

The Liberals' Regress

by
John Kurzweil

John Kurzweil has done a superb job of both researching and explaining one of the great political failures of our time. His article is one that should be read and saved by every American who cares about past, present, and future directions of this country because it details so well that the choices societies face are always the same. On most decisions there is a choice between personal security and personal liberties with liberalism in this country having veered further and further towards personal security emphasizing a more powerful central government. John Kurzweil has masterfully described how what used to be a proud political philosophy has reached the brink of suicide.

—Bruce Herschensohn

IN OCTOBER 1988, a writer for the *Wall Street Journal* came to California and interviewed Rep. George E. Brown Jr. of California's 36th Congressional district. Brown is one of Congress's most liberal members, though he represents one of California's most conservative areas, the "Inland Empire." Even so, Brown wasn't worried about the upcoming election. Its outcome, as the *Journal* put it, "was decided months, even years, ago" — in Brown's favor — through a combination of "gerrymander, dominance over political money, and liberalism cloaked in conservative rhetoric."

Though that was the reporter's conclusion, Rep. Brown hardly disputed it. Regarding the gerrymander: "I think it was essential," he told the *Journal*. "This district could just as easily have its Democrats spread among several others." Just as easily perhaps, but not nearly so helpfully for the incumbent. Brown's district boundaries were drawn with enormous care and precision to purge just the right proportion of Republican

precincts while drawing in every available Democrat neighborhood to guarantee the incumbent maximum advantage. For good measure, though, Brown acknowledged that, as a 12-term member of a 34-year Democrat House majority, he'd have no trouble outspending his opponent two-to-one, relying upon labor and business PACs and, if necessary, funds generated by the "Waxman-Berman machine." "Henry [Rep. Waxman] called me last week and asked if I'm in any trouble," Brown told the *Journal*. "I said, 'I don't think so, but we can always use the money.' So he sent the maximum [\$6,000]." He added that "several dozen congressmen are waiting for a call" if more funds prove necessary.

And what does all the money buy? An image Brown can sell to his conservative constituents more easily than the truth. According to the article, "Mr. Brown tells constituents [with the help of Waxman-Berman-financed campaign literature] he supports greater defense spending, though he regularly votes for less; and that he 'voted for the stronger death-penalty provisions in the 1988 Drug Act,' though he had opposed the death-penalty amendment. 'I'm not happy having to do this,' he concedes, 'but what can you do? That's the way politics is run these days.'"

Especially liberal politics. Liberals like George Brown operate in an increasingly strange political environment. They believe in policies that even the slowest-witted voters are realizing have failed consistently, and so can't espouse them in public. They must instead tip-toe around their districts like agents behind enemy lines, pretending to oppose ideas and positions they actually support. The cover-up usually works, with the help of gerrymandering, the fund raising advantages of incumbency, and the reluctance of California's news media to talk about it. Conservative politicians recognize the importance of ending the gerrymander and

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have wisely produced several initiatives designed to do so in 1990. But more should be done to tell the story of the political collapse of liberalism following upon the failure of its policies. Liberal editors and reporters can't reasonably be expected to pursue the story aggressively. It is critical, however, that it be told, and conservatives should do the telling. It has three parts:

FIRST, LIBERALISM has reached a crisis. Its policies having failed to deliver as promised, the cause is no longer popular. Its champions must resort to distorting the record, both their own and that of their ideology, and rely upon gerrymandering and the advantages of office to hold power — not, all in all, the formula of a healthy political movement.

Second, the crisis is not superficial; it hasn't resulted from Ronald Reagan's talents on television, from the fickleness of the voters, from inept campaigns or from the venality and stupidity of liberals in office. These elements have played their part, as such things do in all human endeavor. But even if none had been present, the crisis would have arrived anyway. Its causes lie in the root assumptions of the Left, assumptions liberalism shares: that what is needed is to redistribute, rather than create, wealth, that our first task is to feed the body and worry about the soul later, and that achieving power, rather than freedom, is the key to success.

