settled in the eighteenth century by Scots-Irish immigrants from Ulster, many of whose distant cousins in contemporary Northern Ireland are ‘heavily-armed...members’ of Unionist militias and followers of ‘Christian fundamentalists’ such as the Reverend Ian Paisley. The Bible Belt would be the Bible Belt, even if the US had a parliamentary system like that of Canada. In this case, Lazare’s real argument is not with the US constitution, but with certain of his fellow citizens.

A Coherent Majority?

At times, Lazare writes as though there were a secular-socialist-statist majority in the United States that would long ago have taken over, but for the fact that ‘the system’s multi-chambered eighteenth-century architecture is itself an obstacle to change’.⁷ He dismisses the Democrats and Republicans because ‘both are dedicated to God, country, and the free market above all else’.⁸ Does he really believe that ordinary American voters—who tend to be more religious and sentimentally patriotic than the social élite—would vote for atheist, cosmopolitan socialists?⁹ This brings to mind the obliviousness to American political reality of Trotsky, who reportedly once began an address with the words, ‘Workers and peasants of the Bronx...’

It is true that the polls indicate that the public is rather less committed to the free market than the bipartisan élite; Christian conservatives as well as unionists tend to express support for entitlements—for themselves, if not the inner-city poor—as well as suspicion of big business and banks. But all this means is that in a system of pure majoritarianism in the US that expressed popular attitudes more or less directly, the prevalent force, the ‘coherent majority’ to use Lazare’s term, would be a kind of right-wing populism, mixing support for working-class and middle-class economic entitlements with support for the death penalty and

⁷ *Ibid.*, p. 33.

⁸ *Ibid.*

⁹ According to a Washington Post/Harvard/Kaiser Family Poll in August 1998, 78 per cent of Americans believe that ‘encouraging a belief in God’ is more important than ‘encouraging a modern scientific outlook’.

hostility to flag-burning, obscenity and sexual deviance.¹⁰ ‘The more vehement the local populist forces,’ Lazare writes of the American Revolutionary Era, ‘the greater their hostility to anything resembling an emergent nation-state.’¹¹ This was true then, and to a large degree it is true now; consistent nationalists in American politics, like James Wilson and Alexander Hamilton in the eighteenth century and Herbert Croly in the twentieth, have usually been members of rather small and avant-garde élites with limited political influence.¹²

The Dangers of Coherence

‘In the absence of coherent majority rule’, Lazare writes, ‘parties are chronically weak and principles scarce to non-existent’.¹³ But America’s two parties have usually been weak and incoherent, not because of the constitutional system as such, but rather because of the interplay between American society and American electoral rules (which are creations of statute and are not mandated by the federal constitution). A case can be made that a multiparty system is best suited to the diversity of American society; but a plurality or first-past-the-post voting system inherited from eighteenth-century Britain has forced American politics into the straitjacket of a stable two-party system. The usual compromise between America’s multiparty society and its two-party electoral order has been a system of two incoherent parties.

This being the case, one would expect that an attempt to make the two major parties in the US more ideologically coherent would have two effects. The first effect would be the alienation of a growing number of American voters who cannot find even a faction within a major party with which they can identify. An even more dangerous consequence of the growing coherence of the Democrats and Republicans should be a sharpening of partisan rancour, as partisan lines come to overlap closely with regional, racial and religious divisions.

Both of these phenomena can be observed in the 1990s, as a result of the movement of the American party system from healthy incoherence to dangerous coherence. The purging of socially-conservative Democrats and economically-liberal Republicans has produced two groups of alienated voters—working-class Buchanan

¹⁰ A Gallup survey of April 25–28, 1996, revealed majorities in favour both of social conservatism and economic liberalism. Thus, 83 per cent of Americans polled opposed racial preferences in jobs and schools, and 79 per cent favoured the death penalty for murder; the same number, 73 per cent, were in favour of a school prayer amendment to the constitution and opposed to the legalization of marijuana. At the same time, 54 per cent opposed reducing social spending, and 83 per cent favoured raising the minimum wage. This suggests that economic liberalism can succeed in the United States only if it is divorced from cultural liberalism.

¹¹ Lazare, ‘America the Undemocratic’, p. 14.

¹² Akhil Amar’s new study, *The Bill of Rights: Creation and Reconstruction*, New Haven 1998, demonstrates just how deeply-rooted localism is in American political culture.

