

FOREWORD

“Ordinary” Americans and the “Politics of Power”

By Professor Robert A. Destro

Introduction

Though there is no *official* ruling class in the United States, there is plenty of evidence that America’s cultural elites do, in fact, think that the rest of us are either too dumb, racist, self-centered, homophobic, xenophobic, or devoted to our respective faith traditions to be trusted with the actual levers of power. Robert “Delegate Bob” Marshall’s book is written for “the rest of us.”

In 2008, then-Senator Barack Obama, speaking at a San Francisco fundraiser, “took a shot at explaining the yawning cultural gap that separates a Turkeyfoot from a Marin County”, and famously observed that people in “these small towns in Pennsylvania and . . . a lot of small towns in the Midwest” have grown weary of the failed economic promises of both parties. “And it’s not surprising then they get bitter, they cling to guns or religion or antipathy toward people who aren’t like them or anti-immigrant sentiment or

anti-trade sentiment as a way to explain their frustrations.”¹

On September 9, 2016, Hillary Clinton made explicit what Mr. Obama implied. Speaking before an LGBT for Hillary gala in New York City, the former secretary of state neatly divided the 62.9 million Americans who voted for Donald Trump into two “baskets”: 31.45 million “deplorables” and 31.45 million “people who feel that the government has let them down.”

You know, to just be grossly generalistic, you could put half of Trump’s supporters into what I call the basket of deplorables. Right? The racist, sexist, homophobic, xenophobic, Islamaphobic—you name it. And unfortunately there are people like that. And he has lifted them up. . . . Now, some of those folks—they are irredeemable, but thankfully they are not America.

. . . But that other basket of people are people who feel that the government has let them down, the economy has let them down, nobody cares about them, nobody worries about what happens to their lives and their futures, and they’re just desperate for change. It doesn’t really even matter where it comes from.²

¹ Mayhill Fowler, “Obama: No Surprise That Hard-Pressed Pennsylvanians Turn Bitter,” *The Blog, HuffPost*, November 17, 2008, http://www.huffingtonpost.com/mayhill-fowler/obama-no-surprise-that-ha_b_96188.html (accessed July 30, 2017).

² Angie Drobnic Holan, “In Context: Hillary Clinton and the ‘basket of deplorables,’” *Politifact*, September 11, 2016, <http://www.politifact.com/truth-o-meter/article/2016/sep/11/context-hillary-clinton-basket-deplorables/>. James Barrett, “How Many Votes Did Trump and Clinton Get? The Final Vote Count,” *The Dailywire*, December 21, 2016, <http://www.dailywire.com/news/11777/how-many-votes-did-trump-and-clinton->

It is therefore no accident that much of the social engineering that America's social and cultural elites believe to be necessary legal and cultural reforms are accomplished through the courts, government regulations, and other informal means. One does not need Supreme Court intervention in "periods of ordinary lawmaking." In those political contexts, ballot box victories translate directly (or nearly so) into legislation that has, or will acquire, broad-based public support.

It is only when the voters send a clear message *rejecting* specific candidates, programs, or policy directions that those seeking a different policy direction need the courts to do the heavy lifting for them. These are, in the words of Professor Bruce Ackerman, "constitutional moments" in which the court, with or without the acquiescence of Congress and the executive branch, substitutes its own judgments for those of the people and their elected representatives.³

It is precisely because constitutional litigation neatly avoids the rough and tumble, logrolling, and compromise inherent in the processes of democratic self-governance that my friend and political comrade Robert "Delegate Bob"

get-final-james-barrett. The vote totals are compiled from official sources by David Wasserman @Redistrict, Cook Political Report @CookPolitical, <https://docs.google.com/spreadsheets/d/133Eb4qQmOxNvtsw2hdVns073R68EZx4SfCnP4IGQf8/edit#gid=19> (accessed July 31, 2017).

