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## *Foreword*

Over at least the past decade, it has become almost trite to describe the national political system in the United States as “dysfunctional.” Analysts across the political spectrum seem to agree on that, if on almost nothing else, and they present a variety of explanations for the phenomenon. Some emphasize the truly exceptional way that Americans finance elections (including, of course, the primaries that increasingly choose candidates). Others focus on the development of the 24-hour news cycle plus the decline of what is now called, often contemptuously, the “mainstream media” in favor of cable television, talk radio, the blogosphere, and varieties of “social media.” Attention is also paid to the increasing polarization of American politics, which has been helped along by a repulsion among significant portions of the public at the idea of “compromising” with one’s political enemies. As to polarization, it is almost enough to quote the title of a 2012 book by two longtime Washington-based students of American politics, Norman Ornstein and

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Thomas Mann: *It's Even Worse Than It Looks: How the American Constitutional System Collided with the New Politics of Extremism*.

The Constitution was designed in 1787 to create multiple veto points on the way to passing legislation, which, it was thought, would encourage compromise inasmuch as the alternative would be what we today call “gridlock.” Thus, one should also attend to the title of a 2013 book by political theorists Dennis Thompson and Amy Gutmann, *The Spirit of Compromise: Why Governing Demands It and Campaigning Undermines It*. Contemporary American politics has become distinguished by what has been labeled “the permanent campaign,” with constant worry, for example, about raising money and forestalling primary challenges. An important consequence is that it becomes ever harder to generate what they call the “spirit of compromise” necessary for actual governance in a system where one party does not have sufficient dominance simply to pass its programs through the House and the Senate—programs that will then be happily signed by a president of the same party.

My own analysis, as reflected in two books I have published in the past decade, *Our Undemocratic Constitution: Where the Constitution Goes Wrong (and How We the People Can Correct It)* and *Framed: America's 51 Constitutions and the Crisis of Governance*, has emphasized the degree to which the formal political structures established by the Constitution of 1787, and amended in only minor ways since then, contribute to the gridlock that effectively makes it nearly impossible to achieve the passage of legislation that adequately responds to the challenges facing the United States in the twenty-first century.

Stephen Griffin is one of the legal academy's most gifted analysts of American constitutionalism. His first book, *American Constitutionalism: From Theory to Politics* (1997), emphasized the various ways that the constitutional system in fact changed over time, even with-

out formal constitutional amendment, to adjust to new realities. John Marshall emphasized in *McCulloch v. Maryland* that our Constitution was “intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs.” The most obvious such crises are probably great wars, whether the American carnage of 1861–1865 or the two world wars fought in the twentieth century; the implications of such developments are the subject of Griffin’s most recent book, *Long Wars and the Constitution*. Similarly obvious, and one of the examples considered in this new book, are the effects of natural disasters such as Hurricane Katrina (or, later, Sandy), not to mention, of course, the near collapse of the international economic system in 2008 and the “Great Recession” that plagued the United States for years thereafter. *American Constitutionalism* was in context quite optimistic about the resilience of the American constitutional system. This book is more somber in tone.

Griffin begins this book with a review of the literature on “dys-functionality.” And, of course, the title of his book itself brings this analysis to the fore. But what makes Griffin’s voice distinctive—and more than justifies its inclusion in the series on “constitutional thinking” that Jeff Tulis and I coedit for the University Press of Kansas—is his elaboration of a fresh insight about the deep causes, and potential cures, of our present discontents. Quite obviously, our basic constitutional structures have not changed in recent years; one can argue, therefore, that they did not present fatal impediments in the past to confronting some very basic crises, including economic depressions and world wars. What *has* changed, and what Griffin argues is absolutely crucial, is the relative decline of *trust* in the ability of those institutions (and the people who make them up) to serve the public well.

As he puts it, “We must create virtuous cycles that produce both

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greater trust in government and more effective government.” Each is both cause and effect of the other; the perception of effectiveness leads us to trust public officials and their suggestions regarding the need for new programs; concomitantly, the perception that these officials are in fact trustworthy will generate a needed level of confidence that their advice as to new programs should be followed. However, for several decades now the cycle has been distinctively “vicious”: the perceived ineffectiveness of government—encouraged, of course, by the rise to power of a wing of the Republican Party that systematically promoted contempt for what was usually called “big government” and the “bureaucrats” administering it—reinforces the mistrust underlying Ronald Reagan’s famous comment that “the ten most dangerous words in the English language are ‘Hi, I’m from the government, and I’m here to help.’” The inevitable failure of at least some percentage of governmental programs has become for many Americans evidence *not* that to err is human—and that such failures may well be more than counterbalanced by quite successful programs, but that government is basically incapable of “helping”—but, instead, that government is almost invariably incompetent. Why indeed would one expect the American public, if endorsing such a dour view of government, to support new programs (or even the maintenance of well-established ones)?

