

BRENNAN

CENTER

FOR JUSTICE

CONFERENCE REPORT

The Governing Crisis: Exploring Solutions

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The Brennan Center for Justice at NYU School of Law is a nonpartisan law and policy institute that seeks to improve our systems of democracy and justice. We work to hold our political institutions and laws accountable to the twin American ideals of democracy and equal justice for all. The Center's work ranges from voting rights to campaign finance reform, from racial justice in criminal law to Constitutional protection in the fight against terrorism. A singular institution — part think tank, part public interest law firm, part advocacy group, part communications hub — the Brennan Center seeks meaningful, measurable change in the systems by which our nation is governed.

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INTRODUCTION

On February 12-13, 2014 the Brennan Center for Justice convened a group of 80 scholars, advocates, journalists, foundation leaders and philanthropists at NYU School of Law for a series of discussions on government dysfunction. The conference was conceived at the height of worry over the government shutdown and latest debt ceiling debacle. It soon gravitated toward larger, longer-term ambitions. The Center — and organizations like ours — must grapple with governing crisis that besets the country, a task that will require new thinking and focused effort. Our goal for the two days: to facilitate discussions that moved beyond arguments about causes of the current state of dysfunction and, rather, begin to identify potential viable solutions.

Among the repeated themes and lessons from the two day gathering:

- Across the political spectrum, participants shared a sense of urgency — even alarm — over the collapse of effective government. This is not just messy governance as usual. Something new, and disturbing, seemed evident to most participants.
 - Cures for dysfunction are structural as well as cultural. Reformers should avoid the fallacy of assuming that tweaking rules or tightening procedures can overcome deep-seated divisions. At the same time, merely wishing for partisans to cast aside their animosities is a hope never likely to be achieved. Recognizing cultural and political trends, the participants gravitated toward reforms that could steer political actors toward more productive governance. We sought to avoid false choices, and largely succeeded.
 - The conference produced some surprises. In particular, some stressed the importance of party leadership ... and skepticism about openness and transparency as an effective mode for governance.
- Different communities brought preconceptions — and had those preconceptions challenged. Social justice-oriented groups and funders grappled with the “dysfunction” frame. Reform ideas must be assessed not just through the lens of “democracy” but also “governability.” If government and the political system are not rendered more functional, on a basic level, no underlying policy changes are possible. Funders and scholars who focus, especially, on “polarization” as the ill to be addressed grappled with the need to embrace structural reforms, and not just changes in norms and practices.
- All grappled with a fundamental challenge for funders, nonprofit groups, scholars and journalists: how to address intrinsically political questions through a necessarily nonpartisan lens. We must beware the fallacy of technocratic solutions. Today’s problems have deep political roots — the solutions must be inevitably, intrinsically political. It is naive to expect solutions to come without wider public engagement and political conflict.
 - Repeatedly, participants asked whether dysfunction is a genuine crisis, or merely the most recent swing of a cyclical pattern. Perhaps it’s always been this bad. Or perhaps it will work itself out, as moderates battle extremists and self-interest drives leaders to the bargaining table. Or perhaps, as too often seems likely, this really does reflect a new, worrisome and dangerous degradation of America’s democratic experiment.
 - One dividing line: Some participants believed the governmental breakdown on display is best understood as a consequence of widening economic inequality and spreading stagnation. They see the most worrisome polarization as top-down, not left-right. Given these broad trends, they suggested, it would be a surprise if the political

system worked better than it did. Others saw the challenges of the political system (e.g., the ability of wealthy interests to stall or steer policy change) as a cause of economic malaise. In any case, they argued, political reform is a necessary precondition to policies that could help spur economic revival.

In all, we explored seven topics — the summary of each panel discussion is described as a section in this report. In addition, we heard an evening keynote and a funded and focused summary at the close of the event. Sessions were held in a “discussant-style” format to facilitate participation from the entire audience, along with the moderator and panelists. There were a few variations: the session on “Opportunities for Bipartisan Democracy Reform,” featured the co-chairs of the Presidential Commission on Election Administration engaging in a lively moderated dialogue; the panel on “Cultural Polarization” was a Q&A over dinner. The sections that follow each provide a summary of the discussions that ensued, followed by the Brennan Center’s assessment of follow up questions to be explored via research. Recordings of the discussions are available, as well, on the Center’s web site (www.brennancenter.org). Other resources included as appendices with this summary: the event program; bios of the moderators and panelists, and the full list of participants.

STATEMENT OF PURPOSE

In advance of the event we shared the following statement of purpose:

How can we get American government working again?

Consider the past two years: Shutdowns. Debt ceiling debacles. Endless filibusters. A polarized Congress. Judgeships and executive branch jobs unfilled. Trust in government plunging to its lowest level in decades. The spectacle of billionaires sponsoring presidential candidates like racehorses. No wonder the Gallup Poll last fall identified governmental dysfunction as the country's number one concern.

On every dimension, government has failed to find pragmatic solutions or respond to fundamental public needs. Our broken politics now stands as a principal obstacle to economic progress. Further environmental and social challenges loom. To meet them, no task is more urgent than to fix broken government, restore trust, and rebuild the promise of American democracy.

This conference seeks to move beyond arguments about causes of this dysfunction, and begin to identify and test solutions. We will examine issues ranging from changes in Congress, to voting and election systems, and even the cultural and social forces that are either driving polarization, or could be utilized as part of a solution.

Toward this end, participants come from different communities with varying perspectives. We do not expect to conclude with consensus on reforms or an action plan. Rather, we expect that the group of forward-thinking, imaginative scholars, practitioners, journalists, and funders will share reform ideas, help identify priorities, and highlight needs for further research.

Of course, partisanship, corruption, delay, and gridlock long have marked our politics, punctuated

by periods of progress and action. But there are strong reasons to believe today's dilemmas go deeper than in decades. Dysfunction has profound structural roots. Stronger leadership or a generous spirit of compromise will not be enough. Solutions, in the long run, demand systemic change.

We see today's government dysfunction as a confluence of four forces:

Partisanship: America's two major political parties are now divided along ideological lines, with none of the overlap that for much of the 20th century created a space for bargaining and consensus.

Polarization: Elected legislators, particularly in one party, respond to their ideological extremes, rather than seeking consensus or seeking to reach the median voter. Simultaneously, Americans are more divided than in recent decades by ideology, region, religion, and by media that reinforces their own viewpoints.

Institutional failure: Congress in particular is poorly designed to function under conditions of ideologically aligned and polarized parties. Electoral structures exacerbate polarization. Some reforms have fostered unintended consequences. Structural failures deepen government mistrust, making coherent public action even more difficult. That mistrust is also stoked by actors in the political process.

Political influence of economic inequality: Vast new sums of political money, not limited to campaign contributions, distort decision-making, take promising policy options off the table, alienate the public, and in turn reinforce economic inequality in a vicious circle.

This conference will focus on concrete reforms that would address these forces and their consequences. We seek a wide array of perspectives. We will try to go beyond

OPENING REMARKS

Michael Waldman

President

Brennan Center for Justice at NYU School of Law

“silver bullet” claims that overstate the effect of single policy solutions. We will discuss proposals to reform institutional structures, such as legislative procedures, redistricting, and campaign finance, to ideas that might reduce cultural polarization and mistrust. Moreover, we seek to identify promising avenues for inquiry, identify the gaps in knowledge we need to fill, and begin to map out an action-oriented research agenda.

We expect that an open, facilitated discussion, with only brief presentations, will lead to ideas that many participants had not thought of previously.

We are hugely grateful to all of you for being here to grapple with a major challenge that faces the country we love. Our political system, our government, in fundamental ways, are broken. The question for us all is: what can we do about it? Not just to bemoan it, but what solutions can we advance so our government and our politics becomes a meaningful and powerful instrument of common purpose again for us all.

The topic and the timing couldn't be more urgent. You could probably say that at almost any point in American history — but we feel that the pressures on American democracy have been building for years and years. But in a tangible way in the past year or two, those longstanding trends towards dysfunction have tipped toward a kind of crisis.

Of course American politics, American governance never, ever has been tidy. It has never been linear. There's always been polarization. There's always been partisanship. There's always been intense fighting and occasional irrationality. I just spent much of the last year researching some early history of American constitutionalism, and I was struck by how many of the things we worry about today have been present from the beginning. Even the Founding Fathers had to pander to the Tea Party. (It was the actual Tea Party!) People were irrationally afraid of overreach from Washington since it was George Washington. And especially relevant to today, the very first partisan gerrymander took place in the very first Congressional election, when Patrick Henry drew a Congressional district to try to keep James Madison from getting elected to Congress. So many of these things didn't start last week or last year. They're baked into the DNA of American government. Most of the country's history has been long stretches of paralysis punctuated by occasional periods of progress, often-sudden progress. That's just the way it is.

But in recent years things have begun to happen that go deeper, that go in a more troubling direction than the norm in American politics and governance. We all know the litany: The shutdowns and the showdowns. The tribalism on Capitol Hill that supplants normal partisanship. The paralysis. More filibusters than in the previous century put together. A dystopian campaign finance system dominated by dark money, where billionaires proudly sponsor presidential candidates as if they were racehorses. Those are among the reasons why trust in government has plunged to the lowest level in decades, respect for Congress is unmeasurable, and why the Gallup Poll for the first time in years identified governmental dysfunction as the number one issue concerning people last fall.

Those are the immediate symptoms. In the statement of purpose we expressed the view that there is a fundamental mismatch between the institutions of American democracy and the forces of American politics. Grappling with that current mismatch is what this conference is all about. We believe that if we don't address these issues, things are only going to get worse for American governance. There's no magical automatic equilibrium that's going to reassert itself. And given the looming challenges we face — climate change, economic growth, economic inequality, taxes, tax reform, whatever it might be — if we don't fix the systems, we won't solve the problems. One of the premises of the next two days is that leadership isn't going to be enough, better sentiment among elected officials isn't going to be enough. That there are potential changes in the way we run our government, the way we run our institutions that need to be encouraged and addressed. All that is the bad news. There is good news, too. There are green shoots of reform. People are starting to really focus. Look at just in the last few months: We had the first steps toward filibuster reform in the Senate. We had small donor public financing come within one vote of enactment in Albany. Yesterday — and this shouldn't be newsworthy — the House of Representatives passed a clean debt

ceiling extension because of the recognition there would be massive political blowback if they were going to do anything else. People in power know that people are watching and are concerned. Later today we will hear from Bob Bauer and Ben Ginsberg, co-chairs of the bipartisan Presidential Commission on Election Administration. They're like figures from an alternate universe where people from both parties can get together and solve divisive issues. They will talk to us about how they got that done, and what lessons we can learn. So there are positive trends and positive stirrings.

And your presence here is evidence of a further positive trend: outside the government and outside the political system, people are starting to really work on this. Now we all care about these democracy issues, we've all grown increasingly alarmed by the crisis and dysfunction — but in many ways we've worked in our various communities. We've had conversations among ourselves, whether it's funders or scholars or activists or journalists. So one goal for today is to bring those different communities together. The collision of those views can be useful, and there can be mutual education and mutual agreement too.