The third aspect of the story is that liberalism is an aberration not shared by many people really. Most Americans know that forcing others to share with them is a short-sighted and demeaning way of providing for oneself. They also know that moral considerations outweigh material ones, and that, left free, they will solve or adjust to life's difficulties better on their own than through the efforts, well-meant or otherwise, of government. What follows is a more detailed look at the story, but is by no means exhaustive. It is intended to stimulate more writers to undertake the project.

The Liberal Crisis I

Policy Failures and the Defection of the Voters

The Judiciary

ABOUT THE time it began to seem Supreme Court nominee Judge Robert Bork would not be confirmed by the U.S. Senate, liberal columnists and legal writers

began drawing supposed parallels between the cases of Bork and former California Chief Justice Rose Elizabeth Bird, wringing their hands about the "politicization" of the judiciary these cases represented. Typically, though, they confined their analysis to the campaigns that were waged against these justices, ignoring their records on the bench. For example:

"Bird lost because of the multimillion-dollar, mass-media and direct mail campaign mounted by her opponents," David Broder wrote in *The Washington Post*, "and if Bork goes down, it will be for the same reason."

Veteran Bird supporter Gerald F. Uelmen, dean of the Santa Clara University Law School, wrote in the *Los Angeles Times* that "[i]t does not take an astute observer to see the parallels between the fight over Bork's nomination and the brawls over Supreme Court elections in many states last year [1986]. Those who spend money to influence public policy are realizing that a lot of the policy they want to influence is made by Supreme Court justices, and it takes a lot less money to affect the selection of justices than it does to elect legislators, governors, or a President."

A few days later, Harvard Law School's Alan Dershowitz took a slightly different tack. "While no one," he wrote in the *Times*, "can dispute the White House claim that the debate over the future of the Supreme Court has become highly political, two important questions remain: Who is primarily to blame for politicizing the judiciary, and can the process of politicization be reversed?" Dershowitz possessed the ready answer, which again turned out to depend upon the selection process: "During Ronald Reagan's nearly seven years in office, he has politicized the process for selecting all federal judges more than any president in recent history."

Looking at the processes by which judges are selected, retained, or rejected attends to the symptoms while ignoring the disease. Uelmen came closest to the truth in his comment about "a lot" of policy being "made by Supreme Court justices." Justices who make a lot of policy are political. If they wish to avoid becoming political, they must make every effort to leave political (policy) decisions to the other branches of government. But this is not what liberals would have them do.

Judicial policy making was a highly-praised, central element of the post-World War II liberal program for America. Leonard Levy, in his 1972 book *The Supreme Court Under Earl Warren*, captured the liberal reaction of that period to judges as policy makers:

"When Earl Warren became Chief Justice of the United States in 1953," Levy wrote, "American constitutional law, like the nation that it served, stood poised at the brink between two worlds. One, which nothing short of lethal action could move or remove, deserved a speedy, contemptible death; it was the world of racism,

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political rottenboroughs, McCarthyism, discriminations against the poor, puritanical in sexual matters, denial of the suffrage and egregious infringements on the rights of the criminally accused. The other was a world struggling to be born, in which injustices would be remedied and the fundamental law of the land would have a liberating and egalitarian impact. The Supreme Court under Warren was a midwife to the newer world."

Thirteen years after Levy wrote, Mickey Kaus, son of former California Supreme Court Justice Otto Kaus, reminded liberals supporting Bird of their roots.

"It is certainly a bit late," Kaus wrote in *The New Republic*, "for California's liberals to start complaining of politics polluting the judiciary. Like their counterparts elsewhere, they have long championed the role of judges as bold social reformers. One California justice, the late Matthew Tobriner, used to give speeches on the court's obligation to react to 'the economic imbalance in our society' and 'the plight of the economically downtrodden.' If judges are going to claim such a broad right to respond to 'society's demands' (as Tobriner put it), then it's hard to deny society, at election time, its right to demand something else."

A particularly insidious result of the liberal success in capturing and using the Supreme Court for political purposes is that it has politicized even the nomination of non-political judicial candidates. The presence of such a member on a court becomes a threat to whatever political movement the court has been serving. Thus, when Reagan nominated Bork — a man whose most characteristic belief is that judges should exclude extra-legal (including political) considerations from their decisions — Dershowitz identified a blatant "attempt to politicize the judiciary." If the Court is already political, depoliticizing it will obviously have political impli-

cations. They are that politics will return to the elected branches where it belongs. Employing the Dershowitz rule means that a once-politicized court must remain so forever — in the name of depoliticization!