For Griffin, “trust is a *constitutional* problem” in that its presence—or, in our contemporary era, absence—will help to explain whether our institutions will in fact function as effective agencies of governance. He has no doubt that our present constitutional order is playing a role in causing “policy disasters” and that “persisting low trust in representative government” has the potential for further “endangering the stability of the constitutional order.” Toward the conclusion of his book, he quotes Piotr Sztompka’s

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description of a “culture of distrust”: “Social life is pervaded with mingled worry, chronic diffuse fear, suspicion, conspiracy theories, anxiety and foreboding, paralyzing action on any wider scale.” Many readers will no doubt find this an apt description of our contemporary reality. It takes only slight extrapolation to think of Thomas Hobbes’s memorable evocation of the fear induced by a state of nature that promises only a life that is “nasty, brutish, and short.” Hobbes’s solution, of course, was the creation of a leviathan state. Locke was somewhat more optimistic, and his work served as the basis for a less-ominous version of the state. But constitutions do not only reflect theoretical impulses; they must also establish and maintain institutions that reassure those governed under their aegis that their anxieties and forebodings can be set aside because government is in fact effective.

Griffin is certainly not disdainful of the desirability of at least some institutional reform, but he emphasizes that any such reforms must focus on the extent to which they are likely to reverse the pervasive mistrust in our polity and generate development of greater trust. Such trust, paradoxically, may be most important when we find ourselves on the losing side of a given political argument. After all, no one can reasonably believe that the only trustworthy government is one in which he or she wins every political dispute; rather, one must be willing to accept one’s lumps, secure in the belief that future elections might bring one’s own party to power. Most important, perhaps, is the concession that political opponents are people with a good-faith commitment to discerning what best serves the overall interests of the polity, as proved by a demonstrated willingness to listen to critiques and perhaps even to adopt some arguments presented by their political opponents.

An especially important part of Griffin’s analysis deals with the

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disillusionment in much of the American West, at the turn of the twentieth century, in representative government. State legislators especially were increasingly viewed as offering their services to the highest bidders, often, as in California, railroad magnates. The American Senate at the time was described by many critics as a “millionaire’s club” (when to be a millionaire was a far more striking achievement than it is today) of men who were often able to purchase their seats from the state legislatures that, prior to the Seventeenth Amendment in 1913, still exercised their constitutionally granted prerogative to select those who would serve in the Senate. Only members of the House had to face the electorate.

What happened, at least in many American states, was the adoption of “direct democracy” as a supplement to a representative democracy whose very point was to take decisionmaking away from the public and give it exclusively to those persons elected by the public. California is the most (in)famous example of a state governed at least in part through direct democracy, and Griffin enables us to understand why its adoption in the early twentieth century, as in other states at the time, was thought to be an important “progressive” step. If it manifested a fundamental mistrust in the integrity of those likely to control legislatures and a rejection of their claim genuinely to “represent” the public (instead of the economic interests that effectuated their elections), it obviously required a deep trust in the ability of ordinary people to rise to the occasion of becoming informed citizens thinking of the public good.

Interestingly enough, one of Griffin’s most important suggestions for institutional reform is a national referendum as a way to “bypass the gridlocked political structure of the Beltway and get an issue before the people.” One can, of course, wonder about the extent to which most Americans today maintain what we might view as a Jeffersonian faith

in popular judgment. I suspect that many readers would almost viscerally reject any such referendum because they do *not* possess such faith (which requires accepting the risk that most of their fellow Americans would, in good faith, end up the on other side).