We want to encourage you to think about proceeding with a few thoughts in mind.

First, we want to focus on solutions. It's too easy to slip into an analysis of the problems, of root causes. And we do have to ask some of those questions. We will talk about redistricting. Does gerrymandering deserve the bum rap it gets as a driver of polarization in Congress? Analysis is something we're good at — but it is emphatically not enough. I believe passionately that there is a craving for the next generation of policy reforms in the area of democracy and governance, for people to engage with and rally around. It's hard, but there's a hunger for it — and there will be a movement in the political world if we can come up with some of those ideas. And we must recognize that they can't be stale. We can't ride into battle under a tattered flag,

with ideas were last new in the 1970s. We need to look seriously at the new positive trends such as the digital world, small donors in campaign finance, a whole bunch of other things — all to ask what about the next wave — not the last two or three — of reform ideas might be.

Second, toward that end we must ask ourselves tough and possibly disconcerting questions. We all have our preconceptions, we all have the ideas we've been wedded to for a long time. After all, if we were going to have a conference on political reform at any other point over the past century here in Greenwich Village, a lot of the theme and a lot of the agitation would have been: "How can we break the power of party bosses?" Well now we see some of the downsides, the weaknesses of parties that have come out of some of the reforms that people like me and many of us here advanced. We need to be honest about that. How do we have strong parties without bringing back Tammany Hall? How do we have a robust campaign finance system? How do we make government work not just so that it's clear and hygienic but that it actually can do the job? That's a challenge but we need to "think anew," as Lincoln said.

And finally I hope we'll recognize that change of this kind requires a political strategy. "Dysfunction concedes nothing without a struggle," as Frederick Douglass never said — but if he had said it, he would have been right. You've never had political reform, you've never had substantial change in the way government works without deep public support. And so what that means is that as we talk about ideas, we have to think simultaneously about the strategies to enact those ideas. This is not a matter for the left alone, or the right alone, or the center. We've got folks here representing all those political approaches. We think that there is potential common ground . . . but even more that there is uncharted ground with the vast territory of the American public who are mad at government and mad at politics and don't view themselves in any distinct ideological camp. I am always reminded of a signal moment in American politics around these

issues. Twenty two years ago Ross Perot got 19 percent of the vote as a third party candidate talking about the dysfunction of American government and the brokenness of American politics after it was clear to everybody he was out of his mind. Normally American political change when that happens one of the two major political parties co-opts that new force. That's what FDR did with the Progressives, and what Nixon did with the George Wallace vote. But after 1992, that didn't happen. That Perot vote and the millions beyond it are the jump ball of American politics. They choose who wins the elections. They've taken on new forms, some good, some bad but there is a public that can and must be engaged and not necessarily traditional ways.

What do we at the Brennan Center hope to get out of this conversation? We hope for new ideas, yes; new energy, a sense of common urgency, maybe a little common panic about what's happening and a common determination to work together. Not necessarily consensus about what ideas make sense, though that would be great. We want a research agenda going forward that we and other groups can focus on. What do we know? What don't we know? What will we need to know to be able to make change? At the end of the conference we don't want people to just walk out feeling that they were happy to be indoors in a warm and welcoming space. We're going to be producing, for example, a book of some of the ideas. We hope some of them will come from you, and that you can participate in that. We'll be creating a communications hub to keep the conversation going, and a research agenda. But I want you to keep that in mind, from the beginning and think about way we can continue the conversation if it is fruitful going forward.

Larry Kramer

President

The William and Flora Hewlett Foundation

The importance of the topic goes without saying, so I'm not going to say anything about it. The one note I want to underscore is that the problem we are discussing today is shared across the ideological spectrum: whether you want government to do more, less, nothing, or something different, you can't get anything done. Even the libertarian, for example, can't get the government to do less than it does. Thus, the idea that we want a functional government that we can then work through to determine if it should do less, more, nothing, or something different, is what we're really after here. Today we are hoping to begin to see solutions and ways to move that idea forward.

There has been, and continues to be, a lot of analysis as to what the problems are. Even with all this research, however, there are important knowledge gaps that remain. But really, new thinking about ways in which we can get things moving in the right direction is the most important thing now, because we can't wait that much longer. So the key things that we're looking for, and I just want to underscore what we hope will come out of today, is first and foremost, fresh thinking. There is a lot of conventional wisdom out there, much of which we think is bad, and much of which is contrary to a lot of research. Getting beyond that, and beginning to get an understanding of both what is not right and what is possible, is a really important thing that we need to talk about and to share. This is one of the reasons that we are so happy to see academics and activists together in the same room, sharing ideas, as opposed to having separate conversations. When I moved from the academy into the foundation world, one of the most striking things to see was just how much research we were funding but not using ourselves. A lot of foundations fund a lot of research, but don't necessarily talk to the people whose research is being funded. This realization was paramount

when it came to thinking through how we wanted to approach problems ourselves. This is also true for a lot of the activist organizations, so conversation is a good way to begin to develop fresh ideas and fresh thinking about how to solve some of these problems.

The second goal of today's meeting is to begin to develop long-term thinking about the problems. We need to worry about the system as a whole and not whatever short-term or medium-term partisan gains we can get out of it. This is, of course, a major problem when you begin to push any idea forward because everything that we might do has a short-term consequence that favors either the left or the right. Getting both sides to understand that, regardless of the short-term consequences, in the long run these proposals are all going to be ideologically neutral is a very difficult feat. Additionally, it is imperative to convince both sides that the best way to compete for support and promote ideas is not to try and exclude portions of the populace, but rather to make the system accessible and workable as a whole. That's a long-term proposition and not a short one.

Related to that is the idea of thinking indirectly, in terms of solutions, rather than directly. Every organization and funder here has a substantive agenda and not just a procedural one. If you're thinking in terms of what we are going to do now that will advance your substantive agenda immediately, then this process of democratic reform will itself become just one more contributing factor to polarization. The only way we're going to get beyond the polarization debate is if people can put those agendas aside and say what we're after in this work is, indirectly, to create the conditions in which we can begin to directly argue and fight for our agenda. If the agenda is strong, we'll prevail in that fight, regardless of what the agenda is. To me, that's true whether you're on the left, the right, or in the center.

The last thing that we're looking for, and one of the things we're most excited about, is to get funders aligned

THE GOVERNMENT SHUTDOWN: A CASE STUDY

around this process. The audience here is comprised of academics, activists, and quite a few funders. And in that connection I want to underscore what Michael said about not holding back. We funders, we're not that thin-skinned. Feel free to criticize us and tell us what we're doing wrong, or what we're not doing or should be doing. Most importantly, feel free to just talk openly, because we have no interest in funding things that aren't going to work just because we think they might be the right thing to do at this very moment. That's an important part of the conversation, and I hope having us here really becomes part of a process of getting all of the funders aligned in terms of what we're supporting. The problem is so large that if funders approach this the way they traditionally do, which is to think in terms of a particular little program and what can we do to advance that forward, we're not going to solve the problem as a whole. This is not worth doing if we're not going to solve the problem as a whole, just to be able to boast at the end that we achieved little reform X in five states, but then did not actually do much to solve the larger problem of polarization. If that is going to be the case, there are other areas where we could have more of an impact. An impact in this is going to be measured, and needs to be measured, by some sort of broad solution, and that's only going to happen if we are all working together. So the last thing we would like to see come out of this meeting is to begin to get everybody, if not on quite the same page, at least within the same chapter.

Thank you all for being here, and I'm really looking forward to hearing what you all have to say.

Moderator:

Joe Goldman, Director, Democracy Fund

Panelists:

Jamelle Bouie, Staff Writer, *The Daily Beast*

Thomas B. Edsall, Columnist, *The New York Times*, Professor, Columbia Journalism School, author *The Politics of Austerity*

Norm Ornstein, Resident Scholar, American Enterprise Institute, author *It's Even Worse Than It Looks: How the American Constitutional System Collided with the New Politics of Extremism*

Neera Tanden, President, Center for American Progress

Even a fiasco can teach valuable lessons and illuminate broader trends. The 16-day federal government shutdown in October 2013 offered a case study in several dimensions of dysfunction. The collision was far uglier than typical budget gamesmanship. The threat to use the debt ceiling as a negotiating tool, coming after the similar crisis in 2011 that led to a credit downgrade for the United States government, was merely the most novel and jarring element. Longstanding divides between the parties, the pull toward the extremes, and the inability to find compromise even when a solid majority would prefer it. All played their part. This first panel was asked to dig below the headlines to examine deeper causes and underlying trends, including demographic change, economic stagnation and inequality, partisan media, and the rise of outside funders and factions influencing elections. The panel set up four questions, which helped to inform the discussion over the rest of the conference.

Are the causes of our current gridlock institutional or cultural?

Are the American people themselves fragmented — with our institutions merely an accurate reflection of a fractured country? Or is the dysfunction of political institutions a result of the structures of the political and governmental system?

Some argued that political dysfunction stems from long-term demographic shifts. New York Times columnist Thomas Edsall suggested that a period of dramatic racial and ethnic change, particularly at a time of little or no economic growth, inevitably would place enormous stress on democratic institutions. Because of economic stagnation and budget austerity, government negotiations have “become a zero sum proposition” where “my gain is your loss and vice versa.” In this context, cutting a deal becomes painfully hard. The Daily Beast political reporter Jamelle Bouie proposed that polarization is a manifestation of fear and frustration among white working-class voters. Until the last two presidential elections, it was not possible for either party to win a national election without the support of white working-class voters in Rust Belt states or the South. That has caused these voters to try “to prevent or lock in the status quo that benefits them before everything changes.” Participants pointed to other aspects of the cultural divide: Stetson Law Professor and Brennan Center Fellow Ciara Torres-Spelliscy pointed to the growing gap between religious and secular Americans; Hofstra Law Dean Eric Lane raised the decline in civic education nationally.

Others saw political polarization in society as a result, not a cause, of institutional gridlock. Communications Workers of America president Larry Cohen argued that breakdowns in political and social institutions leave people mistrustful and disengaged, leading them to an angry tribalism. In a later conversation, Deepak Bhargava, of the Center for Community Change, noted that one reason for the breakdown in Washington is that mediating institutions that anchor the social consensus — such as mainline churches, authoritative media, and labor unions — have been steadily in decline. Without such institutions, it is harder for political leadership to gain broad popular support or acceptance for compromise.

The Joyce Foundation’s George Cheung and FairVote’s Rob Richie both identified partisan redistricting as an

institutional structure that exacerbates polarization. The Raben Group’s Joe Onek argued that political primaries, particularly among Republicans, create a vicious cycle in which voters are turned off, turnout drops, and the electorate participating in primaries narrows. The outcomes veer further toward the extremes and away from the median citizen. Onek pointed out that intensely ideological groups such as the Tea Party can disproportionately sway lawmakers merely by threatening to run in primaries against them. Even if those activists can field candidates in only 25-30 primaries, there are hundreds of Members of Congress who fear they may face such an opponent.