The "parallels" in the Bird and Bork cases were spurious because rejecting Bird carried the opposite meaning with regard to politics in court that rejecting Bork conveyed. Judicial politicking is what liberals have always expected from their judges. Their complaint against Bork was precisely that he would have failed to provide it with regard to cherished liberal political gains made through the courts.

In contrast, the evidence against Bird's "applying the law" as it came to her (which Broder seems to think she did) is mountainous. For just one example: when Bird joined in overruling provisions of the "victims bill of rights" (Proposition 8), dissenting Justices Stanley Mosk and (now Chief Justice) Malcolm Lucas wrote: "Once again, through a strained and unrealistic statutory construction, the majority has thwarted the obvious intent of the framers of, and voters for, Proposition 8." The case was by no means untypical.

Broder further implied in his column that it is equally unfair to characterize either Bird or Bork as judicial "extremists." In this regard, it is worth noting that while Bork was never overruled during his tenure on the bench, California's current Supreme Court, in a 6 to 1 opinion written by Mosk, overturned what the *Los Angeles Times* called "the most significant capital-punishment decision" issued under Bird, *Carlos vs. Superior Court*. And in January of 1986, long before any "multimillion-dollar mass-media" campaigning began, 118 (64 percent) of 184 California appeal and trial court judges who answered a *San Francisco Chronicle* poll said Bird should not be reconfirmed.

So, recalling Alan Dershowitz to the stand, we again ask, who is primarily to blame for politicizing the judiciary, and can the process of politicization be reversed? The answer to the first question is in the record. As for the second, the answer seems to depend upon whether liberals are on the losing or winning side. In California, where they lost, so did politics. In the Senate, politics won, and liberals rejoiced. But, unlike the old days when Leonard Levy could celebrate openly, now liberal columnists find politicized justice embarrassing. They scramble to condemn what they once welcomed and encouraged and search for scapegoats to blame for it. But, what can they do? Politicization has proven a fiasco, both in court and as public relations, so that's the way liberal politics is run these days.

The Economy and Social Policy

THE CENTERPIECE of liberal domestic policy since World War II is the War on Poverty begun during Lyndon Johnson's administration and continuing, though with far less hoopla than at the beginning, today. The War was to be far more than merely the implementation of new or expanded federal programs to help poor people. It represented, and continues to represent for most liberals, an across-the-board repudiation of an American past dishonorably marked, in their estimation, by narrow-minded bigotries, callous disregard for the less fortunate, and childish delusions that ours was a nation "with liberty and justice for all." It included "reforms" of the nation's legal, educational, and political systems; it sought the overthrow of many of the social mores and traditional values that had guided America from its founding and which liberals consider backward, stifling, and hypocritical; it was a revolutionary vision of a future in which Christ's remark that "the poor you have with you always" would finally, joyfully become part of history.

The central intellectual feature of the War on Poverty was the proposition that structural forces embedded deeply in America's social, economic, and political systems created barriers to wealth the poor could not overcome. These were the real, "root" causes of poverty. Until they were removed, the poor had no chance of escaping their plight. The old system had been limited to providing only the minimum level of charitable support required to keep people from starving. It relied primarily upon individual initiative and private, voluntary efforts to move people from want to wealth. This approach, liberals believe, completely missed the point that society, not the poor, is to blame for poverty. Blaming the poor only demoralized people already facing an impossible situation. Worse, it usually served as a hypocritical excuse for bigots, the selfish rich, and self-righteous moralizers to avoid addressing their own faults and poverty's real causes.

The poverty war's slogan was "a hand, not a hand-out." The "hand-outs" of the past perpetuated the problem with their tone of moral condemnation and irrelevance to the larger problem. Now, the powerful "hand" of the federal government would go to work to sweep away poverty's structural causes freeing poor Americans, once and for all and at long last, to help themselves. This was the War's revolutionary goal: the dole would end forever and America would no longer be divided into rich and poor, educated and ignorant,

or privileged and repressed. Society would cease holding men down but, instead, would clear a path they would follow upward toward dignity and equality.