¹³ *Ibid.*, p. 26.

voters, most of whom are former New Deal Democrats with right-wing social views, and suburban John Anderson voters, most of whom are former liberal Republicans. (Ross Perot's populist persona appealed to the former, while his program, more technocratic progressive than populist, appealed to many of the latter.) In the old days, Anderson Republicans and Buchanan Democrats could find their places in a two-party system that was really a four- or five-party system in disguise, characterized by alliances among elements of rival parties—like the 'conservative coalition' of Southern Democrats and Republicans that dominated US politics for most of the twentieth century, or the civil rights coalition that united liberal Republicans with the Democratic Left. The evolution of the Democrats and Republicans into more disciplined parties is one of the major causes of the emergence of a substantial minority—as much as a third of the electorate—which is angry and alienated. Both the anger and the alienation may be justified; but inasmuch as the dynamics of the plurality voting system discourage the formation or success of third parties, that anger and alienation is likely to be dissipated through ephemeral anti-political movements organized around demagogues such as Perot.¹⁴

Conservatism's Comparative Advantage

Meanwhile, the conversion of white Southern Democrats to the Republican Party has destabilized American politics, in a way that leftists and liberals in the Democratic party, eager to be rid of the Dixiecrat right wing, did not foresee. As long as conservatives were divided among the two parties, they had at least some incentive to work with liberals in their own parties—Lazare dismisses most American politicians as conservatives, but his sectarian leftist viewpoint requires the abuse of ordinary political terminology. The conversion of the Democrats into a more or less consistent liberal party and of the Republicans into a more or less consistent conservative party has demonstrated what insightful political observers knew all along—there are far more self-identified 'conservatives' than self-identified 'liberals' in the United States. To make matters worse, the partisan divisions are being reinforced by regional and racial and religious divisions. A national politics of shifting coalitions is being replaced by trench warfare along the frontier between two immobile armies, in which each, for narrow partisan reasons, attempts to weaken and destroy the branch, or house of the legislature, that the rival party temporarily controls.

The price of trying to turn America's loose parties into disciplined, Westminster-style parties, then, is growing voter alienation and

¹⁴ If I am correct, then the Perot and Buchanan movements were, among other things, unintended by-products of the efforts of Republican leaders like Newt Gingrich and their Democratic counterparts to impose Westminster-style party discipline on their heterogeneous parties.

escalating partisan rancour. The point that must be stressed is that this partisan polarization has nothing to do with the US constitution—a stable background which cannot be invoked as the explanation for changing patterns in the foreground. Rather, the increased polarization is a result of the interaction of a complex society with a too-simple electoral régime. There is no constitutional crisis in the US; instead, there is a political crisis, a crisis of partisan politics. If the US abruptly adopted a Westminster-style parliamentary system, but maintained its inherited Anglo-American plurality voting system, then the two-party system would still exist, as would the choice between an inclusive system of two incoherent parties or an exclusive system of two coherent parties.

Suppose the United States adopted proportional representation for the House of Representatives, along with alternative or preferential voting for the President and individual Senators. The result would most likely be the decomposition of the two-party system into a multiparty system. Lazare endorses proportional representation—but why? There is little reason to believe that PR would further his goal, the formation of a ‘coherent majority’. It seems more likely that none of the new American parties—certainly none of the Lilliputian parties of the radical Left—would have a majority. Two or more parties would therefore have to engage in complicated negotiations in order to form a majority coalition. This may not be a bad thing—as a supporter of PR for both the US and the UK, I do not think it would be—but it is very far from the straightforward, programmatic politics of a ‘coherent majority’. Even in a unicameral parliamentary system, multiparty coalitions based on carefully negotiated power-sharing arrangements are unlikely to carry out the kind of revolutionary reforms that Lazare favours.

Could the US Have Evolved into a Parliamentary Democracy?

In addition to undermining his analysis of contemporary American national politics, Lazare’s left radicalism distorts his account of American constitutional history. Like many members of America’s Left, Lazare is drawn to the notion that the evolution, in the United States, of a Western European-style welfare state and a party system dominated by class representation was aborted at this or that tragic turning point. For various schools on the Left, American history took a wrong turn with the Cold War, or the Progressive Era, or the replacement of the Articles of Confederation by the Federal Constitution. According to Lazare, the wrong turn came when the radical Republicans of the Reconstruction Congress failed to carry out a sweeping revolution that might have resulted in American socialism and an American parliamentary system. If Andrew Johnson had been impeached, Lazare tells us:

The legislative branch would have become superior to the executive, while the House, which had initiated impeachment

proceedings and was the more competent and vigorous of the two, would have become dominant over the Senate. The US would have been on its way to becoming a modern democratic state under the control of a sovereign national assembly.¹⁵

Many political historians agree with Lazare that the removal of President Andrew Johnson over policy differences might have led to the evolution of the US Constitution in a parliamentary direction, with impeachment playing the role of a vote of no confidence. But is this really true? The argument assumes a great deal. It assumes that the Senate would have consented to be subordinated to the House, automatically removing Presidents and other executive officials who had been impeached by the House, not just once, but many times. This seems unlikely. The US Senate, according to convention, is the 'Upper House'. US Senators consider themselves far more important than mere Representatives, and in fact are more likely to come from the socio-economic élite—a majority of today's Senators are millionaires. Today's Senators have been quick to express their annoyance with attempted micromanagement of Clinton's impeachment trial by House leaders. It is hard to imagine nineteenth-century Senators abandoning their prerogatives in order to rubber-stamp the decisions of the House—even if the American people did not turn in wrath against legislators who repeatedly tried to remove the Presidents whom a majority of voters had elected.