Regardless of whether the roots of polarization are in society or in our institutions, many were concerned that what the American Enterprise Institute’s Norm Ornstein called the “permanent campaign” has infected the general public. This creates additional barriers to reform, especially in light of the absence of moderating mediating institutions.

Is our current state of polarization new?

Do our current challenges have historical precedents that might lead to solutions? Ornstein argued that, in the 45 years he has closely observed Washington politics, the level of gridlock today is worse and different. Polarization alone, he argued, “doesn’t mean you can’t govern. [Retiring Democratic Rep.] Henry Waxman . . . is nobody’s idea of a moderate, but he managed to accomplish extraordinary things . . . getting substantial numbers of Republicans to go along.” In his view, our current dysfunction is a result of the expansion of the permanent campaign combined with the emergence of a team mentality that says “if you’re for it, I’m against it, even if I was for it yesterday.” Throughout the conference, Ornstein argued, as he has in his book *It’s Even Worse Than It Looks*, that there is a fundamental collision between the Madisonian system of divided powers, multiple veto points and checks and balances, and the new world

of hyperpolarized and endlessly-campaigning political parties. That institutional mismatch, he argues, is at the heart of current dysfunction.

Hewlett Foundation President Larry Kramer saw a longer arc, suggesting that both parties have been in a downward spiral toward ideological purity and raw partisanship for at least 30 years. “It’s true that the Republicans are now worse. But the Democrats, right before them, were worse than the Republicans before them . . . and as each party has been in the minority for some time, they have taken the tactics a little further.”

Is government dysfunction a self-correcting problem?

The Brookings Institution’s Jonathan Rauch offered the optimistic view that the worst might already be over. He pointed to growing frustration in the conservative intellectual movement over the Tea Party, and the rejection of the “Hastert Rule” (under which House Republicans refused to bring measures to the floor that had bipartisan support but not a majority of Republicans alone) in the debt limit vote as evidence of a looming “open civil war” among party factions. Others were less convinced, in part because, as the Center for American Progress’ Neera Tanden suggested, government failure may actually serve to benefit the Republican brand. Even if Republicans were to take a short term hit because of the government shutdown, if that contributes to the public perception that government is ineffective, Republicans may actually stand to gain over the long-term.

Others suggested that polarization and dysfunction may self-correct through demographic change. Tanden pointed to California as a possible preview of our national future. The Golden State also faced gridlock in public institutions for many years, during a period of massive demographic change and controversy over immigration and public services. Today, a multi-cultural coalition has “a clear ability” to decide who the

elected leadership will be, and California has “right-sized their resources to the government that they would like.”

Can political reform help ease government dysfunction?

Polarized politics takes place in an institutional context — one that mediates conflict, or exacerbates it. Kramer argued that the goal should not be to elect more moderates, but rather to determine what kinds of institutional reforms would allow even polarized representatives to find areas of compromise.

Some suggested that the California example shows that procedural reforms — including redistricting commissions and primary election reform — can make a difference. Others pointed to other changes there, suggesting that the end of gridlock in California resulted from the emergence of an ascendant electoral coalition and single-party control, not from institutional reforms that mitigate polarization.

Others expressed skepticism about whether procedural reforms could offer a solution to government dysfunction. Edsall noted frequent unintended consequences. Transparency, for example, is a reform that “people generally support but the reality is that the more you see how the sausage is made, the uglier it looks.” Earmarks, by contrast, are unpopular with the public, but they “are in fact what greases the skids in Congress [and their elimination] is one of the main reasons why John Boehner has such trouble maintaining any kind of control of this Republican caucus.”

*For the 2012 election, a bipartisan redistricting commission drew electoral boundaries. That was coupled with a new system for choosing lawmakers — the top two vote-getters in primaries ran in the general election, even if they were from the same party. To win, then, they must compete for unaligned voters or those from the other party. Observers

note that the candidates who won tended to be more moderate than might have been the case otherwise, even as party control by the Democrats strengthened.

Additional Questions and Next Steps

- Another era when governmental institutions seemed frozen and incapable of grappling with changing demographics and party alignments came at the turn of the 20th Century. At that time, Progressives from all parties worked to change government's role and enact institutional reforms, ranging from direct election of Senators to campaign finance laws to granting women the vote. Can we learn anything from the transition from the Gilded Age to the Progressive Era?
- Are there models we can learn from at the state level? What could we learn about the impact of demographic change from California? Are there examples of successful state governance, without gridlock, in "purple" states? Many were interested in seeing more in-depth studies of state governance and institutions, particularly in California and other states that have implemented reforms.
- Is there a relationship between the dysfunction in our national government and the much noted breakdown of other national, regional, and local civil society and mediating institutions — such as churches and unions? If so, is there a way to rebuild some of these external channels of voice and representation?
- The move to end earmarks was not a central goal for political reform groups. But it proved a potent rallying cry for conservative politicians — in part because it melded concerns over corruption and self-dealing with a critique of spending by "big government." This harkened to an earlier era, when the "radical middle" of voters attracted to candidates such as Ross Perot provided powerful

support for lobbying reform, campaign finance reform and other measures. Is there a similar "Fox News/MSNBC coalition" to be had — or is the very political climate so divided that cross-partisan, cross-ideological efforts would be futile? (Note: This is separate and apart from the question of whether banning earmarks was a good idea.)

GOVERNING STRUCTURES AND CONGRESSIONAL REFORM

Moderator:

Caroline Frederickson, President, American Constitution Society

Panelists:

Larry Cohen, President, Communications Workers of America; Founder, Democracy Initiative

Eric Lane, Dean and Eric J. Schmertz Distinguished Professor of Public Law and Public Service, Maurice A. Deane School of Law at Hofstra University, co-author *The Genius of America*

Frances E. Lee, Professor, University of Maryland, College Park

Joe Onek, Principal, The Raben Group

Jonathan Rauch, Senior Fellow, Brookings Institute, author *Rescuing Compromise*

As has been widely noted, the American governing system is rooted in checks and balances — and this Madisonian model now collides with ideologically pure, increasingly polarized parties. Are there ways to reform the workings of Congress to improve the way government works? How does the interplay among the three branches affect governmental gridlock? After the “nuclear option,” which reduced the ability of the minority to filibuster nominations, should the U.S. Senate embrace further reform? How about the House: should it reform to committee structures, leadership powers, discharge petitions, or otherwise? What other changes are needed? This conversation focused on the institutional changes that could help to move beyond gridlock, and explored paths to achieving these reforms.

What procedural reforms could help ease current gridlock?

University of Maryland’s Frances Lee explained that our system of separated powers may have the value of preventing tyranny and forcing compromise, but it also encourages irresponsible behavior. “Parties that have the power to govern expect to be held responsible for governing failures. But in the U.S., neither parties nor Presidents can govern because power is divided in such

complex ways. Politicians who do not have the power to deliver policy outcomes can and will legitimately blame others for failures and inaction, but this lack of accountability also gives them incentives to behave irresponsibly.” She encouraged thinking around mechanisms that enhance political responsibility, by pairing power with accountability. Reforming Senate procedures to move even further towards majority rule would have that effect, she argued. Elected officials and political parties, she added, should be strengthened relative to outside groups.

Larry Cohen of the Communications Workers of America, one of the leaders of the lobbying drive to curb filibusters, noted the Senate’s role as graveyard for progressive ideas from the House of Representatives — and observed that the recent rules change had led to confirmations of executive branch officials to protect consumers in finance and other areas. He urged continued efforts to revise Rule 22, the rule that governs debate in the Senate. The American Constitution Society’s Caroline Frederickson mentioned the possibility of banning fundraising during legislative sessions to encourage legislators to spend time with each other rather than donors.

Reflecting on his own recent work in the House, The Raben Group’s Joe Onek suggested reforms to the discharge petition — which requires 218 votes and a thirty-day wait to bring a bill to the House floor for consideration — including shortening the waiting period and making the petitions secret until discharge, as they were until 1993. Without reform, it will continue to be difficult or impossible to get votes on bills opposed by party leaders since rank-and-file members will not want to be seen as betraying party leadership. Another reform Onek suggested was to allow party leaders to control more resources. As described more fully below, Jonathan Rauch said that reform should focus on strengthening party leaders’ ability to bring their members in line.

Michael Waldman expressed concern over the disappearance of congressional committees as a rival source of power to party leaders and caucuses. Throughout the 20th Century, standing committees played the central role in the legislative body. That maximized the power of chairs, for better or worse, but drew on their status as incubators of compromise and repositories of expertise, as well as easy targets for lobbying and special interests. The role of these committees is now greatly diminished, minimized first by party leaders (in the 1970s) and then by the caucus (in the 1990s and now). Waldman suggested that we consider reforms to restore the importance of committees.

Some participants suggested there may be limits to how much rules reform alone would do to fix dysfunction. Lee explained that inter-party cooperation is challenging given the “ferocious competitiveness of our political system.” She argued that we “can hardly blame politicians for...continually focusing on the next elections, when the prospects for changing power are so great.” Lee said that few periods in American history have seen such close parity between the parties in political strength, with control of the Senate changing hands every few years. Such an equilibrium breeds intensely competitive behavior. Ornstein pointed out that even if we were able to adopt a dramatic rules change — like a move to a parliamentary system — we lack “a culture that gives legitimacy to the decisions made even for those who don’t like them.” He cited Daniel Patrick Moynihan’s observation that America doesn’t do broad social policy change without broad bipartisan leadership consensus, which is why the policy accomplishments of President Barack Obama’s first two years have been continually under attack and delegitimized. Hofstra University Law School’s Eric Lane suggested that a major problem is really in the level of citizen interest and engagement with the project of governance. He argued that few American citizens can rally around rules reform when they don’t have the requisite knowledge about political leaders or the political process. What we really need is a recommitment to civic education in our public school system.

What are the potential paths to rules reform?

Cohen described the success of the Democracy Initiative, a coalition of labor, civil rights and environmental groups, in energizing organizational membership around seemingly arcane process issues. The key, he explained, was to link rules reform to broader political issues that touch daily lives. Cohen explained how the Democracy Initiative was launched by a group of large membership organizations to build a popular movement around these kinds of structural reforms. He said that it “became very clear that if we don’t tackle the procedure in the Senate and link it to these other issues . . . money in politics, voting rights, we really don’t have a path to the kind of economic and social justice that motivates so many of us.”

Additional Questions and Next Steps

- Beyond filibuster reform, what other procedural mechanisms could help reduce gridlock or promote compromise? Should the procedures for discharge petitions be changed (or would that merely lead to chaos in the House)? Should the other “veto points” in the legislative process be eliminated so that individual or a minority of members will no longer be able effectively to prevent legislative action?
- Are there differences in the types of procedural reforms appropriate for legislation and for nominations? What is the actual impact of last year’s changes to the filibuster rule for executive and judicial nominees in terms of the number of nominees confirmed, the types of nominees confirmed, and the background of subsequent nominees? Should the other procedural hurdles that gained prominence be reformed as well? In particular, with respect to judicial nominations, should the “blue slip” process, whereby no nomination goes forward without the written approval of both home state senators, be reformed or abolished?