One of Griffin's most important claims is that Americans are basically antagonistic to political conflict. "From the perspective of the average citizen, national politics is full of intense and apparently endless conflict over issues that are relatively unimportant. No wonder," he writes, "citizens are frustrated and display low trust toward government." What they want, he suggests, is a political system "without influence from special interests," where "policy-making elites" would be "disinterested and not self-serving." This is, of course, a version of the civic republican "politics of virtue" articulated most notably, albeit complexly, in *The Federalist*, No. 10; it is also linked with what is often referred to as the "antiparty Constitution." But that vision of American constitutionalism crashed to an end no later than 1800; no one could possibly understand our political order without paying adequate attention to political parties and the particular "special interests" that constitute their respective "bases" and attempts to win elections for "self-serving" purposes.

Stephen Griffin is incapable of asking merely superficial questions. Though a short volume, *Broken Trust: Dysfunctional Government and Constitutional Reform* raises absolutely fundamental questions about our constitutional system. The future of that system may depend on our collective ability to come up with acceptable answers that will serve to replace the present vicious cycle of mistrust and inefficacy with the virtuous cycle necessary to a well-functioning political system.

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It is especially meaningful to me to finally publish a book with the University Press of Kansas, as it published my father's (Clifford S. Griffin's) leading work on the history of the University of Kansas and his coedited series on the presidency, both of which he worked on for many long years while I was growing up. Publishing this book makes me feel closer to my family, friends, and former teachers in Kansas and Lawrence, my hometown.



I

*Is Our Government Dysfunctional?*

The months before the 1787 Federal Convention in Philadelphia found James Madison cramming as if he were about to take an exam. Studying as if his life depended on it, Madison reviewed the entire history of human government, focusing especially on the democracies of the classical world and modern republics. Madison also devoted considerable time to formulating a detailed critique of the way American government had worked to that point under the state constitutions and Articles of Confederation.<sup>1</sup>

In April, just prior to the opening of the Federal Convention, Madison produced a remarkable evaluation of American government called “Vices of the Political System of the United States.”<sup>2</sup> He set forth eleven separate points, chiefly having to do with the failures of the state governments. Madison believed that the states were constantly encroaching, violating, and trespassing on the rights of the federal government; other state governments; and, indeed, other nations.<sup>3</sup> In addition, the Articles of Confederation could not operate as a genuine “Political Constitution” for the

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United States because it failed to give the national government the ability to coerce the states and so enforce its judgments.<sup>4</sup> Finally, state legislatures in particular were truly out of control. They had passed multiple laws abusive of liberty and kept changing those laws so rapidly that no one could keep up with them. Many of these laws were clearly unjust, at least in Madison's judgment.<sup>5</sup>

Few would deny that Madison identified some of the faults of the prevailing system of government. Given the serious nature of these faults, it is plausible to say that Madison had shown his system of government to be "dysfunctional." Thinking about the task Madison set himself can help orient us in assessing the claims of many thoughtful observers that America's political and constitutional system today are in a similar state.

Let's assume that you had to produce a contemporary version of Madison's "Vices." Do you know what you would say? Given the seemingly universal dissatisfaction with the way American government operates, particularly as shown by how little trust most Americans have in their government, there is no doubt that many citizens could elaborate their own eleven-point (or more!) lists. We will begin our inquiry by sorting through indictments of the American system of government by journalists and scholars. But Madison's achievement should inspire caution, for consider: What sort of *knowledge* would be required to duplicate it today? Madison believed he needed to review the history of government from the fifth-century B.C.E. Lycian Confederacy onward as well as consulting the great political treatise writers of his age, such as Montesquieu and Grotius.<sup>6</sup> It is all very well to complain about the way our government works (or fails to work), but doing anything today similar to what Madison did in 1787 would surely involve years, perhaps decades, of study.

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Consider another point: Do we have Madison's *confidence* that it is open to us to design the constitutional system anew? One of the most famous quotations from the founding period comes from the very first number of *The Federalist*, the great work written by Alexander Hamilton, John Jay, and, of course, Madison himself. This was by Hamilton, who observed, "It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from *reflection and choice*, or whether they are forever destined to depend for their political constitutions on accident and force."<sup>7</sup>

The authors of *The Federalist* were obviously proponents of the view that it is possible to respond rationally to the flaws of a government by offering reforms. We should further observe that these framers were advocating not any garden-variety reforms but a fundamental alteration of their country's constitutional structure. The general notion that we can rationally criticize our system of government and advocate meaningful systemic reforms remains popular today. Some might even consider this to be a matter of common sense and wonder how it could be questioned. Notice, however, that this kind of thinking assumes we live in a *designed system*—in a government established, as Hamilton says, from reflection and choice.