Impeachment and Metamorphosis

Needless to say, if impeachments by the House had become routine and, at the same time, the Senate had refused automatically to convict impeached Presidents and other executive officers, then nothing like parliamentary democracy would have evolved. Instead, the most likely result of the weakening of the presidency by the House would have been the strengthening of the Senate at the expense of both the presidency and the House. Presidents, Vice-Presidents and their appointees would have had an incentive to defer to the Senators who could convict and remove them rather than obey the Representatives who, at best, could merely recommend their removal. In *The Federalist Papers*, Hamilton appears to envision the Senate protecting executive branch officials from the House in this way.

There is another reason why the impeachment of Johnson would not have produced a parliamentary régime. Upon impeachment and conviction, a President is replaced by his Vice-President, not by the Speaker of the House. Those who write about the 'parliamentarization' of American politics as a result of impeachment must assume either that successive Houses and Senates would have collaborated to impeach and convict Vice-Presidents along with Presidents, in order to make a series of Speakers of the House President; or that Presidents

¹⁵ Ibid., p. 20.

and Vice-Presidents would be so afraid of impeachment that they would become deferent subordinates of the Speaker of the House. In the battle of legitimacy, though, *any* President of the United States is far better positioned than any Speaker of the House—as successive speakers during the Clinton administration have learned so painfully. The President is the only American politician who is elected, if only indirectly, by the American electorate as a whole. By contrast, the Speaker is elected to the Speakership only by other politicians; the only American citizens who actually vote for him are the citizens of his district. In a parliamentary democracy, the selection of the prime minister or chancellor by the legislature does not reduce his legitimacy. But in a system of separated powers like that of the US, the plebiscitary legitimacy of the President easily neutralizes the parliamentary legitimacy of the Speaker of the House, or, for that matter, the Senate Majority Leader.

The American presidential system was, and is, no more capable of evolving into a parliamentary system than a hippopotamus is capable of metamorphosing into a peacock or a turtle. Lazare is pessimistic about the American constitutional system—but, in assessing possibilities in the past for fundamental change of that system, he is not pessimistic enough.

Two Conceptions of Democracy

If Lazare's critique of the US constitutional system depended entirely on his ideology-influenced misprisions of American political culture and American political history, then it would deserve to be dismissed. The most important aspects of Lazare's critique, however, are based on a conception of democracy, which in theory—if not in Lazare's own theory—has no necessary connection to the ideology of the socialist Left.

Lazare never makes explicit his own conception of the ideal constitution. From his writings, it appears that his conception of the good constitution rests on two premises. The first is that a 'demos' is a more or less coherent community. The second assumption is that relatively simple majoritarian institutions are the most adequate vehicles for the expression of the sovereign will of the demos. Lazare's ideal constitution, it would seem, would establish a unicameral legislature in a unitary state, with a majority of the legislators free to abrogate the constitution and promulgate a new one whenever they chose to do so. This conception explains Lazare's insistence that federal systems and complex constitutions are either deluded responses to groundless fears of majority tyranny or sinister contraptions devised by Machiavellian élites to neutralize democracy. 'Can a people divide and conquer itself?' Lazare writes.¹⁶ 'Is stable self-government really to be achieved through self-fragmentation?'.¹⁷

¹⁶ *Ibid.*, p. 27.

¹⁷ *Ibid.*

If this is a fair statement of Lazare's views, as I believe it is, then Lazare belongs in the older and more influential of the two traditions of thinking about democracy. The oldest and most prevalent conception of democracy identifies it with the will, or, in another version, the interests, of a numerical majority. Most centrist liberal and progressive proposals for constitutional reform, along with those of the radical Left, have been based on this assumption.¹⁸ There is, however, a minority tradition in political thought, which questions the identification of democracy with majority rule. The nineteenth-century American theorist and South Carolina Senator John Calhoun, with his idea of 'the concurrent majority', is one of the key figures in this minority tradition.¹⁹ So are twentieth-century theorists of 'consociational democracy', like Arend Lijphart and Lani Guinier, most of whom are found on the Centre-Left and share nothing in common with Calhoun, except for a concern with the plight of numerical minorities.²⁰

The consociational theory of democracy differs from the majoritarian theory in two key respects. First, unlike majoritarians, consociationalists take seriously the possibility that a given political community may be made up of two or more enduring, distinct communities defined by extra-political characteristics, such as regional, racial, or religious identities. The second difference follows from the first. Consociationalist theory rejects the assumption that simple majoritarian constitutional structures are necessarily the best. In countries with a complicated regional or ethnic make-up, complicated democratic institutions may be necessary.