- Are there protections for minority rights (as present in Germany’s legislature, for example) that could be coupled with greater ability to enforce majority rule? Most focus has been on the Senate: what about the House?
- The great struggles over congressional rules in the past were proxies for larger social reforms. The battle to curb the power of the speaker in the early 1900s was driven by frustration over the failure of regulatory proposals such as workplace laws. The fight to change Rule 22 — which was waged for two full decades before culminating in 1974 — was driven by thwarted majorities for civil rights legislation. Is there a similarly popular proposal today blocked by congressional gridlock or obstruction? If so, can that be yoked to reform energy? If not, is there really a problem? If the phenomenon is more complex — e.g., climate change legislation is intensely necessary yet politically dicey, hence easily blocked — how does that affect the political calculus?
- Is the reduced role of congressional committees a good or a bad thing? Are there rules changes (in how committee chairs are chosen, for example) that would restore power to committees? Similarly, are there budget rules (such as a restoration of the role of the appropriations committees) that can foster effective governance?
- If polarization and hyper-partisanship are now inevitable, are there ways to shift institutional procedures so that partisan combat does not escalate into crisis? Specifically, is a change in the debt ceiling law worth attempting — or is it politically impossible?
- How can rules changes strengthen the ability of party leadership to manage legislative bodies? Should some “successful” reforms (like the elimination of earmarks) be reconsidered?
- Is the problem of political dysfunction due to the absence of leadership? If so, what are the factors that are contributing to this void in the party leadership? Are they correctable — or are they an inevitable consequence of long term trends like the move towards more complete political participation and the decentralization of communications? If so, are there spaces for productive leadership outside of the traditional party and institutional structures?
- To what extent is government dysfunction due to a breakdown of cultural norms within institutions? Can these norms be rebuilt? Are there lessons and models from other types of organizations that could be helpful in understanding these challenges?
- What changes to the filibuster rules would be most effective in ensuring majority rule while preserving minority’s voice? Can we learn anything from practices in state legislatures?

POLITICAL MONEY AND ECONOMIC INEQUALITY

Moderator:

Mark Schmitt, Political Reform Program Director, New America Foundation

Panelists:

Michael J. Malbin, Co-Founder and Executive Director, Campaign Finance Institute

Heather C. McGhee, President, Demos

Ciara Torres-Spelliscy, Assistant Professor, Stetson University College Law, Fellow, Brennan Center for Justice

Political money long has warped policymaking and limited policy choices. It appears to also worsen dysfunction, but reform options are rarely viewed through this lens. This panel was asked to consider whether and how big donors and the flood of outside money drive polarization, as well as how the threat of independent spending affects legislative behavior. Of course, after *Citizens United*, outside spending is even harder to curb than ever. Given constitutional curbs, what reforms might make a difference? Have previous changes helped create this dystopian system — and what can we do to avoid those mistakes going forward?

Has independent spending deepened polarization?

Since *Citizens United* and *Speech Now*, campaign spending has shifted abruptly toward independent spending. Does the new world of “dark money” and Super PACs have an especially egregious impact on polarization and legislative dysfunction? The New America Foundation’s Mark Schmitt suggested that outside spending has helped to reinforce the process of ideological polarization that has been occurring in the country. “The people who often built bridges between the parties in the past were people who were able to win on the other party’s political turf” such as southern Democrats and northern Republicans. They “had a political incentive to actually work with the other party because that was actually a majority of their constituency. . .” Now, independent expenditures can be made to “remind people which side you’re on.”

Even very flawed candidates, like South Carolina Rep. Mark Sanford, are able to win in a strongly partisan district. Ironically, some participants noted, the very transactional and even corrupting nature of traditional campaign contributions served to moderate ideological factions.

The Brennan Center’s Michael Waldman asked whether public finance systems can be successful in the era of unlimited independent expenditures, citing the experience of the Wisconsin judicial public financing system. (Spending by candidates for statewide judicial positions in 2011 were matched and in some cases exceeded in spending by independent expenditure committees. The state later repealed the program.) Malbin said that independent expenditure groups typically go after candidates “who have problems for other reasons.” He gave the example of Senator Lugar, who had “lost touch” with the state. Malbin explained that small donor public finance systems can help to counter this effect by placing more value on in-district donors because it deepens the candidate’s ties with her own constituency. Other types of public finance systems do not have that impact. But if correctly designed, public financing can create a comfort base that helps to protect candidates from outside money.

Several participants noted that recently introduced federal legislation on campaign finance would help reduce this polarizing effect. Democracy 21’s Fred Wertheimer asserted that a bill introduced by Reps. David Price (D-NC) and Chris Van Hollen (D-MD), modeled on the New York City system that provides public funds to match small contributions, would also work to shut down candidate-specific Super PACs and put teeth into the coordination rules to help limit the impact of independent expenditures. Fund for the Republic’s Nick Penniman asserted that the similar plan introduced by Rep. John Sarbanes (D-MD) is designed to connect candidates with the community and provide enough money to protect them against outside attacks.

Is government gridlocked — or is it actually working, but only for the benefit of the wealthiest Americans?

In a time of widening economic inequality, perhaps “gridlock” is the wrong frame. Demos’ Heather McGhee argued that relevant polarization arises not by party, but by class. The widening divide is between the political class — elected officials as well as donors — and the rest of America. On core economic issues — the role of regulation, taxes, deficits, the minimum wage, and the role of labor unions — American government is responsive only to public preferences expressed by the most affluent citizens, which differ substantially from the preferences of rest of the country. Seen broadly, governmental policies on taxes and other distributional concerns are entirely “functional.” Cohen and Rockefeller Family Fund’s Leslie Lowe offered the example of Congress’ ability to move quickly on trade agreements, even while other legislation and nomination remains stalled. (Of note: those agreements have long been governed by procedural rules such as “fast track” authority that minimize obstruction. Even so, in recent years trade pacts have faced as difficult a path to enactment as other measures.) This raises the question of whether, if the dysfunction problem is defined as a lack of representativeness based on income, the solutions are different than those proposed to resolve polarization between the parties?

Are there policy reforms that can help to realign government action with voter preferences?

McGhee suggested that public financing is part of the answer to dysfunction because it can make the system more responsive to voters rather than to the donor class. She pointed out that in Connecticut, where public financing has been adopted, it has bipartisan support.

Michael Malbin of the Campaign Finance Institute (CFI) explained that the core problem of dysfunction stems from lack of participation. He referenced the work

of Sidney Verba, Kay Lehman Schlozman and Henry Brady in a recent book, *The Unheavenly Chorus*, calling attention to “the three Ms” — means, motivation, and mobilization. Small donor public financing can help bolster participation because it “create[s] an incentive for some of the best mobilizers in the country — the candidates — to shift their attention.” CFI’s research conducted with the Brennan Center shows that small donor matching funds in New York City make a big difference in terms of both the number and diversity of those who give small contributions. Malbin did caution, however, that public financing does not cure all ills. He suggested that boosters of these systems have the modest goal of creating “countervailing sources to give candidates alternative sources of funds that will get the candidates and representatives involved in connecting constituents to the political process and bringing them out.” Achieving that goal might help move toward compromise and action, because big donors would be less able to hold single-issue threats over the agenda, but we should avoid overstated promises about the possible benefits of even an ideal campaign finance regime.

Is there a tension between a functional government and a representative one?

While campaign finance systems based on encouraging small contributions through public funds are an increasingly appealing alternative, some wondered if such systems feed party polarization, either by encouraging extremist donors or making it easier for extreme candidates to run. Jonathan Rauch suggested that if we are concerned about “reattaching politicians to hierarchies and structures that can discipline their behavior, then actually small donor matches might be a step in the wrong direction, because it makes them even more independent entrepreneurs than they really are.” Malbin responded that his research does not support this claim, at least as to small donor systems. His research suggests that small donors are no more extreme in their issue positions than large donors and the candidates supported by small donors are pretty

much the same ideologically as their co-partisans in Congress. Waldman pointed out that while extremists were elected under the public finance system in Arizona, they were also elected in many other states that did not have public finance systems.

Are there other types of reforms that could have a positive impact?

Other ideas for potential money in politics reforms included a greater focus on regulating corporate money with enhanced pay-to-play laws and increased disclosure for corporate political spending by publicly-traded companies. Ciara Torres-Spelliscy, a Stetson Law professor and Brennan Center Fellow, suggested that more research is needed to determine the true cost of corruption — to shareholders and taxpayers — to support regulatory reform. Penniman encouraged more thinking on lobbying reforms — including capping lobbyist contributions and barring members of Congress from fundraising from lobbyists and executives in the industries regulated by the committees on which they sit. Malbin said that reformers should be more serious in the design stage, ‘making sure they address current problems.’

Rauch asked whether this conversation — with its focus on incremental rule changes — is relevant given that the “old paradigm is irredeemably broken.” He encouraged the group “think in more creative ways about what [can actually be done] in a Koch brothers’ world.” Malbin responded that “the whole of idea of trying to bring more people into the system, instead of regulating problems out of the system,” is a new approach. It’s “a way of expanding the game.” Common Cause’s Karen Hobart Flynn noted that there could also be an enhanced role for the parties in a public finance system because they have the expertise that state-level candidates lack in organizing small donor fundraising.

Is the issue of campaign reform itself now inevitably a partisan cudgel? In the past, the push for reform was led by lawmakers from both parties (Theodore Roosevelt

and Ben Tillman, John McCain and Russell Feingold, etc.). Now it has become a cause identified principally with the left. The Bauman Foundation’s Gary Bass pointed out that more people need to care about these issues for money in politics reforms to happen. He gave the example of the draft executive order on contractor contributions, which generated no popular support and significant industry backlash. Wertheimer added that no major campaign finance reform bill has passed without significant Republican leadership and support. In our current polarized climate, Wertheimer suggested, it will require mass mobilization to generate Republican interest in money in politics reforms because “they are very suspicious that this legislation is tilted against them.” McGhee suggested that this is possible, given that there is majority support even among Republican voters for clean elections reform options. But the Brennan Center’s Lawrence Norden said that in New York State, it has been challenging to translate popular support into political will. Republicans in the State Senate uniformly opposed public financing last year, “despite the fact that if you look at the polls in New York State, a majority of Republicans will say that they’re in favor of a small donor matching system — and despite the fact that . . . small and medium sized businesses who are often a big Republican constituency feel that because they can’t make the kinds of contribution bigger interests can, that they’re locked out.”

Additional Questions and Next Steps

- What has been the impact of independent expenditures and “dark money” on polarization? Are these different from the general challenges of the campaign finance system? Can we show empirically what has been stated anecdotally: that polarization is worsened by lawmakers fearful above all of independent spending by groups like the Club for Growth in primary elections? Has the increase in outside spending in recent years crowded out moderate or pragmatic voices? Can we figure out who is making independent expenditures and where that money is going?

