

CXXXI – What Lies Ahead?

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By Butler Shaffer

[A] civilization can be defined at once by the basic questions it asks and by those it does not ask.

~ Andre Malraux

There is a booming silence on a topic of enormous importance to the entire world. Like friends and relatives who gather at the bedside of a terminally-ill person — none daring to let the word *death* pass o'er their lips — there is an unwillingness to openly contemplate the future of the American state. There are the inquiries into questions that have long been rendered irrelevant: will the Democrats regain control of Congress? Who will be the presidential candidates of the two major parties in 2008? But no questioning that takes one outside the circle of conventional thinking.

People will sooner note that their automobile is in need of a major overhaul or replacement, than observe that the politically-structured society in which they live has about run its course. All of the axioms taught to us by high school civics class teachers are being brought asunder by forces we were assured could never arise in America. Were we not blessed by the combined virtues of *constitutional government*, *democracy*, *checks and balances*, a *bill of rights*, the *rule of law*, not men, and, above all else, the fact that America was God's favorite country? Didn't our constitution assure us that we had finally overcome the threat to lives and liberty that governments have always posed to mankind?

It should be evident to any thoughtful observer that constitutionalism — as a system for limiting political power — has proven a failure. What began as an abstract proposition — an untested theory — has been refuted by historical experience. It would be a gross distortion of facts to lay the blame for such dashed hopes on George W. Bush alone. His administration is but the logical extension of the dangers inherent in the dual proposition upon which political systems rest: that the state enjoys a monopoly not only on the lawful use of violence, but on the power to define the extent of its authority.

A major weakness in Western culture is its preoccupation with abstract thinking. The Constitution is comprised of words, the most abstract of our tools. The problem is that, no matter how much precision we try to employ, there will always be a gap between *reality* and the words we use to describe it. As such, language is always subject to interpretation. Because of their abstract nature, words can be interpreted in self-contradictory ways that allow us to integrate foolishness into our sense of reality. When we

can think of u201Csoldiersu201D as u201Cpeacekeepers,u201D and the bombing of cities as the establishment of u201Corder,u201D our minds are set for the acceptance of all kinds of delusions upon which political power rests. The consequence of this was well-noted by Voltaire: u201CAnyone who has the power to make you believe absurdities has the power to make you commit injustices.u201D

No one has better understood this elusive nature of words than Lewis Carroll:

u201CWhen I use a word,u201D Humpty Dumpty said, in rather a scornful tone, u201Cit means just what I choose it to mean — neither more nor less.u201D u201CThe question is,u201D said Alice, u201Cwhether you can make words mean so many different things.u201D u201CThe question is,u201D said Humpty Dumpty, u201Cwhich is to be master — that's all.u201D

Despite the gossamer nature of words, most of us ascribe an almost magical power to their use. Thus we are able to believe that the writing of words on parchment can restrain those who enjoy a monopoly on the use of force and who, like Humpty Dumpty, are to be the masters of the meaning of such words.

If our thinking was influenced more by an experientially-based awareness of consequences implicit in our actions, and less by logical deductions drawn from abstract principles, we might avoid many adversities that reason, alone, cannot contemplate. Those who drafted the American constitution were doubtless as well-read, well-motivated, and thoughtful men as one would expect to find in any political undertaking. Even with the grasping hands of such men as Alexander Hamilton helping to weave its structure, the Constitution was probably created with the best intentions for which minds, fashioned by the u201Cage of reason,u201D might hope: a rational means for limiting state power.

The framers' dreams of a political system grounded in the illusion of a u201Csocial contract,u201D and ruled by reason and fail-safe mechanisms to restrain power, has morphed into the realpolitik of the modern state. When the state is given the power to interpret words that define its authority, institutional self-interest will ensure constructions that serve state purposes.