Do we live in a designed system? There is no shortage of scholarly works based on the premise that a careful study of the logic of the original constitutional design will pay dividends in the present. Yet for every work insisting on the contemporary relevance of the original design, there is another reminding us that the system we actually live in is the product of more than 200 years of historical

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practice.<sup>8</sup> Relatively uncontroversial examples of major changes to our system of government not anticipated at the founding include political parties, the Reconstruction amendments, and the expansion of the right to vote. Somewhat more controversial examples (in the sense that some deny their legitimacy) of major informal constitutional changes might include the delegation of power to the administrative state, the expansion of the power of the national government vis-à-vis the states, and presidential war powers. Many scholars would also point to the U.S. Supreme Court's interpretation of the Constitution amid myriad historical adaptations and practices as having changed our political and constitutional system over time (throughout the book, I use the terms "constitutional system" and "constitutional order" interchangeably; I define the latter term in the last section of this chapter).

Some scholars are so impressed with the reality of a practice-based constitutional system that they hold we have transited to a British-style "unwritten" constitutional tradition.<sup>9</sup> We need not go this far to appreciate that there are problems with simply assuming we are living with the same system the framers designed. The point for now is this: if we accept that we are living in, at a minimum, a hybrid political and constitutional system, partly designed and partly the product of more than two centuries of historical change, then this complicates considerably the task of producing a Madisonian "Vices" critique in the present. It makes it more difficult for us to place ourselves in Madison's position and imagine how we would begin the system anew. More to the point, it makes it difficult both to pin down the causes of any systemic problems and to anticipate the consequences of any proposals for constitutional reform.

Let's consider one final aspect about trying to be Madison in contemporary times before we turn to some leading recent as-

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assessments of our political and constitutional system. What does criticism of our dysfunctional politics and political system have to do with the Constitution? For his part, Madison was certain that the Articles of Confederation was an inadequate framework for government. Indeed, it appears that after the Constitution was adopted, few people waxed nostalgic about government under the Articles. We are on the other side of that debate, and so for us it is settled that the Articles was unworkable. An entirely new constitution was called for and it is the Constitution ratified in 1787–1788 that prevails today as our supreme law (although it has been amended twenty-seven times). The point of the question, however, is that even if we are dissatisfied with our public officials and the way they conduct politics and even if we are convinced that we have advanced a sound critique of the entire “political system,” do those defects extend to the Constitution? Are we today as sure as Madison was that a significantly amended or even new Constitution is required? The typical answer Americans give is no. At the beginning of his interesting set of Socratic dialogues with ordinary citizens about constitutional reform, for example, Christopher Phillips observes that “as dysfunctional as people of most political persuasions believe our government is, they are just as convinced that the Constitution still works.”<sup>10</sup>

Amid all the talk of dysfunctional government, this last point suggests that we should focus on whether the critiques of government dysfunction justify major changes to our system of government. To put it another way, assuming the political and constitutional system is dysfunctional, is that something we simply have to live with, perhaps while the system muddles through, or does it demand our immediate attention and motivated commitment to significant constitutional reforms?

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To summarize this introductory discussion, we should bear three points in mind in assessing claims that our system of government is dysfunctional. Inspired by the task Madison set himself, we should consider (1) whether we have the appropriate knowledge to diagnose and remedy the problems of our political and constitutional system, (2) whether we have confidence that we can fundamentally alter that system without risking unforeseen negative consequences, and, finally, (3) whether there is a reasonably close link between dysfunctional government and the Constitution itself.

### *Critiques of Dysfunctional Government*

Let's keep these points in mind as we examine recent influential critiques of our contemporary politics and system of government. It is useful to divide them, somewhat roughly, into three groups:

- domestic critiques
- international critiques
- theory critiques

#### Domestic Critiques

Domestic critiques are those that most clearly advance claims of dysfunctional government. They argue that the political system no longer works for most Americans and highlight the increased polarization of American politics; the “hyperpartisanship” that prevails in the core of the Democratic and Republican parties, especially in Congress; and the gridlock in government that results. The best example by a journalist is Ronald Brownstein’s insightful

and well-researched *The Second Civil War: How Extreme Partisanship Has Paralyzed Washington and Polarized America*.<sup>11</sup> Another example in the same genre is the more impressionistic book by *New York Times* columnist Tom Friedman and noted political scientist Michael Mandelbaum, *That Used to Be Us*.<sup>12</sup>