³ See Bruce A. Ackerman, *We the People*, vol. 1, *Foundations* (Cambridge, MA: Belnap Press, 1991), which distinguishes periods of ordinary lawmaking from "constitutional moments" in which the courts, acting with or without the tacit approval of the legislative and executive branches, effect a major reallocation in the operational distribution of power.

Marshall wrote this book. As a veteran of the political fray at both the national and state (Virginia) levels, “Delegate Bob” knows from experience that we cannot stand idly by while our rights as citizens are diminished by judicial and factional usurpation of the political order. We must actively resist every such effort.

It is a difficult process, to be sure, but it is worth doing. Even if efforts to demand political accountability from the courts, the executive branch, and Congress fail, the attempt will be duly noted—at least for a short time. Writing in 1941, shortly after the politically-disastrous, but enormously influential, “court-packing plan” proposed by Franklin Delano Roosevelt as an explicit way to reign in the Supreme Court, then-Attorney General and future Supreme Court Justice Robert H. Jackson spoke plainly about “the politics of power”:

Constitutional lawsuits are the stuff of power politics in America. The Court may be, and usually is, above party politics and personal politics, but the politics of power is a most important and delicate function, and adjudication of litigation is its technique.⁴

Delegate Marshall’s book is about the other—far from delicate—side of what Jackson called “the politics of power”: the legislative process. He rightly concludes that legislation is the only process that can get the courts and executive branch under control. His book is essential reading for anyone who really wants to know (or to be reminded about) how the

⁴ Robert H. Jackson, *The Struggle for Judicial Supremacy: A Study of a Crisis in American Power Politics* (1941). 287–88.

game of power politics is *really* played in America.

Delegate Marshall makes two main points. The first is explicit: among its other guarantees, the Constitution of the United States contains two provisions that expressly confirm that the most basic right we have as Americans is the right to govern ourselves.

- Article IV provides that the “United States shall guarantee to every state in this union a republican form of government.”⁵ Its “plain language” is straightforward: The United States *government*—including the Supreme Court—is obligated to guarantee to the people of each state that laws will be made *by their elected representatives* in accordance with the division of powers set forth in each state’s constitution.
- In keeping with that guarantee, the First Amendment explicitly guarantees the right of every citizen “to petition” Congress and his or her state “government for a redress of grievances.”⁶

Because Delegate Marshall’s second point is implicit, I will take the liberty to put it bluntly: the politics of power are not for the faint of heart. The fictional Mr. Dooley’s famous observation that “politics ain’t bean-bag”⁷ is as true today as it was when he first pontificated from a Chicago pub back in 1895. Since that time, however, the stakes have

⁵ U.S. Const. art. IV, §4, cl. 1.

⁶ U.S. Const. amend. I.

⁷ The phrase was first uttered by the fictional Mr. Dooley, created by political columnist Finley Peter Dunne (1867-1936) in the Chicago Evening Post, October 5, 1895. Excerpted in Charles

grown infinitely higher.

Every citizen must understand that the politics of power are played *for keeps* on a variety of fronts in every venue in which an American citizen has the right “to petition for a redress of grievances”: in the courts, in the media, in the millions of dollars spent every year on lobbying at the federal, state, and local levels, in the hundreds of millions raised and spent in political campaigns at every level of government, and in the ever-present gaze of both mainstream and social media.

And, thus, we return to the main points discussed in Delegate Marshall’s excellent book. Even though there was no national consensus on abortion in 1973 (and there is none today), the Supreme Court legalized it nationwide for the entire duration of pregnancy.⁸ Although the voters in twenty-five states overwhelmingly rejected same-sex marriage, the Supreme Court legalized it in all fifty states.⁹ Though the nation has been traumatized by the evil of race discrimination since the first slave landed at Jamestown, Virginia, in 1619, the court has consistently held that racial discrimination is permissible whenever elite social conventions demand it.¹⁰ And now the courts are poised to hold that the Constitution and laws of the United States require government

Fanning, *Finley Peter Dunne and Mr. Dooley: The Chicago Years* (Lexington, KY: University Press of Kentucky, 1978). Mr. Dooley’s full statement: “Sure, politics ain’t bean-bag. ‘Tis a man’s game, an’ women, childer, cripples an’ prohybitionists ‘d do well to keep out iv it.”