Concessions and Consensus

From the consociationalist perspective, a given constitution may be less important as a set of rules for the self-government of a majority than as a *modus vivendi*, a treaty among various groups, which may have a long history prior to that of the national or multinational polity in which they find themselves as a result of coercion or choice. In particular countries, particular compromises embedded in the constitution as a concession to this or that sub-national group will cause the constitution to deviate to a greater or lesser degree from the Platonic ideal of a democratic constitution. In some cases the deviations may be unjustifiable—like the concessions made to slave-owners or less populous states in the US constitution. In other cases,

¹⁸ For a representative example of the argument that the US constitution should be reformed to make the US government more closely resemble a Westminster-style parliamentary democracy, see James L. Sundquist, *Constitutional Reform and Effective Government*, revised edition, Washington, DC 1992.

¹⁹ Most of Calhoun's discussion of the numerical and concurrent majorities in *A Disquisition on Government* is excerpted in *The Essential Calhoun*, edited by Clyde N. Wilson, New Brunswick 1992, pp. 1–43.

²⁰ See Arend Lijphart, *Patterns of Majoritarian and Consensus Government in Twenty-One Countries*, New Haven 1984.

though, the concessions may be reasonable and legitimate—particularly if the alternative to an idiosyncratic constitution is not a simpler, more majoritarian constitution, but secession or other kinds of civil strife.

For many—though by no means all—majoritarian theorists, the purpose of democracy is to ‘express’ the ‘will’ of the more or less unitary ‘people’—a Rousseauian General Will that somehow (perhaps by mental telepathy) has formed apart from, and prior to, elections and debates among elected officials. For adherents of consociationalism, the purpose of democracy is not the expression of a pre-existing national will, but the formation of a consensus among sub-national groups—substantial minorities, as well as majorities. Elections, negotiations among parties within the legislature, negotiations among houses of a bicameral legislature or between branches of a government with separation of powers, even negotiations between levels of government—all of these may be legitimate stages in the cobbling together of a political consensus. To oversimplify matters, it might be said that majoritarians see legislation as the product of a political consensus, whereas consociationalists see a political consensus as the product of the legislative process.

The emphasis that consociational democracy puts on consensus suggests that, as a rule, supermajorities should be preferred to simple majorities. A program enacted by a bare majority, against the bitter opposition of a near-majority, is likely to be lacking in legitimacy, in practice if not in theory. Nor is it that much more legitimate in theory, if one rejects the majoritarian fiction that fifty-one per cent of a population speaks for the whole. Every numerical minority in a society cannot be placated. But no effort should be spared to co-opt substantial minorities, if social peace hangs upon the result.

Consociational democrats are much more likely than majoritarians to view the constitutional polity as something fragile and in danger of ‘Balkanization’ into lesser communities along sub-national lines. The fact, noted above, that party systems in democracies tend to perpetuate and reinforce regional and ethnic and religious divisions within nations only strengthens the fear of consociational theorists that ill-designed democratic arrangements will exacerbate rather than avert civil strife.

Revising the Constitution

The consociational theory of democracy provides a justification for written constitutions other than the superhuman wisdom of the drafters—be they classical Legislators, or American Founders. If the constitution is thought of as a treaty among groups, then an ephemeral political majority should not be able to unilaterally revise what a supermajority painstakingly negotiated. At the same time, the constitution-treaty analogy works against the idea that any given

constitution could or should be eternal. Like treaties, constitutions should be revised or replaced every few decades or generations, as conditions and particular balances of social forces change.²¹ Periodic revision of fixed constitutions prevents the evil of preserving an outmoded system, while preserving the important distinction between the constitution and ordinary legislation. Periodic revision is not alien to the American tradition; although the federal constitution of 1787 has not been replaced, only amended, many American states have had three or four or five constitutions in their history—Jacksonian constitutions in the early nineteenth century, Progressive constitutions in the early twentieth. The project of constitutionalism as the basis of what the philosopher John Gray calls a social *modus vivendi* is thwarted if it is too easy to amend or replace a constitution—and also if it is too difficult.

Having said this, it is important to stress that consociational democracy has nothing to do with immobilism, with the idea that hasty action is somehow worse than slow action, or that incremental policies are to be preferred to systematic ones. The goal of consociational constitutionalism is to promote consensus for policies enacted by a democratic government—not to prevent abuses of government by impairing the capacity of government to act at all.