It is neither abstract principles nor reason to which we ought to refer in assessing the shortcomings of u201Cconstitutionalismu201D and u201Climited government,u201D but to historic experience. Long before George W. Bush came on the scene, Abraham Lincoln had demonstrated that the constitution was no barrier to tyranny in America. FDR was another major contributor to the expansion of governmental power, with the participation of the Supreme Court. Following landslide election returns for Roosevelt in 1936, coupled with his proposal to enlarge the membership of the Court in order to get more favorable decisions, the Court rolled over, in 1937, to accept the u201Ccommerce clauseu201D as a vehicle for virtually unrestrained federal authority.

Nor can we overlook the fact that Mussolini governed under a constitution in Italy; or that Hitler came to power, through democratic means, under a German constitution. Spain had a constitution, at the time of its civil war, which did not prevent Franco from seizing power. Nor ought we to forget that the Soviet Union had a constitution — adopted in 1936 — that bore remarkable similarities to the American version. Constitutions, in other words, do not have a favorable history in limiting state power and assuring individual liberty.

Borrowing from Oliver Wendell Holmes' classic observation that "[t]he life of the law has not been logic: it has been experience, the realities of the twentieth century, alone, should have taught us what abstract reasoning was unable to teach the Founding Fathers. Institutional interests produce a dynamic of their own that cannot be channeled by words. Anthony de Jasay grasped this point quite well in noting that collective choice is never independent of what significant numbers of individuals wish it to be. Herein lies the Achilles' heel of constitutionalism.

The American state does not reflect the image we have been conditioned to see. The political system and its processes are under the control of major corporate interests, whose ownership of major media outlets propagandize the public on behalf of such narrow interests. The appearance of a democracy collapses into the reality of a one-party system — the Establishment Party — which, election-after-election, provides voters with choices between Tweedledum and Tweedledummer. So-called popular democracy long ago faded into a plutocracy, with only the independently wealthy having a realistic chance of getting elected to high office. Nor did the election returns of 2000 — in Florida — and 2004 — in Ohio — instill confidence in the voting process itself.

That corporate interests might take over the state apparatus was considered, by the framers, less of a threat to a free society than was the fear that the electorate might become mobilized to despoil the rich of their wealth. Just such a concern underlay the Supreme Court's 1803 decision in *Marbury v. Madison*, in which the court crafted, wholly out of air, its power to pass upon the constitutionality of acts of Congress. Reason, combined with justifiable fears arising from the French Revolution, led thoughtful minds to distrust a democratically based electorate.

Experiences garnered from the nineteenth and twentieth centuries, however, revealed an opposing threat to liberty. Centralized state power was more of an attraction to those with concentrated economic interests — e.g., corporations — than it was to those whose interests were more diffused — e.g., consumers. If, for example, the federal government was considering a measure that would raise the price of milk by ten cents per gallon, a family that drank one gallon of milk per week would end up having to pay \$5.20 more for milk each year. Even if householders were aware of such a proposal, they would have little incentive to oppose it, as any such effort would cost them more than the planned price hike.

For milk producers, however, the incentives for political action are quite different. If Americans drank, let us say, three billion gallons of milk per year, this government-mandated price increase would enhance their revenues by some \$300,000,000 per year. It is the nature of the state — which centralizes authority in vertically-structured power systems — that explains the phenomenon of corporate domination of government. With the courts giving expansive definitions to state power, and restrictive definitions to individual liberty, those with concentrated economic interests will enjoy an advantage over those with diffused interests.

Whether the framers ought to have foreseen the symbiotic relationship between concentrated political power and concentrated economic interests, need not concern us here. It is sufficient that history has revealed this lesson to us, and demonstrated the fallacy of relying upon a faith in abstract principles to override self-interested ambitions. We have the benefit of empirical evidence to inform us that constitutionalism has been proven a functional failure in limiting state power.