⁸ *Roe v. Wade*, 410 U.S. 113 (1973).

⁹ *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015).

¹⁰ The court has long approved the use of racial discrimination to accomplish social goals. In *Plessy v. Ferguson*, 163 U.S. 537

affirmation of those who self-identify as transgender. The list can be multiplied over many years and issues, but one theme is clear: America's cultural and political elites of both parties much prefer the court's approach to the politics of power than the bare-knuckled variety suggested by Delegate Marshall. But "Delegate Bob's" approach is nothing other than that envisioned by the Founding Fathers of this great country.

(1896), which approved the concept of "separate but equal", the court found it "reasonable" that Louisiana would legislate "with reference to the established usages, customs, and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order." 163 U.S. at 550. In *Brown v. Board of Education*, 347 U.S. 483, 492-93 (1954), the court *rejected* the plea of Louise Brown and her parents that she be admitted to the public school closest to her home without regard to her race.

In approaching this problem [of school segregation], we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. *Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.* . . . We conclude that *in the field of public education* the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. (*Brown I*, 347 U.S. at 492-93, 495, emphasis added)

See *Gomperts v. Chase*, 404 U.S. 1237, 1240 (1971) (opinion of Douglas, J., sitting as circuit justice denying a motion for preliminary injunction pending the filing of a petition for certiorari) noting that "*Plessy v. Ferguson* has not yet been overruled on its mandate that separate facilities be equal." Today, racial discrimination is *permissible*: "A university may institute a race-conscious admissions program as a means of obtaining 'the educational benefits that flow from student body diversity.'" *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198, 2210 (2016).

Power Politics in Practice: Voter Apathy and Political Stasis

As these words are written in late July 2017, the received wisdom is that the American electoral and political systems are “broken.”¹¹ While it is unclear *why* Americans have soured on the process, their “negativity toward the election process does not seem to be based on the view that there is a dearth of good candidates.”¹² It therefore seems implausible—if not impossible—for “ordinary Americans” to win in the game of power politics. Hillary Clinton correctly observed that at least some part of the electorate is comprised of

people who feel that the government has let them down, the economy has let them down, nobody cares about them, nobody worries about what happens to their lives and their futures, and they’re just desperate for change. It doesn’t really even matter where it comes from.¹³

¹¹ See Clare Foran, “How Can the U.S. Fix a Broken Government?”, *The Atlantic*, July 16, 2016, <https://www.theatlantic.com/politics/archive/2016/07/trump-clinton-washington/491426/> (accessed July 31, 2017); Mark Hensch, “Poll: 66 Percent Think Presidential Election Process is Broken,” *The Hill*, March 25, 2016, <http://thehill.com/blogs/ballot-box/presidential-races/274281-poll-30-percent-think-presidential-election-process-works> (accessed July 31, 2017), citing 2016 poll data from Frank Newport, “Republicans Sour on Way Election Process Is Working,” *Gallup*, March 25, 2016, http://www.gallup.com/poll/190292/republicans-sour-election-process-working.aspx?g_source=Election%202016&g_medium=newsfeed&g_campaign=tiles.

¹² Newport, “Republicans Sour on Way Election Process Is Working.”

¹³ Holan, “In Context”; see also Barrett, “How Many Votes Did Trump and Clinton Get?”

Delegate Marshall's book is a reminder that there is no such thing as "the government" or "the economy." In a representative democracy (a republic), *we the people* are the government. In a market economy, *we the people* are the economy. Unless ordinary citizens take charge of their own futures and make it clear that they *do* care "where [change] comes from," the tyranny of the elites Marshall so steadfastly decries will endure.