It is important to understand that these authors are not criticizing political polarization and partisanship in the abstract. They link these phenomena to a series of pressing policy issues that they believe have gone disturbingly unaddressed. It is typical for domestic critics to stress that they are concerned just as much with poor policy outcomes as with a defective political process. Brownstein begins his book by listing eight policy areas in which he claims the nation has failed to make progress for years on end:

1. Reducing U.S. dependence on foreign oil
2. Balancing the budget
3. Providing health insurance for uninsured Americans
4. Immigration policy (a plan to improve border security and provide a way to deal with 12 million illegal immigrants already in the country)
5. Adjusting Social Security and Medicare benefits and taxes in a way that future generations can bear
6. Taking steps to provide greater security for middle-class Americans in an era of global economic competition
7. Creating a strategy to reduce greenhouse gases
8. Deciding how to properly fight the threat of terrorism<sup>13</sup>

We will analyze the issues on Brownstein's list in more detail later in this chapter. Although a number of these points relate to foreign policy, I call his critique "domestic" because he is funda-

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mentally concerned with how the fabric of domestic politics—the nuts and bolts of how the political system works—frustrates progress on desirable policies. Unlike the authors of critiques I call “international,” Brownstein is less interested in comparing how the United States stands in relation to other countries as a competitor in the arena of great-power politics.

Another outstanding example of a domestic critique is *It's Even Worse Than It Looks* by the prominent political scientists Thomas Mann and Norman Ornstein.<sup>14</sup> The book's very title assumes that there is widespread concern with the state of the American political system. Mann and Ornstein are longtime expert observers of the Washington scene and this book is a follow-up to their 2008 work, *The Broken Branch: How Congress Is Failing America*.<sup>15</sup> In this earlier work, Mann and Ornstein's concern was with how Congress functioned within the American constitutional system. They concluded, “The problems that make this Congress sharply different from past ones and clearly, in our view, a broken branch, are manifold. They include a loss of institutional identity, an abdication of institutional responsibility vis-à-vis the executive, the demise of regular order (in committee, on the floor, and in conference), and the consequent deterioration of the deliberative process—the signature comparative advantage of Congress as a legislative body.”<sup>16</sup>

In *It's Even Worse Than It Looks*, and certainly in the opinion of many longtime Washington observers, the 2011 debt-limit crisis is Exhibit A. The crisis resulted in the downgrading of the credit rating of the United States for the first time in history.<sup>17</sup> The debt-limit crisis looms large in the literature on dysfunction, and a number of books analyze what happened.<sup>18</sup> Mann and Ornstein concede that Washington endured debt-limit brinksmanship many times over the past several decades but insist that 2011 was different: “For the

first time, major political figures, including top congressional leaders and serious presidential candidates, openly called for default or demanded dramatic and unilateral policy changes in return for preserving the full faith and credit of the United States.”<sup>19</sup> The denouement of the debt crisis showed Congress in its worst light, and its popularity plunged to 9 percent in October 2011, the lowest approval rating ever recorded.<sup>20</sup> One of the themes of the debt-limit crisis was that it seemed impossible for congressional Republicans to maintain party cohesion unless they firmly opposed *anything* President Barack Obama proposed.<sup>21</sup> This meant, of course, that it was exceedingly difficult to resolve the crisis through the standard arts of political compromise. Mann and Ornstein comment, “To us, the battle was a template for all that is wrong with contemporary society and politics. Balancing interests, conducting meaningful deliberation and debate, respecting adversaries and, most of all, focusing on problem solving all took a backseat to the Republicans’ take-it-or-leave-it bargaining positions.”<sup>22</sup>

Continuing in the same vein, we can easily come up with other recent examples of dysfunction. Moving back in time, Exhibit B might be the uniform Republican opposition to President Obama’s economic stimulus proposal in spring 2009—an opposition that was apparently resolved upon even before the proposal was introduced.<sup>23</sup> A little further back, Exhibit C might be the continuing Republican opposition (along with that of some Democrats) to any form of the Troubled Asset Relief Proposal (TARP) put forward by Hank Paulson, secretary of the treasury during the George W. Bush administration, along with Ben Bernanke, chair of the Federal Reserve, during the fall 2008 financial crisis. The failure of House Republicans in particular to even consider the possibility of such a proposal and the defeat of its first version fundamen-

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tally shook economic confidence. And in each case, opposition was not accompanied by an offer of any workable policy alternatives or willingness to compromise.