Consociationalism and Constitutionalism

If we think of constitutions as compromises among different groups living in the same territory, groups that may agree on little more than the desirability of continued co-existence, then we would not expect them to resemble one another closely, any more than we would expect a treaty between Britain and Iceland to contain most of the provisions of a treaty between Australia and Indonesia. As Adam Ferguson wrote, 'Laws, whether civil or political, are expedients of policy to adjust the pretensions of parties, and to secure the peace of society. The expedient is accommodated to special circumstances...'²² The irreducible diversity of constitutions reflects the irreducible diversity of nations and the regions, ethnic groups, linguistic communities and religious denominations into which the populations of the world's states are divided.

Proponents of consociational democracy, then, tend to be very cautious about suggesting that only one or a few models of constitutional democracy are legitimate. Asked to devise an abstract blueprint for an unnamed democracy, most contemporary theorists of consociationalism would be likely to propose a parliamentary system

²¹ Calhoun, more perceptive than Madison in this as in many other respects, noted that constitutions tend to embody obsolete social compromises...fighting the last civil war, as it were.

²² *Principles of Moral and Political Science*, ii., p. 44; quoted in Alasdair MacIntyre, *After Virtue*, Notre Dame 1984, p. 236.

with legislators elected by one or another method of proportional representation. But any consociational theorist worth her salt would probably reject the exercise, on the grounds that, as there are no generic countries, there can be no generic constitutions. In most circumstances, PR might be preferable to plurality voting. However, in countries where PR might lead to formation of parties along narrow regional, ethnic or religious lines, plurality voting might deter the direct translation of social difference into political conflict, by encouraging the coalescence of interests into two stable parties based on cross-cutting alliances. Similarly, as a general rule, parliamentary democracy may be better than presidential democracy. But in newly-democratized countries with royal or dictatorial traditions, a quasi-regal president, invested by popular election with plebiscitary legitimacy, might be more effective than a prime minister or chancellor in imposing civilian authority on recalcitrant armed forces and bureaucracies.

With these qualifications in mind, it is possible to make some cautious generalizations about the suitability of different constitutional structures in light of the rival theories of democracy. The institutions best suited for the *creation* of a consociational ‘consensus’ are not necessarily those best adapted to the expression of a majoritarian ‘will.’

The Spectre of Direct Democracy

The majoritarian theory of democracy itself comes in several versions. One, associated with Edmund Burke, holds that elected representatives should do what they believe is in the best interest of their constituents—whether the constituents agree or not. This view is less influential than the ‘mandate’ theory, according to which an ‘instructed’ representative is bound to carry out the wishes of the majority that elected him. If the ‘mandate’ is that of a party rather than an individual, the appropriate form is Westminster democracy, in which the winning party should face few constitutional restrictions in enacting a complex program which is assumed to have been endorsed, down to its details, by a majority—or, in some cases, a plurality—of the electorate. Taken to an extreme, the mandate theory would encourage the elimination of legislatures altogether, and their replacement either by direct democracy, in the form of referenda on particular issues, or elective dictatorship. (Something like this conclusion was drawn by early twentieth-century US Progressives, whose puritanical horror of legislative log-rolling led them to favour strong, ‘non-partisan’ executives, like city managers, as well as initiative and referendum.)

For obvious reasons, the theory of consociational democracy emphasizes the primacy of a legislature—whether unicameral or bicameral—that reflects the diversity of legitimate interests in a complex and divided society in its very make-up. To be genuinely

representative, a legislature must be sufficiently large, and it should be elected by methods that do not misrepresent the actual distribution of opinions, values and interests in the electorate—almost all theorists of consociational democracy prefer forms of proportional representation to the first-past-the-post or plurality voting system for this reason.

The claim that a given constitution is out of date because of technological and economic progress is unconvincing; the invention of telephones, faxes and e-mail has not deprived Robert's Rules of Order of their usefulness in modern committee meetings. On the other hand, it would be a mistake to deny that there has been some genuine learning from experience when it comes to the design and operation of political institutions. A Burkean defence of inherited constitutional arrangements merely because they are inherited ignores the genuine if limited advances in what is bravely called 'political science'.

The chief breakthrough in political design between the era of the American Founders and our own has involved, not constitutional structures, but electoral systems. The invention of proportional representation, and related methods of representation that protect minority interests, such as cumulative voting, constitutes one of the major watersheds in the development of democratic politics. What we have learned since 1787 is that it is better to seek some—not all—of the legitimate ends of the American Founders by means of electoral design rather than institutional fragmentation.

Like most proponents of consociational democracy, Lazare prefers proportional representation to plurality voting. In every other respect, however, he is a majoritarian. His majoritarian views lead him to be more hostile than a consociational democrat would be to the separation of powers and to federalism, not just in their American incarnations, but in general. Consociational democrats are more likely than majoritarians to believe that, in particular countries, federalism, bicameralism and separation of powers may serve the same goal as PR elections—reducing dangerous strife, by giving as many groups as possible a stake in the system, and minimizing the possibility that one region, or one race, or one religious denomination, can use the power of the state to exploit the others.