- A theme throughout the conference was the need to strengthen party leadership. How does the current campaign finance system undermine or strengthen party leadership? Do Leadership PACs play a positive role or a negative role?
- Given the collapse of rules (abetted by increasingly bold Supreme Court decisions), would we be better off to abandon the pretense of campaign finance limits altogether? Some noted that a deregulated system exists in some states; has there been a positive correlation between deregulation and functional government? (The example of Albany suggests perhaps not.)
- Given the erosion of limits on outside spending and the growth of new political spending entities, like Super PACs, do contribution limits no longer make sense? How much coordination is there between candidate-specific Super PACs and candidates?
- Are there new jurisprudential directions that can support a campaign finance system that would reduce government dysfunction and polarization or make government more responsive to all citizens?
- Moving beyond campaign finance laws, how do we ensure access and accountability between elections? Is it possible to level the lobbying playing field, given the First Amendment right to petition government? In other eras, advocates and scholars grappled with ideas to create “countervailing power” to existing corporate influence on government — from the union dues check-off to the Citizens Utility Boards. Court rulings neutered many of these. Are there new ideas for giving citizens greater voice outside the campaign finance rules per se?
- Small donor matching is one way to bolster political participation. Are there other ideas for democratizing the donor base that should be explored? What about tax credits? Vouchers?
- Are independent expenditures really independent? Are there constitutional ways to enhance the strength of federal and state coordination rules?
- Are public finance systems viable in an era of unlimited independent spending? Are there design characteristics that make these systems more or less attractive and competitive? What can we learn from the existing campaign finance models?
- Is small donor public financing polarizing?

OPPORTUNITIES FOR BIPARTISAN DEMOCRACY REFORM

Moderator:

Wendy Weiser, Democracy Program Director, Brennan Center for Justice

Panelists:

Robert Bauer, Partner, Perkins Coie, Distinguished Scholar in Residence and Senior Lecturer, NYU School of Law, Former White House Counsel

Ben Ginsberg, Partner, Patton Boggs, LLP, National Counsel, Romney for President, 2008 and 2012

In 2012, few issues seemed more prone to partisanship than voting. Alleging a risk of voter fraud, 19 states passed new laws that restricted voting in a variety of ways. Warning of potential disenfranchisement, advocates opposed these measures, largely prevailing in court. Few of the laws were in effect by Election Day. Yet ironically, a recent positive development has suggested a path forward on voting — one that might offer encouraging lessons for other issues.

President Barack Obama, in his 2013 State of the Union Address, announced a Presidential Commission on Election Administration. He named as co-chairs Bob Bauer, former White House Counsel and attorney for the Obama campaign, and Ben Ginsberg, the leading Republican election lawyer and former counsel for the Romney campaign. The panel released its recommendations this past January, drawing praise from conservatives and liberals alike.

What lessons did they draw? Both agreed that the nature of the task and the structure of the commission were very important to the cooperation and collaboration that ensued. Most significant was how the panel's challenge was framed: based on the idea that all voters should expect to be treated the way the best-run businesses treat their customers. Another factor that enabled them to overcome potential divisions was the technical approach the Commission took to its charge, which was greatly aided by the composition of its membership. The commission included three senior executives from major companies, as well as

five state and local election commissioners from both political parties, and so most of the participation on the commission was based on technical expertise, not party affiliation. In fact, only two political operatives served on the commission (the co-chairs), and their partisanship was acknowledged and balanced. Another factor was leadership: the co-chairs came to the task with a commitment to resolving the serious flaws in our voting system based on their shared experience with the problems of recounts. The panel agreed to shelve contentious topics such as voter identification, which would have prevented agreement. Similarly, the participants took pains to frame their discussions in neutral terms and to avoid formulations that would raise partisan hackles.

The Brennan Center's Wendy Weiser asked Ginsberg and Bauer to reflect upon which of these lessons could be translated to other problems of institutional dysfunction. Bauer suggested a need to “reset the conversation” to avoid the political triggers that prevent real dialogue. This means “letting of invective.” “When people talk about dysfunction of government, often they mean that the policies they prefer aren't passing.” Most policy issues aren't zero-sum, but when they are portrayed that way, people begin to appeal to principle as a reason to avoid compromise. Ginsberg said that going out into the field where different reforms had been tried and evaluating their effects really helped separate the problems and their solutions from the political context around them. Both emphasized the need to protect confidential spaces for full and frank discussion.

Asked whether their participation in a bipartisan effort created tensions for them within their own parties, Ginsberg noted that the parties are not monolithic creatures. In the commission, he was very conscious of using best practices developed by Republicans secretaries of state and governors. Bauer explained that the combination of clear cut party affiliation, years of dedicated service to the party, and deep subject matter mastery can help to manage “stirrings of discontent in

the ranks.” When asked where they changed positions or compromised as part of this process, Ginsburg noted that he moved on the need for early voting after hearing the positive experiences of election officials, and Bauer said that he moved on the need to use technology to share voter registration information across state lines.

Lastly, both Ginsberg and Bauer were asked about their priorities and plans for implementing the commission’s report. Both agreed it was important to reach out to state and local legislators, as well as community leaders, to educate them about the report and their recommendations. They also agreed that fixing voting machines is their highest priority recommendation.

Additional Questions and Next Steps

- Both Bauer and Ginsburg suggested that voting is distinctly susceptible to bipartisan cooperation, compared with other reform issues. Is that really true? Or was it the framing of the issue toward noncontroversial goals (customer service) that enabled consensus? Could such a reframing along common values be achieved in other reform areas?
- Technology provides a *deus ex machina* for many voting challenges. The panel endorsed voter registration modernization, which relies on digital technology and already-mandated computerized lists to reduce error and duplication of voting records — and widen registration. Are there similar uses for technology that can revive reforms in other areas (e.g., campaign finance)?
- One unstated factor that may have contributed to the success of the commission was its charge to focus on making recommendations for reforms at the state level rather than at the federal level—despite the fact that a broad majority of Americans support minimum national standards for voting. Freed from the polarizing pull of Congress, the commission came up with a series of “one size fits all” recommendations that could, in fact,

form the basis for federal legislation. Are there other creative uses of federalism that could help overcome gridlock and polarization in Congress on other issues?

KEYNOTE ADDRESS

Robert Gallucci

President

John. D. and Catherine T. MacArthur Foundation

Good evening. First, let me say how pleased I am to be here, both personally and as President of the MacArthur Foundation. The issues this conference addresses are timely, important, and compelling.

We have to address the “growing skepticism and cynicism with which Americans view their government, our conviction that our leaders are out of touch with, and don’t care about, the well being and the lives of ordinary people, and our belief that politicians see voters merely as pawns to be manipulated in the nasty chess game that Republicans and Democrats are playing against each other.” Francine Prose wrote that a couple of weeks ago in the *New York Review of Books*. It rings true with what I hear from many people.

Lack of trust in the political process cannot be good for democracy. But there are consequences of our present dysfunction that extend beyond alienated citizens.

For example, there are certainly consequences for philanthropy. I recently argued that, because almost all foundation work is done in a policy environment where government is the most powerful player, government policy is crucial to our success.

Foundation resources are tiny compared with federal or state budgets. If there is no policy, or just bad policy, in an area that we are trying to address — such as the environment, or our fiscal future, or energy — the organizations we support cannot make headway. The resources we invest buy less impact. So strengthening the causal chain of functioning democracy, good governance, and sound policy is in our interests.

MacArthur decided to take on the political process directly. We have funded work on the role of money in campaigns, the right to vote, and the modernization of voting systems. We also support efforts to make

evidence-based policy debate the norm in state legislatures and in the high-quality journalism that is necessary for an educated electorate.

I believe foundations, particularly if they coordinate their efforts, can make a powerful contribution in this field. It is good to see that several foundations are engaging in this effort and that good collaborations among foundations are underway.

But far more important than details of the system are the consequences of democratic dysfunction for the American people. Our present crisis goes to the heart of what this nation is about and threatens the American dream.

The President has put economic inequality at the top of the political agenda, calling it “the defining challenge of our time.” It is certainly striking — and increasing. In 2012, the top ten percent earned half of the nation’s income and the top one percent alone earned 20 percent. A quarter of the gains in income since the 2008 recession have gone to the top 5 percent.

“So what?” you may ask. America has never been about equality of condition or social levelling. But there is something troubling about this concentration of wealth for our system of government. Angus Deaton, the Princeton economist, writes: “The political equality that is required by democracy is always under threat from economic inequality, and the more extreme the economic inequality, the greater the threat to democracy.”

This strikes me as simple common sense. If money buys you more representation, then the game of democracy is rigged. The rules are simple: the rich become powerful and (just as dangerous) the powerful become rich. Is this happening now in America?

Look at some simple statistics. The last presidential election cost \$7 billion dollars. A Senate seat, on average, costs \$10.5 million and a House seat \$1.7

million. There are powerful incentives for politicians to pay attention to wealthy donors — electoral survival, to start with, but also the economic benefits that come with such relationships. It is striking that almost half our congressmen and senators, according to Mark Leibovich, become lobbyists when they retire and that, for the first time, more than half of our congressmen are net worth millionaires. Senators average out at \$2.5 million. Public service appears to pay well — or to be the preserve of the wealthy.

We should notice that seven of the ten richest counties in the U.S. are in the suburbs of Washington, D.C. which, as Italian economist Luigi Zingales points out “produces little except rules and regulations.”

Some of those rules and regulations are extremely profitable for the industries whose interests they promote. They underwrite an army of lobbyists. Our government produces a complex web of subsidies, price-controls, uncompetitive contracts, preferential tax policies, and other policy devices that protect special interests. They also distort the market, protect the status quo, and undermine innovation and opportunity.

The result is a nexus of power and money, government and corporate interests in synchrony, that exists to shore up its own position and maximize its own profits.

As a symptom, one could point to the Farm Bill that just passed, which (over ten years) adds \$27 billion to crop insurance subsidies for farmers who make up to \$900,000 annually, while cutting food stamps by \$8.5 billion for families of four making up to \$31,000 a year.

It does not seem an intellectual stretch to conclude that, when the political and economic winners collude to dominate politics, the concerns of ordinary people will not be at the top of the agenda. That will, more than likely, increase inequality and make economic mobility harder to achieve.

While I certainly think that we should be trying to reduce the undue influence of money in our political system, the obstacles to upward mobility is what exercises me most. And this is where I have personal experience. I am first generation. My father worked for United Parcel Service, my mother for Macy’s. My brother and I were the first to go to college, both to our local state university at Stony Brook. He’s now a Full Professor in Quantitative Sciences at the University of Washington. Not being as smart, I went into government. We both benefited from educational and job opportunities. So have our kids. But now I worry about my grandkids.

I can accept that changes in the global marketplace account for the stratospheric wealth of the new billionaires. But what has happened to the vast majority of people in the middle? Most models seem to show that their incomes have stagnated and that insecurity in the middle class has increased.