Noted Harvard Law scholar Lawrence Lessig traces the problem of dysfunctional government to the system of campaign finance in *Republic, Lost: How Money Corrupts Congress and a Plan to Stop It*.<sup>24</sup> Lessig develops a connection between the pervasive role of money in politics and the lack of regulation of the banking sector that led to the 2008 financial crisis.<sup>25</sup> He also highlights, however, a distinct change in what might be called the ideology of government regulation. New Deal-era agencies and the financial regulations they promulgated produced nearly four decades of stability without a major crisis.<sup>26</sup> As Lessig describes, however, “beginning in the 1980s, critical financial assets of our economy were exempted from that basic regulatory framework.”<sup>27</sup> The key new sector that went unregulated was the developing market in derivatives.<sup>28</sup> Meanwhile, the financial sector expended enormous resources influencing both parties to believe that deregulation was in the public interest.<sup>29</sup> Against the background of an assumed skepticism toward government regulation in general—an assumption driven by the consistently low trust in government—an antiregulatory ideology became the new norm.<sup>30</sup> Protection of the public interest against systemic risk was an afterthought.<sup>31</sup>

Before considering international critiques, I would like to highlight two additional recent observations from the memoirs of those who have seen the contemporary political system up close as participants. Robert Gates, who served six presidents in the Central Intelligence Agency (CIA) and the National Security Council and was secretary of defense in the Bush and Obama administrations, experienced firsthand what he clearly regarded as a dysfunctional

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Congress. In his memoir Gates emphasizes the importance of the often-overlooked budget process: “I prepared five budgets for Congress from 2007 to 2011, and not once was a defense appropriations bill enacted before the start of the new fiscal year. The impact of this, and the associated ‘continuing resolutions’—which kept the funding level at the previous year’s appropriations and did not allow for starting any new program—was dramatically disruptive of sensible and efficient management of the department. This was an outrageous dereliction of duty.”<sup>32</sup> Without proper budgets approved by Congress in a timely manner, the various executive departments and agencies cannot function effectively.

Similarly, Tom Allen’s thoughtful book *Dangerous Convictions* contains much ground-level evidence that Congress is the main source of dysfunctional government.<sup>33</sup> Allen is a Democrat from Maine who served six terms in the House of Representatives. As Allen describes the situation, “Congress today is deeply divided because, to each side, the opinions of the other make no sense and therefore, each concludes, cannot be honestly held.”<sup>34</sup> Allen believes the consequences for specific policy problems, such as climate change, are dire. He writes, “There is no greater long-term threat to life on earth than climate change, yet the American political system appears incapable of addressing it with the speed and on the scale it requires. The price of dysfunction on this matter is tragic.”<sup>35</sup>

### International Critiques

Let’s now turn to international critiques. Such critiques are concerned first and foremost with whether the United States can maintain its position as the one global military and economic

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superpower and achieve security against foreseeable current and future threats, including terrorism and environmental challenges such as climate change. The urtext for international critiques is Paul Kennedy's 1987 book, *The Rise and Fall of the Great Powers*, still a touchstone for debate more than a quarter century after its publication.<sup>36</sup> With respect to the United States, Kennedy might have signaled his intentions better had he used the title *Rise and (Relative) Decline of the Great Powers*, as he made no argument that the United States was about to exit the front rank of the global power competition. But he sounded famous notes of caution. Kennedy's most striking observation was that the United States was risking "imperial overstretch". . . the sum total of the United States' global interests and obligations is nowadays far larger than the country's power to defend them all simultaneously."<sup>37</sup> Kennedy went on to describe the fundamental challenge for the nation:

Although the United States is at present still in a class of its own economically and perhaps even militarily, it cannot avoid confronting the two great tests which challenge the *longevity* of every major power that occupies the "number one" position in world affairs: whether, in the military/strategical realm, it can preserve a reasonable balance between the nation's perceived defense requirements and the means it possesses to maintain those commitments; and whether, as an intimately related point, it can preserve the technological and economic bases of its power from relative erosion in the face of the ever-shifting patterns of global production.<sup>38</sup>

Certainly we should observe that Kennedy assumed a cold war context in which the now-defunct Soviet Union was still very