The Separation of Powers

Critics of the American constitutional order, such as Lazare, have little trouble dismissing one of the traditional justifications of the separation of powers in the American constitutional system—namely, the claim that only the division of government powers among multiple, independent branches and houses of the legislature can prevent otherwise inevitable tyranny. Most democracies in the world today are parliamentary democracies, in which executive power

is wielded by the leaders of the major legislative chamber; in many countries the legislature can over-rule the judicial branch as well. Contrary to the Montesquieuan mythology accepted by America's Founding Fathers, the result has not been a nightmare of tyranny. Indeed, outside of the United States, presidential régimes with separation of powers along American lines have been found chiefly in Latin America, where they have been associated with frequent interruptions of constitutional civilian democracy by military dictatorship or authoritarian civilian presidentialism. Inverting the Montesquieuan tradition, some contemporary political scientists argue that civilian supremacy and democracy are safer under parliamentary systems than in presidential régimes.²³

It is possible, of course, that the entire debate is misconceived. The key variable may be, not constitutional design, but political culture. Whether a constitution of any sort is obeyed may depend on whether a culture of constitutionalism is capable of keeping tendencies toward militarism, corruption, nepotism, or personalism in check. The contrast in civil-military relations between the English-speaking world and the Spanish-speaking world—in each of which there have been both parliamentary and presidential democracies—suggests that the form of the constitution is less important than cultural attitudes toward law and government.

Tyranny and Faction

From the fact that the separation of powers is not a plausible defence against tyranny, it does not follow that the 'Madisonian' rationale—separation of powers as a defence against faction—is also to be dismissed. Discussions of the 'tyranny of faction' blur the distinction, clear to the American Founders, between 'tyranny' and 'faction'. Even in a country in which the midnight knock on the door is not a problem, the threat posed by faction may remain. Today's consociational democrats are not obsessed, as Madison was, with the fear that debtors will overpower creditors. But consociational theory takes the problems posed by other kinds of factionalism quite seriously. In a highly regionalized or ethnically polarized society, the fragmentation of power may well serve a good purpose by minimizing the possibility that a regionally- or ethnically-based plurality, or bare majority, could monopolize the government. The same arrangements might maximize the chances that minorities gain at least some footholds in the government.

The history of race relations in the United States, as well as the history of culture wars among whites of different ancestries, demonstrates the importance of these considerations. Similarly, in the United States the prospect of the economic exploitation by one region

²³ See, for example, Juan J. Linz and Arturo Valenzuela, *The Failure of Presidential Democracy: The Case of Latin America*, Vol. II, Baltimore 1994.

or coalition of regions of others is no mere turnip ghost. Northern and Southern politicians, when given the opportunity, have not hesitated to subsidize their sections by taxing the others. From the Civil War until the New Deal, Southerners, including blacks and poor whites, were taxed to subsidize Northern industry and infrastructure. Beginning in the 1930s, the New Deal Democrats, and their successors in the South and West in the Republican Party, have taxed North-Easterners and Mid-Westerners in order to pay for the industrialization of the Sun Belt/Gun Belt. For decades, as a result of Southern and Western influence in Congress, the populations of the North-Eastern states have paid out more in taxes than they have received in benefits. Nor would the situation necessarily be much different in a hypothetical socialist America. The socialized service workers and farm workers of the South-West might be willing to pay higher prices for imports to protect the jobs and mass transit networks of their socialist comrades in the Mid-Western factory belt. But, then again, they might not.

Federalism: Is It Necessarily Reactionary?

When it comes to federalism, proponents of consociational democracy will be even more afraid of generalizations. To begin with, there is obviously a difference between countries formed by the amalgamation of pre-existing polities—such as Switzerland, the Netherlands, Germany, Italy and (arguably) the United States—and countries such as France and Britain that possessed centralized, unitary government long before they had democratic government. From Lazare's viewpoint, Switzerland must be even more of a constitutional and political abomination than the United States. Perhaps the Swiss would be better off if the cantons were abolished and replaced by prefect-governed provinces that were periodically redrawn by a national legislature dominated by German speakers, and if the elaborate balance of regional and ethnic interests in their unique institutions—such as their collegial presidency—were replaced by a simple majoritarian frame of government. I, for one, would hesitate to say so, without a careful analysis of the traditions and interests of the Swiss, solely on the basis of an abstract theory of democracy.

In addition to different national origins and traditions, a factor that must be considered in evaluating a given example of federalism is scale. Lazare does not address this issue. One need not be a reactionary Jeffersonian to wonder whether the democratic government of a country such as the United States—which may have as many as 400 million people in the twenty-first century—should be simply a blown-up version of the government of a democracy of a country such as Norway, which has fewer inhabitants than a number of American cities. In both biology and engineering, changes in scale require changes in structure. An ant the size of an elephant would not be able to walk; large animals require legs that are quite large relative to their bodies. A sky-scraper is different in design, not merely height, from a

two- or three-storey building. Observers of group dynamics have long been aware that the nature of an institution like a club or a law firm changes, when its membership exceeds the thresholds approximated by certain ‘magic numbers’—12, 25, 60, 200.