Government power was duly mobilized. Between 1950 and 1980, federal social welfare spending — for

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public assistance, education, social insurance, housing, and health and medical costs — increased by 20 times, while the country's population increased by half. Also job training programs, soaring minimum wages, affirmative action plans, rent controls, VISTA programs, and a vast expansion of legal "remedies" to correct and dismantle an ever-lengthening list of injustices and structural barriers were thrown into the battle.

Liberals tend to consider implementation of a program the equivalent of the program's success and seldom bother checking, once the political battles are won, to see whether or not any good is actually coming from their undertakings. Fortunately, however, in the early 1980s, Charles Murray carefully researched the War's record and, in 1984, wrote a book, *Losing Ground*, compiling what he found. "The unadorned statistic gives pause," Murray wrote. "In 1968, as Lyndon Johnson left office, 13 percent of Americans were poor, using the official definition. And, in 1980, the percentage of poor Americans was - 13 percent." Bad as this lack of progress appears on the surface, the underlying failure of the War to achieve its main objective - ending the dole and eliminating dependency - is much worse. Going beyond mere failure, the massive effort first halted a steady trend of improvement in this regard and then aggravated the problem.

To measure the War's success in reducing America's dependent population, Murray subtracted all government payments (AFDC, Social Security, Disability Payments, SSI) from total reported income for the years 1950 to 1980. He wanted to track the "latent poor" — people "who show up below the poverty level in the official measure [which counts government transfers as part of income] plus those who are above

the poverty line in the official measure only by virtue of government support." He found that latent poverty had fallen between 1950, when it stood at about a third of the population, and 1965 ("up to the beginning of Johnson's War on Poverty"), when it reached 21 percent. "The proportion of latent poor continued to drop through 1968," Murray wrote, "when the percentage was calculated at 18.2. This proved to be the limit of progress. At some point during 1968-70, the percentage began to grow, reaching 19 percent in 1972, 21 percent in 1976, and 22 percent by 1980."

So much for ending the dole. The War on Poverty failed in its primary mission because it ignored the elementary wisdom Western man had gained through

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long experience with the difficult, often frustrating business of trying to help the poor. "The fifties," Murray wrote, "saw the last years of a consensus about the purposes of welfare that had survived with remarkably little alteration since the Republic was founded Its premise was elemental: A civilized society does not let its people starve in the streets." However, "[t]his decent provision was hedged with qualifications" because "[t]he very existence of a welfare system was assumed to have the inherent, intrinsic, unavoidable effect of undermining the moral character of the people." Thus, a sharp distinction was made between the "deserving poor" and "vagrants." People who are genuinely helpless by definition can't take responsibility for themselves and therefore can't have their moral character undermined by charity. But few people really can't help themselves at all, and fewer still remain helpless for long. In most cases, welfare risks engendering vice while trying to do good. This difficulty makes charity an infinitely complex business, best carried out on an individual basis through small institutions not only close enough to the recipient to know him intimately but also tied to him through bonds of love or friendship. Number one, of course, is the family, followed by religious organizations and other private efforts - George Bush's thousand points of light.

The architects of the Great Society, however, rejected this approach as naive and unjust. They set about rearranging society ignoring the possibility that they might be undermining peoples' incentives to care for them-

selves. The results have been disastrous. By the 1970s, Murray wrote, "[i]t was easier to get along without a job. It was easier for a man to have a baby without being responsible for it, for a woman to have a baby without having a husband. It was easier to get away with crime. Because it was easier for others to get away with crime, it was easier to support a drug habit. Because it was easier to get along without a job, it was easier to ignore education. Because it was easier to get along without a job, it was easier to walk away from a job and thereby accumulate a record as an unreliable employee." Or, as summarized in a recent *Los Angeles Times* editorial: "As more fathers refuse to provide, more children grow up in poverty. As divorce, drug abuse, teen-age pregnancy and other social problems become more pronounced, more families experience trouble. Hardest hit are black families. The majority of black families are headed by single women. The majority of black children grow up poor in depressed environments where unemployment, drug abuse, crime, illiteracy, and discrimination take a hard toll. In response to the obstacles, many black leaders are pushing self-help strategies during a summer drive to strengthen the black family."