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much a factor. On one hand, he certainly did not foresee the world of today, in which the United States is on the other side of a decade-long struggle against terrorism set into motion by a shocking attack on the homeland, not to mention a costly and deeply controversial attempt to remake the Middle East by invading Iraq. On the other hand, he made some interesting remarks about whether the United States is well served by its constitutional system: "The country may not always be assisted by its division of constitutional and decision-making powers, deliberately created when it was geographically and strategically isolated from the rest of the world two centuries ago, and possessed a decent degree of time to come to an agreement on the few issues which actually concerned 'foreign' policy, but which may be harder to operate when it has become a global superpower, often called upon to make swift decisions vis-à-vis countries which enjoy far fewer constraints."<sup>39</sup>

Nevertheless, the circumstances prevailing when Kennedy published his book are sufficiently different that we should be wary of extending his thesis uncritically to the present. In many respects, prominent commentators are still trying to refute what they take to be Kennedy's thesis of inevitable American decline. America boosters such as Josef Joffe tend to focus on the military balance and analyze whether the United States is in strategic decline, especially relative to new competitors such as China.<sup>40</sup> Yet Kennedy's argument could be interpreted more broadly and charitably, given his constant stress throughout his book on the critical relationship between national security and domestic strength in economic productivity and political responsiveness.

Joseph Nye, known for his influential theory of the key role of "soft power" in foreign relations, is sanguine about the ability of the United States to handle competition from other major pow-

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ers such as China.<sup>41</sup> Nye believes that Kennedy's concerns must be taken seriously, although like many observers he discounts the idea of imperial overstretch.<sup>42</sup> Instead, "the United States could decline in terms of relative power not because of imperial overstretch, but because of domestic underreach."<sup>43</sup> Nevertheless, Nye tends to view the domestic glass as always half full. He discusses American problems with "social issues" such as high infant mortality, hostility to immigration, a weak system of primary and secondary education, inequality of income, and a lack of trust in government.<sup>44</sup> In the end, however, he reverts to asking whether the United States will maintain its predominance in comparison with the challenges faced by other large nations. He concludes, "America is not in absolute decline, and it is likely to remain more powerful than any single state in the coming decades, although American economic and cultural preponderance will become less dominant than at the beginning of the century."<sup>45</sup>

Richard Haass, president of the prestigious Council on Foreign Relations, takes a more critical view that places more weight on the idea that the American political system is dysfunctional. He argues that the better way to approach the problem of decline is that the United States is "clearly underperforming" relative to its potential and, most problematically, the global challenges it faces.<sup>46</sup> According to Haass, the United States faces substantial policy challenges, including the size of its government debt, the lack of a coherent energy (and environmental) policy, lack of competitiveness in education, a failure to maintain the nation's infrastructure, a failure to update its immigration policies, and lack of attention to producing economic growth. Haass's point is that although all of these are "domestic" challenges, they critically affect the nation's ability to realize any of its foreign policy goals.<sup>47</sup> In drawing the connection

between the lack of action in these policy areas and our dysfunctional politics, Haass is unequivocal: "The biggest and most immediate threat to the United States is the growing inability of the American people and the American political system to forge and sustain policies at home that will allow the country to stay strong and meet the threats (and exploit the opportunities) that will characterize the twenty-first century."<sup>48</sup>

### Theory Critiques

Finally we should consider theory critiques. These are critiques that evaluate the political and constitutional system from the perspective provided by fundamental political principles.<sup>49</sup> One prominent example is the late Robert Dahl's *How Democratic Is the American Constitution?* As implied by the title, it is a wide-ranging review of the Constitution grounded in Dahl's commitment to assessing political regimes by whether or not they adhere to democratic principles.<sup>50</sup> Dahl emphasizes one point in particular that we should keep in mind in pondering why the U.S. political system has grown so polarized and dysfunctional. He points out that the American Revolution, indeed, the founding era as a whole, occurred before the democratic revolution brought by the advent of mass political parties in the nineteenth century. This democratic transition occurred, of course, in the United States as well, although for white males only. So, in a very deep sense, parties were not anticipated by the framers of the Constitution, and our constitutional system, including subsequent amendments, was therefore not designed with them in mind.<sup>51</sup>

One of Dahl's main arguments is that it is not possible to show that the American political and constitutional system is democrat-