Worse still is the picture for those at the bottom where mobility has never been as good as we thought it was. Since the 1970s, only 9 percent of children born in the bottom quintile have made it to the top quintile as adults. More than forty percent stay in the bottom quintile all their lives and never get even a foot on the ladder.

This situation is exacerbated by the “great sorting” of our society — the process in which people have been moving to live with others more like them. Over 30 years, that has produced more areas of concentrated poverty from which it is harder to escape.

What should we do? I think there needs to be a national agenda for mobility, policies to open opportunity for those at the bottom of the ladder and to help those who have made it to the middle class not to slip back — and hopefully to climb higher. I hope to see this figure prominently in our next election.

MacArthur has not worked in this area, nor do we have plans, at the moment, to do so. But others have, and developed persuasive roadmaps. A few years ago, the Pew Economic Mobility Project developed a set of proposals, with bipartisan support, that would lend help where it is most needed and foster the behaviors that produce success.

Among the proposals were these: better early conditions for children and mothers, both in health care and education; stronger family life; more effective education from K through 12; accessible paths to post-secondary education; and assistance for low-wage workers to learn new skills. Financial education, with incentives to save for education, retirement, and home ownership, is another key component.

There may have to be sacrifices at the higher end of the income spectrum: changes to the subsidy for health benefits, the way we tax dividends, or the mortgage interest deduction. CBO calculates that, of the \$900 billion excluded from tax by the ten largest deductions, \$450 billion goes to the top 20 percent.

This is not glamorous, or easy. But, as a nation, we need to make good on the promise that if you work hard and play by the rules, you can get ahead.

America has become known as the land of opportunity. We need to make sure that it truly is. Our work, and yours, to strengthen voting rights, modernize voting practices, and decrease the impact of campaign finance and lobbying money on the political system goes to the heart of this issue. And renewing economic opportunity for all Americans should be a high priority for that political system.

My hope is for a reinvigorated democracy, responsive to the needs and aspirations of its citizens, building consensus and goodwill and serving the common good. That kind of government can pursue sensible, bipartisan solutions to inequality and lack of opportunity in the pragmatic and meaningful ways that most Americans clearly want.

This is, I know, an ambitious vision, but it is far from impossible. I think there is a grassroots movement stirring that wants to fix America, to rekindle the “last, best hope” that has drawn people here from across the globe. We should all be a part of it.

CULTURAL POLARIZATION

Moderator:

Nicole Austin-Hillery, Director and Counsel,
Washington, D.C. Office, Brennan Center for Justice

Panelists:

Brooke Gladstone, Host, *On the Media*, NPR

Reihan Salam, Contributing Editor, National Review,
Senior Fellow, R Street Institute

Dianne Stewart, President & CEO, Public Works

Sean Wilentz, George Henry Davis 1886 Professor of
American History, Princeton University

These panelists were asked whether Americans are as divided as our government and whether, in our long rambunctious history, that has always been true. The dinner conversation highlighted many of the same causes of cultural polarization that were raised in the earlier discussions, but then focused in on the problem of civic engagement and the role of the media, in either enhancing or correcting polarization.

Do Americans still care about government?

Public Works' Dianne Stewart contended that the challenge of engaging people with government reform is getting them to care about the practice of government in the first place. Her organization's research demonstrates that Americans do not think very much about government, and if they do, they tend to think of partisan wrangling, bureaucracy, and corruption. NPR's Brooke Gladstone echoed this conclusion, explaining that since 1980, 25 million people have stopped watching the news. In her view our focus shouldn't be "polarization, that intensifying loathing for each other, it [should be] disengagement." She cited a study by Markus Prior, who says that our country's "biggest problem is that the median voter has never been so bored." Princeton's Sean Wilentz agreed that historically, people have become engaged in times and places when neither party was dominant and, "in the contest over ideology, [people could] actually make a difference in [a] locality as well as nationally." But today we "have forms of entertainment, which are not

about being involved or not being involved. [They are] about opting out of the entire system."

Could the media help us reengage?

The discussion then turned to whether the media could be helpful in reengaging these "bored" voters. Gladstone referred to the success of the Daily Show and Colbert Report as a way of showing that when the news is told through stories, it can engage and inform. But National Review's Reihan Salam pointed out that despite the very low number of Americans who read news articles, name recognition for Edward Snowden is extremely high nationally. He concluded that Americans are getting important meaningful news that is connected to important meaningful narratives — even if they aren't accessing traditional sources. Salam suggested that "what's happening in media is that [we're] having a lot of people who are coming outside of traditional media, who are actually much savvier about narrative as a technology and narrative as a business, than people who are kind of inside of media." The Bauman Foundation's Patricia Bauman pointed to the importance of social media as a tool for engaging young people. Gladstone noted that this kind of online engagement is correlated with greater community engagement.

POLITICAL PARTIES AND CANDIDATE SELECTION

Moderator:

Daniel Stid, Senior Fellow, Hewlett Foundation

Panelists:

Jacob S. Hacker, Director of the Institution for Social and Policy Studies and Stanley B. Resor Professor of Political Science, Yale University

Richard Pildes, Sudler Family Professor of Constitutional Law, NYU School of Law

American political parties are more ideologically cohesive than at any point in the 20th Century. No longer are they coalitions of disparate, competing wings: northern liberal Democrats versus the white “Solid South”; Northeastern “Rockefeller” Republicans versus Taft Midwestern conservatives. Scholars hoped that ideologically homogeneous parties would yield greater responsibility and clarity of choice for voters. But as organizations American parties today are weaker, less able to steer candidates or manage issue priorities. This panel examined whether the erosion of party leadership has contributed to broken government. Are there effective solutions that would re-empower parties without stifling debate or risking a return to Tammany Hall?

How do political parties contribute to polarization?

The conversation began with an examination of parties’ role as a source of polarization. Yale’s Jacob Hacker argued that an accurate diagnosis of the problem requires acknowledging that today polarization is asymmetric: the Republican Party has moved to the right, both in the positions it takes and in its willingness to use what were once considered extreme tactics. This phenomenon pre-dates the rise of the Tea Party in 2010. This poses a challenge for scholars, journalists and nonpartisan advocates. It seems like “bad manners” to acknowledge this imbalance. Hacker urged reestablishment of pressure for moderation, which would require people in the media and in the public discourse to acknowledge this difference between the parties. NYU School of Law’s Rick Pildes

countered that that polarization is not a reflection of recent changes in institutional design or politics, but rather is a function of the long term historical political transformations associated with achieving full democracy in America. In particular, the extension of voting rights to African Americans in 1965 led to an ideological sorting of the parties. Because polarization is likely to endure, we should focus rather on “political fragmentation.” The problem he identified is that “the leadership of the political parties is far less able . . . to actually successfully organize and create discipline and unified agreements within their caucuses . . . to make the deals that are necessary to enable government to go forward.” Frances Lee, of the University of Maryland, challenged both of these explanations, suggesting it isn’t possible to distinguish between ideological and political party conflicts. What appears in historical graphs as divergence between the two parties may just be evidence of partisan “teamship” that has become more intense during a period of close electoral competition, with control of the presidency and both houses of Congress often in play.

Can the parties play a role in correcting polarization?

The conversation then turned to considering what role the parties might play in resolving polarization. Two different perspectives on this question emerged. The first is that electoral losses might eventually lead to a self-correction by the Republican Party. Harvard’s Elaine Kamarck suggested that another presidential loss might lead the Republican Party to begin developing new ideas to unify and expand their base, just as the Democrats did after losing to George H.W. Bush in 1988. She gave the example of the way in which the Democratic Leadership Council — in which she was prominent — built support for welfare reform in the 1990s.

The second emphasized the importance of adopting reforms that re-empower party leadership to “rescue compromise.” Earlier in the conference, Rauch said we need more mechanisms to strengthen party discipline.

We have a “crisis in followership,” he said, not a “crisis in leadership.” Rauch criticized progressive reformers for “systematically dismantling all of the tools that were used by party machines to enforce discipline and get followership going.” He suggested reintroducing earmarks, reversing transparency rules, limiting the significance of primaries to give party bosses more control, and eliminating contribution limits for candidates and parties. Lee pointed out Republicans in leadership positions were the ones who voted for the debt limit increase to make the point that “power itself is disciplining and induces some level of responsibility.”

Does broader political participation — through primaries — lead to dysfunction?

Is the problem public participation itself? The most significant change in how parties function, over the past half century, has been the rise of primaries as the way to choose candidates. The United States is one of the only nations where this is the norm. Is this cure for “bossism” worse than the disease? Jacob Hacker cautioned against generalized statements about the impact of participation. He cited greater electoral participation in mid-term elections and the empowering of groups representing broad middle class interests as developments that might be moderating. GWU’s Spencer Overton also questioned whether changes that weakened parties could be undone, given the impact of new media and independent expenditure groups.

Additional Questions and Next Steps

- Should reformers be focused on re-empowering party leadership? Is that even possible, given the decentralization of campaign financing and media? If it’s possible, would be it be desirable?
- Did McCain-Feingold go too far in channeling funding away from parties? Is there a way to ensure parties are adequately funded to provide leverage for party leadership? Do leadership PACs

and other means ensure that party leaders still can wield influence through controlling campaign funds?

- To what extent is party polarization a result of the permanent campaign? If we think of polarization as based on gamesmanship rather than ideology, does that change the range of potential solutions?
- What does Arizona experience with a public campaign financing system have to teach us about the relationship between democracy reforms and polarization? Is Arizona a success or failure?
- Where do candidates come from? Has that pool changed over time and, if so, how? Has the candidate selection process contributed to dysfunction?

GEOGRAPHIC POLARIZATION AND THE ROLE OF REDISTRICTING

Moderator:

Keesha Gaskins, Program Director, Democratic Practice, Rockefeller Brothers Fund

Panelists:

Kathay Feng, Executive Director, California Common Cause

Rob Richie, Director, FairVote

Thomas A. Saenz, President and General Counsel, MALDEF

Pundits say that partisan redistricting (or gerrymandering) is to blame for much of our recent polarization. But is that true? We do know that partisan redistricting after the 2010 election helped to tilt the House in the Republicans' direction. By one measure, the Democrats would need 55% of the vote nationally to swing the House back to Democratic control. But we also know that an increasingly mobile American population has gradually created a new geographic polarization, choosing to live with like-minded people in liberal enclaves and conservative exurbs.

This conversation on the role of redistricting centered on whether current reform proposals would help reduce polarization, and at what cost. The discussion focused on two types of reform proposals — independent commissions and multi-member districts with cumulative and rank choice voting systems.

Multi-Member Districts

FairVote's Rob Richie suggested it is not redistricting, but the practice of selecting our legislators in single-member districts through winner-take-all elections, that leads to polarization. A single-member district can elect only one legislator to represent its interests, even when the population leans just slightly toward one political party. In most cases, the district will be represented only by a member of the dominant political party. And once in power, that incumbent will have every incentive to redistrict in a manner that preserves the party's control.