Marshall points out that it is implausible to expect short-term victories, but they are not impossible. The Hyde Amendment, adopted annually since 1976, is Exhibit A. Like the foundation of a building, short-term successes lead to long-term behavior and personnel changes. The long term is, therefore, where the action is, and the local level is where the battles over taxes, Supreme Court appointments, and foreign policy begins—and must be won.

Marshall reminds us that it all starts in the precinct—in the neighborhood. Quoting Frank Kent's almost ninety-year-old description of the function of the precinct and its importance in American politics, "Delegate Bob" reminds us that:

Despite computers, television, automated calls, the Internet, social media, and other technical and cultural changes, the precinct is still the fundamental building block of all elections. It remains the place where votes are counted, where voters live and are registered, and the vehicle by which the system identifies voters. "Working the precinct" either by walking door to door or by making live phone calls is still the most efficient and effective way to win elections. Frank Kent's almost ninety-year-old description of the function of the

precinct and its importance is still relevant today: “No clear idea of a party organization can be had unless you start from the bottom. To discuss Presidential politics without understanding precinct politics is an absurdity. It is like trying to solve a problem in trigonometry without having studied arithmetic.”¹⁴

Chapter 13, entitled “The Building Block of American Politics: The Precinct, or All Politics is Local,” is thus the beating heart of the book. If you read *nothing else* in the book, read this chapter.

Conclusion

“Delegate Bob” Marshall has written both a playbook and a manifesto for all who dissent from the politically correct view on any number of hot-button cultural issues, including race, gender identity, and the proper role of religion in society. Today, elites demand that the rest of us affirm whatever gender identity a person declares¹⁵ and that we remain silent in the face of such demands because “[t]he place for religion” and moral judgments “is in the private realm of our lives, in our homes, businesses, and places of worship.”¹⁶ Tomorrow, they will demand the right to censor speech on the grounds that the stress caused by exposure to ideas or arguments with

¹⁴ See p. 183.

¹⁵ City of New York, Human Rights Commission, “Gender Identity/Gender Expression: Legal Enforcement Guidance,” <http://www1.nyc.gov/site/cchr/law/legal-guidances-gender-identity-expression.page#1>.

¹⁶ Erwin Chemerinsky, “The Court after Scalia: The 2016 election and the fate of the wall separating church and state,” *SCOTUS-*

which we vehemently disagree means “that speech—at least certain types of speech—can be a form of violence.”¹⁷

My hope, of course, is that “deplorables” like me will read Bob Marshall’s book, adjust their conduct, and develop long- and short-term strategies that take aim at the court and the “establishment” politicians who gerrymander their way into safe congressional or state legislative seats and then strive to avoid any vote that will make them take sides on hotly-disputed issues. American voters need to understand that the Founders put the “right to petition for a redress of grievances” into the First Amendment because they knew from bitter experience that “politics ain’t beanbag.” It is serious business. Those who hold power are determined to keep it. If the 2016 election and its aftermath have taught us anything, it is just how ugly things can get when the elite power structure believes that its power is threatened by candidates and political movements from outside the “mainstream.”

Delegate Bob Marshall is one of those outsiders. Read this book, give it to your friends, and get out there and demand change! The Founders built the foundation. It’s our job to keep it in repair.

Politics, after all, “ain’t bean bag.”

Arlington, Virginia, July 31, 2017

blog, September 12, 2016, <http://www.scotusblog.com/2016/09/the-court-after-scalia-the-2016-election-and-the-fate-of-the-wall-separating-church-and-state/> (accessed July 30, 2017).

¹⁷ Lisa Feldman Barrett, “When is Speech Violence?” *Sunday Review*, *New York Times*, July 14, 2017, <https://www.nytimes.com/2017/07/14/opinion/sunday/when-is-speech-violence.html> (accessed August 4, 2017).