The great liberal experiment in using government power to end economic and social troubles (in a word, socialism) has failed, both in America and abroad. That failure lies at the heart of the liberal crisis.

Foreign Affairs

THE LIBERALS' quick acceptance of all sorts of dubious propositions in the War on Poverty betrayed a chronic weakness of left-leaning political movements. Their common assumptions are based almost completely on a critical analysis of conservative policies, ideas, values, and institutions. Little or no attention is given to testing and proving their own ideas or ideas still further to the left. Criticism flows in one direction only: to the right. The French long ago coined a phrase to describe this characteristic of left-wing thinking: *il n'y a pas d'ennemi à gauche* — there is no enemy to the left.

This predilection leaves liberals vulnerable, almost paralyzed, when attacked from their own left. They are undermined by their progressive view of history as a long, sometimes fitful, but ultimately irresistible process of liberating humanity from ancient evils. When more radical Leftists — those further along the road to the future — demand faster progress and accuse the relatively moderate liberals of backsliding and siding

with the evil reactionaries, the liberals can usually manage no more than a weak complaint that the radicals are moving too fast — a defense that not only reinforces the view of their opponents as the truly bold reformers, but also conveys an image of the liberals as having lost the courage and self-assurance to lead.

Nowhere is this weakness more evident than in foreign affairs. Its clearest demonstration came in the collapse of Lyndon Johnson's Vietnam policy and the 1972 capture of the Democrat party by George McGovern's more radical liberals. Employing assumptions similar to those they applied at home, the Johnson and Hubert Humphrey liberals assumed that the policies of America's Great Society would also end poverty and repression abroad and so favored an activist U.S. role in the world. They shared with their further-left opponents the tendency to sympathize with governments that proclaimed broad socialist goals and methods for governing, while opposing market-oriented policies and political movements. Communist and other violent anti-Western revolutionary insurgencies were, and still are, generally assumed across the liberal spectrum to be organic popular uprisings against unjust, right-wing repression and backwardness.

The break came over the question of the appropriate American response to revolutionary violence in foreign lands, specifically Vietnam. The moderates believed the violence had to be resisted, by military force when that proved necessary, to allow the liberal economic and political agenda they were applying the time necessary to eradicate the violence's "root causes." But the radicals rejected this approach which they branded a hypocritical cover-up for American exploitation — the true cause, they believed, of third world revolutions. America was not part of the solution, as the liberals supposed. On the contrary, the corrupting influence of the United States was the worst of the "root causes" underlying the world's troubles. The racism and other "structural" forces the War on Poverty was supposed to eradicate at home turned out also to be at work wherever "American power" was exerted abroad. The only just course for the United States was to tend to long-overdue reforms at home and spare the rest of the world any further meddling and exploitation.

The radical mindset of the era is described by Peter Collier in his book, co-authored with David Horowitz, *Destructive Generation*. Collier and Horowitz were editors of the radical magazine *Ramparts*, where the preferred targets, Collier wrote, were not conservatives, but liberals "who had taken the anti-Communism of the

Truman Doctrine . . . as an excuse to extend American power into every crevice of the globe." The old Democrat anti-communists, confronted with this sort of criticism in the late '60s, found no convincing response and were vanquished with surprising ease and speed between Humphrey's 1968 candidacy and McGovern's in 1972. Since then, no foreign policy moderate has won the Democrat nomination for president. And, consistent with the radical critique, since 1972 liberals have routinely condemned virtually any American role from Southeast Asia to Iran to Central America. *Il n'y a pas d'ennemi à gauche*.

But the McGovern liberals were quickly undermined by the same trap that brought down their predecessors. Ideologically incapable of attacking to their own left, the post-'72 liberals repeatedly found themselves absurdly blaming America for all the world's ills while advising a do-nothing response to every development, with catastrophic consequences from the boat people to the Ayatollah to the invasion of Afghanistan. Made impotent in their turn by their own ideology, today's liberals appear as unable to lead and as primed for a fall as the old guard came to seem some 20 years ago.