The attachment of Americans to their state and local governments has an irrational element, but there is nothing inherently irrational, illiberal or pre-modern about federalism and localism. Influenced by the New Deal and Civil Rights eras, many American liberals and leftists came to assume that there was a natural correlation between progressive politics and central government in the United States. They forgot, or never learned, that, for long periods in American history, conservatives have controlled Washington, and that liberal reformers have often invoked the language of states’ rights. John C. Calhoun learned his states’ rights theory from New England Federalists who considered seceding from a Union dominated by Southern slave-owners. Later, Northern abolitionists and their sympathizers refused to obey or enforce the Fugitive Slave Act, a federal law. When the federal government was controlled by adherents of laissez-faire capitalism during the late nineteenth and early twentieth centuries, progressives and social democrats sought to defend the right of states and localities to experiment with local systems of welfare and business regulation. Nor is this pattern peculiar to the United States; in neighbouring Mexico, federalist liberals have frequently opposed centralizing conservatives.

Lazare quotes Michael Mann’s description of the turn-of-the-century US political scene: ‘In anyone year some northern states might be passing progressive legislation and seeking ways around reactionary court rulings, western states might be shooting Wobblies, south-western states harassing Populists, and southern states intensifying racism.’²⁴ From this one might well conclude that progressives should have favoured states’ rights! Insofar as the South (joined later by the West) has dominated national politics for most of US history—from 1800–1860 and again from 1932 to the present—it is hard to see why the abolition of federalism would result in the universalization of northern progressivism, rather than the permanent institutionalization of centralized Southern/Western conservative rule, from which there could be no escape.

In Defence of Decentralization

Caution is also in order when it comes to discussing local governments. Lazare provides a very compelling critique of the costs imposed by the *Schwarmerei* of petty local governments in the United States. ‘Given the opportunity, all behave with the impunity of feudal barons as they raid their neighbours to lure away businesses, upscale residential developments, or other profitable aspects; Nearly all strive

²⁴ Ibid., p. 34.

to keep out poor people, blacks, or anyone or anything else they think will adversely affect the municipal bottom line.’²⁵ All of this is quite true, and a strong case can be made for municipal mergers to create unified Metro Areas.

Even so, this is another example of a reform which may or may not be ‘democratic,’ depending on the circumstances. It should not be forgotten that metropolitan consolidation, a favourite nostrum of American progressives, has often been opposed, not merely by suburban tax avoiders, but by inner-city minority politicians and their constituencies, who fear, not without reason, that metropolitan consolidation would reduce their political influence, even if it gave their neighbourhoods access to a larger tax base. Here again, the imperatives of democracy and of simplicity in organizational design may not produce the same result.

The decentralized constitution of the state of Texas is a product of the period following the end of Reconstruction, when former Confederates fragmented the power that had been concentrated in Reconstruction-era governors. Dozens of officials, including the attorney general and Supreme Court judges, are directly elected by the voters. California, by contrast, has a Progressive-era constitution in which power is centralized in a strong governor who appoints most executive and judicial officers. The ‘modern,’ ‘democratic’ and ‘efficient’ constitution of California has resulted in the election of very few Hispanic officeholders at the state level, compared to the number in Texas, where, ironically, Mexican-Americans have found it easier to be elected to state offices under the power-dispersing neo-Confederate charter.

From Theory to Practice

In the final analysis, the test of a political theory is not its internal elegance but its likely result in the world of practical politics. Unfortunately, Lazare’s prescription for American political reform fails this test.

In 1996, in *The Frozen Republic*, Lazare suggested that members of the House of Representatives, angry at being paired with a mal-apportioned Senate, would be justified in constituting themselves as an extra-legal constitutional convention, declaring the old federal constitution dissolved, and promulgating a new charter of government for the American electorate to ratify in an extra-legal referendum. ‘If voters did give the thumbs-up to the House’s democratic coup d’état, the results would be the most far-reaching political transformation in America since the Constitution was itself adopted in 1787–88.’²⁶ A few years after Lazare called upon the

²⁵ Ibid., p. 24.

²⁶ Daniel Lazare, *The Frozen Republic*, p. 293.