Those who doubt this verdict on constitutional government need look no further than Washington, D.C. for confirmation. A president lies with impunity in order to rationalize his predetermined goal of attacking Iraq, a country that had neither harmed nor posed a threat to America. He has admitted violating a federal statute banning surveillance of American citizens, and expresses his intentions to abide by only those laws he regards as useful to his ends. He has violated international treaties, and his administration continues to defend the right to engage in torture or to hold people in prisons for months or even years without trial or other recourse to the courts. He rules by whims reflective of the interests of his masters, and justifies his actions in terms of the inherent powers of the presidency, authority that is nowhere spelled out in a constitution of supposedly specifically-enumerated powers. At various times, Mr. Bush has expressed his preference for being a dictator, comments that have generated almost no concern. In his allusions to being God's choice for the presidency, this man conflates Louis XIV's view of the state, and Hegel's proposition that the State is god walking on the earth.

What has been the response of the legislative branch of government? The framers intended Congress to be the locus of sovereign authority in the constitutional scheme, and yet — with few exceptions — this body has proven itself little more than a round-heeled collection of hand-puppets. Shortly after 9/11 — and at the behest of the White House — Congress enacted that most expansive source of domestic power, the Patriot Act, voting it into law without waiting for the language to be drafted, without reading the entire text, and without the benefit of committee hearings. Matters have gone downhill ever since.

With the exception of a few people of integrity — such as Sen. Russ Feingold, and Reps. Ron Paul, John Conyers, Barbara Lee, and a few others — most House and Senate members exhibit the liveliness of the clientele of a cryonics facility! Do you understand why the British Member of Parliament, George Galloway, was inundated with requests to move to America to run for the Senate, following his impassioned public dismantling of Sen. Norm Coleman and his committee? The contrast between Mr. Galloway's energized spirit, and the whiney, wimpy Sen. Joe Lieberman — who epitomizes what most of Congress has become — tells you much about the collapse of representative government in America.

Perhaps no clearer example of the moral and intellectual bankruptcy of Congress has been exhibited than in the response of most members of that body to Sen. Feingold's bill to censure Pres. Bush for his admitted crime of violating a federal statute prohibiting the wiretapping of Americans without a warrant. His bill has received very little support even from Democrats. The Democrats minority leader in the House, Nanci Pelosi, said she understands Sen. Feingold's frustration about the surveillance program not being disclosed to Congress. Instead of being incensed at a president who openly defends his violation of a statute, Ms. Pelosi can do no more than understand the frustration of those who take their legislative roles seriously.

Even the media — once regarded as the watchdog over government — has turned into its lapdog, eager to sit up and beg for whatever morsels of information the state wishes to make public, and to roll over on command. With the exception of a John Stossel, a Chris Hedges, or a few others, the major media is lacking in vigorous, truth-seeking journalists. Most honest journalism is performed by largely independent chroniclers of events such as Seymour Hersh, John Pilger, Alexander Cockburn, Amy Goodman, and Robert Fisk. The Internet is rapidly replacing print and television news as a source for truth.

This is what so-called constitutional government in America has become. It is commonplace, among professionals in Washington, that going before Congress with pleas grounded in constitutional principles is passé. The days of Jefferson and Madison are far behind us, and the specter of autocratic rulers who listen only to voices they like to regard as God, now rule by their sense of divine right.

Whether we shall enjoy liberty in America, or whether we shall continue living under a system with no more elevated purpose than the employment of unrestrained violence in pursuit of the materialistic ends of those enjoying such power, is a question individuals will have to ask of themselves, . . . and soon. We can no longer afford the absurd delusion — brought about by our efforts to reconcile the contradictory nature of the political system — that the Constitution is what keeps the government from doing all the terrible things it does.

At some point, Americans will — like most members of a lynch mob – become aware of just how foolishly they have behaved since 9/11. Even a drunk eventually sobers up and assesses the damage he inflicted while in his besotted mind. In doing so, the nature of the political system that has long ruled this country must be examined. At a time when decentralizing forces are bringing about the collapse of vertically-structured institutional systems; and when horizontal networks of spontaneous and autonomous order are emerging, the corpse of constitutional government needs to be laid to rest.

But such an effort will require moral and intellectual courage and integrity on the part of individuals. We must begin to ask the kinds of questions we have been trained not to ask.

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