The Defection of the Voters

"Switching parties is not an easy thing to do; most people are born into a political party just as they are born into a religion. When McKeithen told his father, a former two-term Democratic governor of Louisiana, that he was switching, his father told him, 'You must be crazy,' but McKeithen responded by reminding his father that he hadn't voted for a Democrat for president in 20 years."

— *The Sacramento Bee*, Aug. 24, 1989

SINCE THE beginning of 1988, 90,000 Louisiana Democrats have switched to the Republican party, including the Secretary of State, Fox McKeithen. A national Gallup poll, released in July, showed that Americans favor the Republican party in every category Gallup employs to measure party preference: keeping the country prosperous (51 to 31 percent), maintaining the peace (45 to 31 percent), and handling whatever issue respondents named as their top concern (33 to 27 percent). California Democrats account for a lower percentage of registered voters than at any time since 1932. Democrat Secretary of State March Fong Eu's

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The Clean Air Crusaders

by
Steven Hayward

LAST MARCH, Southern California took the first step toward what is being termed the "brave new world" of regional regulation. The South Coast Air Quality Management District (SCAQMD) approved a 20-year, three-tiered air pollution abatement plan that is being heralded as a "model for the nation." It is so long and complicated — the documents explaining it stack about six feet high — no one person can comprehend the whole of it. But considering its basic features, it is clear SCAQMD has devised an inflexible, bureaucratic plan that will be frightfully expensive, impose potentially impossible burdens on business, reduce employment by 50,000 jobs or more, and most probably fail to clean up the air. The air quality problem in Southern California, and SCAQMD's exorbitant plan to fix it, provides a perfect case study of what's wrong with American environmental policy, and how it increasingly ignores basic principles of economic rationality.

The plan includes hundreds of measures regulating specific sources of emissions, including restaurant charbroilers, auto body shop solvents and coatings, dry cleaning equipment, electric utilities, chemical processing and petroleum refining, and furniture manufacturing processes. It will ban or restrict many consumer products, including gas-powered lawn mowers, aerosol sprays, and even barbecue lighter fluid. ("Use a barbecue, go to jail," critics lampooned. Not true, says SCAQMD. But they admit they can sock you with a \$25,000 fine for using lighter fluid after the rule is implemented.) These measures, along with new measures for heavy industry (which already faces tough emission controls), will be implemented in the next five years, using already-existing technology. And yet, de-

spite the severe measures aimed at business and industry, the first tier of the plan barely touches the source of more than half the air pollution in the region — cars and trucks. Instead, the second and third tiers of the plan hope to reduce car and truck emissions through yet-to-be-developed technology, or "Buck Rogers" measures such as low emitting automobiles (either electric- or alternative fuel-powered). Considerable skepticism exists, even among some of the planners, that such technology will be available — at any price — within the plan's time frame. Put differently, the plan is the environmental equivalent of the Gramm-Rudman deficit reduction law. Just as Gramm-Rudman enacts across-the-board cuts on just one-third of the federal budget, so too the air quality plan seeks to achieve its reductions chiefly through tight regulation of stationary sources that generate less than half of the problem. As with Gramm-Rudman, it is fairly easy to predict that such a strategy won't work.

What, one might reasonably ask, will all this cost? SCAQMD says \$2.6 billion a year. The National Economic Research Associates (NERA), in a study commissioned by the California Council for Environmental and Economic Balance, estimated the cost to be \$12.8 billion per year, or \$2,200 per household in Southern California — five times SCAQMD's estimate. If NERA is right, the plan's cost would equal a *tripling* of the sales tax. What accounts for this large discrepancy in cost estimates? It turns out that a surprising number of the control measures in the plan are uncoded. Where SCAQMD was unable to estimate the cost of a measure, it counted the cost as zero. In all, 72 percent of the NOx (nitrogen oxide) control measures, and 47 percent of the ROG (reactive organic gases) control measures, are uncoded — more than half of the total measures in the plan. The chairman of the SCAQMD

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