House to attempt a coup d'état, the Republican majority of the House, by impeaching the President, engaged in what many observers described as an attempted coup. Needless to say, the coup led against President Clinton by Newt Gingrich, Bob Livingston, Tom DeLay, Dick Arme, Henry Hyde and other right-wing radical Republicans is not what Lazare had in mind with his proposal for a Tennis Court Oath on the banks of the Potomac. Still, one shudders when one thinks of what use Citizen Delay or Citizen Starr might make of Lazare's observation that 'there are revolutionary periods in which the demos is forced to use repression against its enemies...' Leftist and liberal critics of the federal constitution must be (perhaps secretly) relieved that its cumbersome machinery has worked to slow down the steamroller manned by the Republican Right.²⁷

For a Prudent Idealism

It does not follow that all of the flaws identified by Lazare are not genuine, nor that they should not be corrected by serious reforms. But politics being the art of the possible, reformers—if not would-be revolutionaries—must take into account the traditions and beliefs of a particular population. Lazare alleges that Douglas J. Amy, an advocate of PR for elections in the US, 'makes the serious error of trying to institute reform within the existing constitutional system.'²⁸ In fact, it is Lazare who makes a serious error, in thinking that the situation in the United States is so dire that more than a tiny minority would favour scrapping the federal constitution entirely and starting from ground zero. Lazare is free to declare that 'True democratization [in the United States]...would require a fundamental break with the past,' but one would go bankrupt betting that the US, in the foreseeable future, will experience 'a top-to-bottom makeover along the lines of the French Revolution, the Meiji Restoration, Bolshevism, or the post-1945 transformation of Continental Europe.'²⁹ By contrast, Amy's proposals, which could be brought about by congressional statute, with no need for a constitutional amendment, unite idealism with prudence.

I share Lazare's dislike of the way that the malapportionment of the US Senate magnifies the power of the white continental interior at the expense of the multiracial metropolitan majority in the coastal regions. (Senator Daniel Patrick Moynihan has compared the US

²⁷ Because legitimacy is diffuse in the United States, I see no reason to assume with Lazare that if the House of Representatives declared that the revolution had begun, the American people would listen. Most likely, a majority of Americans would side with the President (whom many mistakenly believe is the commander-in-chief of the nation, and not just of the armed forces). Indeed, I suspect that the American public would be far more likely to accept the legitimacy of a presidential coup à la Fujimori than of a coup d'état by the Speaker of the House (whose very name is unknown to much of the population).

²⁸ Lazare, 'America the Undemocratic', p. 33.

²⁹ *Ibid.*, p. 38.

Senate to the 'pre-reform House of Commons'.³⁰ Indeed, in my own thought experiment in *The Next American Nation* I make Senate malapportionment a contributing cause to the political turmoil of a hypothetical 'Fourth American Revolution'.³¹ Lazare and I disagree on much, but we agree that the Senate may well be the occasion of civil war in the future, as in the past. However, I suspect that the next American Revolution, like the previous three—the American Revolution, the Civil War, and the Civil Rights Revolution—is more likely to modify the inherited constitutional structure than to displace it with a parliamentary régime based on principles foreign to American political traditions. With this in mind, I have proposed the voluntary subdivision of populous states like California, Texas, Florida and New York into smaller states—in some cases, city-states—in order to bring the distribution of power in the Senate more closely (though not perfectly) into line with the distribution of the US population.³² Like proposals for the establishment, by congressional and state statutes and/or state referenda, of PR for national, state and local elections, the proposed multiplication of states would help to democratize the American political order within the constraints of the 1787 constitution. To roast these particular pigs, it is not necessary to burn down this particular house.

In the real world of governments and nations, constitution-making and constitution-revising are like designing, or remodelling, a building to take advantage of the peculiar characteristics of a given site, rather than like devising a blueprint for a generic structure with no location in mind and with no thought of the identity, needs and preferences of the likely occupants. Lazare's critique of the American constitutional order, rich in particular insights, is undermined by the tendency toward abstraction and the impatience with compromise and imperfection which distinguishes left radicalism from liberal meliorism. He does not want to modify capitalism, but to scrap it; he does not want to amend the US Constitution, but to eliminate it altogether. Confronted with such temperamental radicalism, all that a temperamental liberal can say is: from the crooked timber of humanity, nothing straight can be made.

³⁰ Senator Daniel Patrick Moynihan, *The Federal Budget and the States*, Cambridge MA 1997, p. 19.

³¹ 'The crisis came to a climax in the early twenty-first century, when the Senate—by then controlled by a tiny minority of white voters and wealthy national and foreign donors—thwarted the latest of a series of reform packages passed by a House of Representatives responsive to the emerging transracial majority living in the coastal states. When the military refused to fire on rioters during the riots that followed, the conservative-dominated government was thrown into turmoil.' Lind, *The Next American Nation*, p. 344.

³² Michael Lind, '75 Stars: How to Restore Democracy in the US Senate (and End the Tyranny of Wyoming),' *Mother Jones*, January–February 1998. See also Lynn A. Baker and Samuel H. Dinkin, 'The Senate: An Institution Whose Time Has Gone?,' *The Journal of Law and Politics* 13, Winter 1997.