Richie explained that multi-member districts offer one possible solution. Such districts, which send two or more people to represent the district in the legislature, have a long history in the U.S. Richie argued that it would be possible to bring them back, through the institution of ranked choice voting in multi-member congressional districts. Under this proposal, the voter would rank the candidates that are running for three to five seats in the district in order of preference, and certain mathematical principles would be applied such that her vote would be awarded to her highest-ranked candidate who garners enough votes from others to be elected. This would decrease polarization because it would award candidates who reach out to the largest number of voters, and because many districts would send representatives from both major political parties. It would also promote the ability of racial minorities in certain areas to elect candidates of their choice, because a candidate could be elected to office with considerably less than half the vote, effectively required to elect a candidate from a single member district.

Independent Commissions

Kathay Feng, of California Common Cause, shared Richie's view that increased polarization can be traced back to our redistricting system. She cited independent redistricting commissions as a promising solution, drawing on a recent reform passed by California voters in 2008 to implement the California Citizens Redistricting Commission. The Commission is responsible for drawing the boundaries for the state senate, assembly, and board of equalization districts. It is comprised of Democratic, Republican, and other (non-partisan or third-party) commissioners, selected to ensure a racially and ethnically diverse set of commissioners who represent all Californians. Although there has been only one election cycle since the Commission's first maps were put into place in 2011, Feng pointed to early indications that an independent redistricting commission can decrease partisanship. Although the Commission was not explicitly charged

with creating competitive districts, Feng noted that, at the congressional level, California went from “a dismal zero competitive seats to ten competitive seats.”

Considering Redistricting Reform Against the Backdrop of Demographic Change

MALDEF’s Tom Saenz questioned whether the California Citizens Redistricting Commission provided a long-term solution to the problems in our politics. He conceded the Commission did well in the last cycle (he would give it a “B+”), primarily because there was a strong push by the state’s foundations and nonprofits to make sure there was diverse membership on the Commission and diverse participation in the process. Without a similar effort in the future, there was no guarantee that such diversity would exist in future commissions in California, or in any other state where the independent commission model is tried.

He also cautioned that we should not premise structural solutions on “the continued long-term existence of the existing bipartisan, competitive framework.” Using California as an example, Saenz noted that it is completely conceivable that, in 20 years, there could be two major parties in California, but one of them might not be the Republican Party.

Saenz maintained that “fear of demographic change” has been a major driver of polarization, reiterating an argument made repeatedly throughout the conference. But we should not ignore or undervalue the importance of this change. We cannot ignore that “[t]his country is going to be dramatically different” as the Latino and Asian-American communities continue to grow.

Saenz also addressed Richie’s arguments for multi-member districts through the lens of community representation. He noted that racially polarized voting continues to exist all around the country, including in California, depressing minority turnout. We must keep this in mind as we weigh the benefits of switching to multi-member districts.

Additional Questions and Next Steps

- Rigorous research is needed: does redistricting in fact fuel polarization? If so, at what levels of government?
- Even if redistricting does increase polarization, what has been the impact of reforms? In 2012, two major states (California and Florida) instituted very different new regimes for line-drawing. California used an independent commission (akin to the ones used in Arizona and Iowa), while Florida relied on strong constitutional language that constrained the legislature. How did these fare? If reforms worked well, is there a single reform or package that would work in all jurisdictions, or should reform efforts be creatively tailored to each state or jurisdiction?
- California’s commission coincided with new electoral rules as well. How important was the combination of these reforms? Would a redistricting panel alone have had much impact?
- A significant amount of effort was expended to foster informed citizen participation in the post-2010 redistricting processes across the country. Did the increase in citizen engagement make a difference in outcomes? If so, under what circumstances?
- In addition to considering reforms to the redistricting process at the front end, should we focus energy on developing a jurisprudential framework that could allow successful attacks to partisan gerrymanders?
- Are traditional “reform” models — premised on a two party system — obsolete or near-obsolete?
- In decades past, reform efforts have foundered on conflicts between those concerned about electoral competitiveness and those concerned about

POLITICAL STRATEGIES

minority representation as goals of redistricting. Have demographic and political changes rendered this a false choice? Are there insuperable conflicts between these goals? Or must the answer come from moving past the single-member district model?

Moderator:

Michael Waldman, President, Brennan Center for Justice

Panelists:

Deepak Bhargava, Executive Director, Center for Community Change

David Frum, Contributing Editor, *The Daily Beast*, author *Why Romney Lost*

Trey Grayson, Director, Harvard Kennedy School's Institute for Politics, former Secretary of State (R-Ky.)

Elaine C. Kamarck, Senior Fellow, Brookings Institute, Founding Director, Center for Effective Public Management, author *How Change Happens—Or Doesn't: The Politics of U.S. Public Policy*

Any solutions require an effective political strategy. This panel was asked to consider whether and how we can build a strong democracy movement. How does political change happen when that political change is about political change? Can we kindle broad public enthusiasm for often arcane reforms? Is that necessary? What opportunities exist for bipartisan coalition building? Can reforms energize a progressive base and garner cross-party support?

Should democracy reforms be powered by public organizing and support?

Waldman launched the conversation by noting that while many had marched for democracy, “nobody ever marched for election administration.” At times in American history — including the Progressive Era, but others as well — structural reforms dominated kitchen table conversations. The Daily Beast’s David Frum noted that large elements of the democracy agenda have been implemented and that after each implementation things just got worse. Many of the ideas around which there is broad consensus, like breaking the hold of the parties over candidates and creating more transparency, have not necessarily turned out to be such great ideas. Similarly, Frum explained, there is broad consensus that change comes through popular participation,

rather than through elite consensus. He proposes, instead, that what Hamilton called “energy in the executive” is the key to improving government and making the political system work. Kamarck explained that it’s important to focus on finding the right level of conflict. “So if you can win something by going to the Ways and Means Committee, and getting three phrases stuck into the tax bill, well of course, that’s where you’re going to win it. Sometimes, however, . . . you have to go big.” Kamarck’s view was that change is often thwarted because people don’t “understand the level at which they ought to play, and the level at which they can win.” For any policy proposal, it is important to understand the proper arena for decision making — and choose accordingly. Different arenas compel different strategies and require different levels of public engagement. Schmitt noted that while these models are sometimes in conflict (because mass mobilization could make some issues around political reform more partisan and thus ultimately more difficult to resolve), there may be times when they can work together. An issue where the base has moved the elite: immigration.

How does mobilization for democracy reform happen?

With this frame, the discussion turned to strategies for generating a popular movement around democratic reforms. Kamarck emphasized that the solutions have to have certainty, citing the failure to reach consensus around a response to climate change as an issue in which the uncertainty of the solution and not polarization is to blame. She also explained that those solutions must be based on American values, giving the example of Franklin Delano Roosevelt’s Social Security plan, which adopted an American insurance model rather than a European social welfare model. (She quoted FDR’s famous aside, when asked why he couched Social Security as a requiring premium payments, “No goddamn politician is ever going to take Social Security away.”)

Center for Community Change’s Deepak Bhargava, who has been working with white low-income workers in manufactured housing parks around the country, commented on how similar their experiences and concerns are to those of the low-income communities of color he has worked with in the past on issues of mass incarceration, economic justice, and immigration reform. He said that in twenty years of organizing, he has never experienced such a “remarkable sense of disaffection, the sense in which people’s voices don’t count, that they are being trod upon by an elite class in America.” Bhargava suggested that we need to think about how to connect “that sense of disaffection . . . to democratic reform.” He suggested three avenues: First, through existing established organizations (such as the unions, environmental groups and others in the Democracy Initiative). Second, he suggested that activists ought to find ways to tie democracy problems to existing social movements, drawing on grassroots organizing underway on economic issues. Third, and “most disruptive,” through a project to make the electorate in America look like America. Efforts to bring young people, immigrants and people of color into the electorate would change the climate for reform and government policy.

Harvard’s Trey Greyson picked up this final comment to offer some concrete suggestions about how to change election administration. Trey suggested that all of these democracy reforms needed to start from a place of rebuilding trust. He explained that the closer the government gets to the individual, the higher the level of trust, so the focus should be on change in the localities and in the states. He suggested voter registration modernization and restoring voting rights to persons convicted of felonies as areas where bipartisan cooperation is possible.

**Are elites “seceding from the rest of the country?”
And what is the impact of increasing top-down
polarization?**

A final challenge that emerged in the discussion is whether the party leadership and elites recognize the danger of the broad disaffection and polarization. Frum argued that in the 1970s and 1980s, the broad middle saw its interests aligning with those of the people above them. That is no longer true. People at the top insist on continuing “economic policies that hugely advantage the people at the top and that are not so good for the people in the middle. At the same time, those on top insist on continuing the accelerating process of immigration and ethnic change from which the people on the top clearly benefit and which people in the middle find economically and culturally threatening.” Bhargava agreed “the elite have in some way seceded from the rest of the country.” We “can see the strands of populist revolt brewing in the country, which ... could have very positive democratic consequences.” But he “remains surprise[ed] there is not any kind of elite effort to even smooth out the edges of a brutal economy.”

**Will these problems solve themselves? How
important is it to forge a political strategy for
change?**

Brennan Center Fellow Walter Shapiro quoted the economist Herb Stein: “If something can’t go on forever, it won’t.” He noted that much of today’s dysfunction seemed rooted in divisions within the Republican Party. He asked “whether many of these problems, not the big problems, but the level of out-of-control dysfunction, would just go away on its own in the natural rhythms of American politics.” Frum challenged that view, saying it had an “embedded syllogism: ... Since the American republic must always be successful and powerful, and since the problems we’re diagnosing impede the power and success of the American republic, therefore those problems will go away.” In fact, he warned, “Americans have been so powerful and so strong for so long. It’s

hard for Americans to imagine a world in which that wouldn’t be true. And yet, the history of the world is full of failed commonwealths.”

How to choose among models of achieving change?

Schmitt noted that throughout the conference two models for how to achieve change recurred: elite bargaining (e.g., the Bauer-Ginsberg Commission) and popular mobilization (e.g., the Democracy Initiative described by Cohen). Is there a way, he asked, to bridge these models? Is one or another always right? Frum noted a third driver for change: perception of external threat. (Of note, Kamarck’s typology requiring us to understand where and how decisions get made seems relevant: for some things, elite maneuvering is enough; for others, public pressure is required.)

Additional Questions and Next Steps

- Is there a way to bridge the models of elite bargaining (Bauer-Ginsburg Commission) and popular mobilization (e.g., the Democracy Initiative)?
- Given the technical nature of many solutions, how likely is it to rally broad public support? What have been examples of successful mobilizations — and when has that failed?
- Is mobilization for democracy reform necessarily nonpartisan? Every other political trend eventually finds its way in one or another of the major political parties. A century ago, progressives could find a way to influence all major parties (and create their own). But today, parties are more polarized. Does it require “picking” one?
- If polarization is defined as the problem, that suggests certain campaigns to diminish incentives for polarization (or at least to minimize the impact — through rules changes in legislatures, for example). But if polarization is in fact asymmetric,

as some argued, how important is it for funders to mobilize support for reform elements within the conservative movement? Is building a “conservative DLC” a top priority?

- Is it a romanticized fallacy to assume that the public must become engaged to achieve reforms? Will elite leadership (whether in the executive or by other actors) make the difference? Given the embedded resistance to change displayed by current political leaders of both parties, how can we imagine government righting itself without a different level of public education and engagement?
- Will small reforms — more achievable — fail to mobilize public sentiment? Was the architect Daniel Burnham right (“Make no small plans — they will fail to stir men’s blood, and will not get built anyway”)?

APPENDIX A: PARTICIPANTS

ELLEN ALBERDING *President, The Joyce Foundation*

AHELY RIOS ALLENDE *Program Associate, Open Society Foundations*

BARBARA ARNWINE *President and Executive Director, Lawyers' Committee for Civil Rights Under Law*

ROBERT ATKINS *Board Member, Brennan Center for Justice; Partner, Paul Weiss, Rifkind, Wharton, & Garrison LLP*

NICOLE AUSTIN-HILLERY *Director and Counsel, Washington D.C. Office, Brennan Center for Justice*

ALLISON BARLOW *Program Director, Democracy & Media, Wallace Global Fund*

GARY BASS *Executive Director, Bauman Foundation*

ROBERT BAUER *Partner, Perkins Coie*

PATRICIA BAUMAN *President, Bauman Foundation*

JAY BECKNER *President, Mertz Gilmore Foundation*

DEEPAK BHARGAVA *Executive Director, Center for Community Change*

KELLY BORN *Program Officer, Hewlett Foundation*

JAMELLE BOUIE *Staff Writer, The Daily Beast*

MARISSA BROWN *Executive Director, The Democracy Initiative*

KAHLIL BYRD *Chief Investment Officer, Fund for the Republic*

MARC CAPLAN *Senior Program Officer, Piper Fund*

GEORGE CHEUNG *Senior Program Officer, The Joyce Foundation*

ANDREW COHEN *Fellow, Brennan Center for Justice; Contributing Editor, The Atlantic*

LARRY COHEN *President, Communications Workers of America; Founder, Democracy Initiative*

MAGGIE CORSER *Program Associate, Open Society Foundations*

ALAN DAVIS *Director, WhyNot Initiative*

DAVID DONNELLY *Executive Director, Public Campaign Action Fund*

THOMAS EDSALL *Columnist, The New York Times*

KATHAY FENG *Executive Director, California Common Cause*

BRENT FERGUSON *Counsel, Brennan Center for Justice*

JOHN FORTIER *Director of the Democracy Project, Bipartisan Policy Center*

STEPHEN FOSTER *President and Chief Executive Officer, The Overbrook Foundation*

CAROLINE FREDRICKSON *President, American Constitution Society*

DAVID FRUM *Contributing Editor, The Daily Beast*

ROBERT GALLUCI *President, John D. and Catherine T. MacArthur Foundation*

KEESHA GASKINS *Program Director, Democratic Practice, Rockefeller Brothers Fund*

HEATHER GERKEN *J. Skelly Wright Professor of Law, Yale Law School*

BENJAMIN GINSBERG *Partner, Patton Boggs LLP*

BROOKE GLADSTONE *Host, On the Media, NPR*

JOE GOLDMAN *Director, Democracy Fund*

TREY GRAYSON *Director, Harvard Kennedy School's Institute of Politics*

JACOB HACKER *Director of the Institution for Social and Policy Studies and Stanley B. Resor Professor of Political Science, Yale University*

KAREN HOBERT FLYNN *Senior Vice President for Strategy and Programs, Common Cause*

THOMAS HILBINK *Senior Program Officer of the Democracy Fund, Open Society Foundations*

LALEH ISPAHANI *Director of the Democracy Fund, Open Society Foundations*

MARCIA JOHNSON-BLANCO *Co-Director, Voting Rights Project, Lawyers' Committee for Civil Rights Under Law*

JOHANNA KALB *Jurisprudence Counsel, Brennan Center for Justice*

RICHARD KIRSCH *Senior Fellow, Roosevelt Institute*

DAN KOLB *Board Member, Brennan Center for Justice; Senior Counsel, Davis Polk & Wardwell LLP*

JOHN KOWAL *Vice President for Programs, Brennan Center for Justice*

LARRY KRAMER *President, The William and Flora Hewlett Foundation*

BETSY KREBS *Senior Program Associate, The JPB Foundation*

ERIC LANE *Dean and Eric J. Schmertz Distinguished Professor of Public Law and Public Service, Hofstra Law School*

CHISUN LEE *Counsel, Brennan Center for Justice*

FRANCES LEE *Professor, Department of Government and Politics, University of Maryland*

JUSTIN LEVITT *Associate Professor of Law, Loyola Law School*

LESLIE LOWE *Program Officer, Rockefeller Family Fund*

KIMBERLY LUBRANO *Communications & Strategy Associate, Brennan Center for Justice*

MICHAEL MALBIN *Co-Founder and Executive Director, Campaign Finance Institute*

NANCY MCCABE *Executive Director and Trustee, The Kohlberg Foundation*

MICHAEL MCDONALD *Associate Professor of Government and Politics, George Mason University;
Non-Resident Senior Fellow, Brookings Institution*

HEATHER MCGHEE *President, Demos*

ELIZABETH MOYNIHAN *Trustee, Leon Levy Foundation*

LAWRENCE NORDEN *Deputy Director, Democracy Program, Brennan Center for Justice*

NICK NYHART *President and CEO, Public Campaign*

JOE ONEK *Principal, The Raben Group*

NORM ORNSTEIN *Resident Scholar, American Enterprise Institute*

SPENCER OVERTON *Director, Political Law Studies Initiative, George Washington University Law School*

NICK PENNIMAN *Executive Director, Fund for the Republic*

BARBARA PICOWER *President, The JPB Foundation*

RICHARD PILDES *Sudler Family Professor of Constitutional Law, NYU School of Law*

MILES RAPOPORT *President, Common Cause*

JONATHAN RAUCH *Senior Fellow, Brookings Institution*

ELSPETH REVERE *Vice President of Media, Culture, & Special Initiatives, John D. and Catherine T. MacArthur Foundation*

REIHAN SALAM *Contributing Editor, National Review; Senior Fellow, R Street Institute*

THOMAS SAENZ *President and General Counsel, MALDEF*

MARK SCHMITT *Director, Political Reform Program, New America Foundation*

WALTER SHAPIRO *Fellow, Brennan Center for Justice*

ANDREW SHOLLER *Associate Director, The Tow Foundation*

CLAIRE SILBERMAN *Board Member and Vice Chair, New Leaders Council; Board Member, Voter Participation Center*

GRETCHEN CROSBY SIMS *Vice President of Programs, The Joyce Foundation*

ANDREW SOLOMON *Vice President of Public Affairs, John D. and Catherine T. MacArthur Foundation*

MELISSA SPATZ *Senior Program Officer, Piper Fund*

DIANNE STEWART *Director, Public Works*

DANIEL STID *Senior Fellow, Hewlett Foundation*

KATHERINE STORCH *Senior Research Analyst, Democracy Alliance*

NEERA TANDEN *President, Center for American Progress*

CIARA TORRES-PELLISCY *Assistant Professor of Law, Stetson University College of Law*

JAFREEN UDDIN *Events Coordinator, Brennan Center for Justice*

CHRISTINE VARNEY *Board Member, Brennan Center for Justice; Partner, Cravath, Swaine, & Moore LLP*

MICHAEL WALDMAN *President, Brennan Center for Justice*

LAURA WALKER *President and CEO, New York Public Radio*

VIVIEN WATTS *Vice President for Development, Brennan Center for Justice*

WENDY WEISER *Director, Democracy Program, Brennan Center for Justice*

MARC WEISS *Founder and President, Web Lab*

JENNIFER WEISS-WOLF *Director of Special Projects and Deputy Director of Development, Brennan Center for Justice*

FRED WERTHEIMER *Founder and President, Democracy 21*

SEAN WILENTZ *George Henry Davis 1886 Professor of American History, Princeton University*

FELICIA WONG *President and CEO, Roosevelt Institute*

KENNETH ZIMMERMAN *Director, U.S. Programs, Open Society Foundations*

APPENDIX B: AGENDA

DAY ONE

WELCOME

February 12, 2014, 10:00 a.m. – 10:30 a.m.

Michael Waldman, President, Brennan Center for Justice

Larry Kramer, President, Hewlett Foundation

THE GOVERNMENT SHUTDOWN: A CASE STUDY

February 12, 2014, 10:30 a.m. – 11:35 a.m.

Even a fiasco can teach valuable lessons. The recent government shutdown was a case study in several dimensions of dysfunction, including the divide between the parties and the pull toward the extremes. The panel will dig below the immediate causes to examine longstanding underlying trends, including demographic change, economic stagnation and inequality, partisan media, and the rising role of outside funders and factions.

Moderator: **Joe Goldman**, Director, Democracy Fund

Panelists: **Jamelle Bouie**, Staff Writer, *The Daily Beast*

Thomas B. Edsall, Columnist, *The New York Times*; Professor, Columbia Journalism School

Norm Ornstein, Resident Scholar, American Enterprise Institute

Neera Tanden, President, Center for American Progress

GOVERNING STRUCTURES AND CONGRESSIONAL REFORM

February 12, 2014, 11:45 a.m. – 1:00 p.m.

Can our constitutional system of separation of powers and checks and balances flourish amid polarized, almost parliamentary parties? This panel will trace the ways in which the three branches contribute to government inaction. How can legislative rules and practices be changed so government works? After the “nuclear option,” should the Senate embrace further reform? How about the House: to committee structures, leadership powers, discharge petitions, or otherwise? Have the U.S. Supreme Court’s rulings contributed to dysfunction? What other changes are needed?

Moderator: **Caroline Fredrickson**, President, American Constitution Society

Panelists: **Larry Cohen**, President, Communications Workers of America

Eric Lane, Dean and Eric J. Schmertz Distinguished Professor of Public Law and Public Service, Maurice A. Deane School of Law at Hofstra University,

Frances Lee, Professor, University of Maryland, College Park

Joe Onek, Principal, The Raben Group

Jonathan Rauch, Senior Fellow, Brookings Institution, author *Rescuing Compromise*

POLITICAL MONEY AND ECONOMIC INEQUALITY

February 12, 2014, 1:45 p.m. – 3:00 p.m.

Political money long has warped policymaking and limited policy choices. It appears to also worsen dysfunction, but reform options are rarely seen through this lens. How do big donors and the flood of outside money drive polarization? How does the threat of independent spending affect legislative behavior? Given constitutional curbs, what reforms might make a difference? Have previous changes helped create this dystopian system — and what can we do to avoid those mistakes going forward? What approaches would bring the axis of the political system in line with voter preferences?

Moderator: **Mark Schmitt**, Political Reform Program Director, New America Foundation
Panelists: **Michael J. Malbin**, Co-Founder and Executive Director, Campaign Finance Institute
Heather C. McGhee, President-elect, Demos
Ciara Torres-Spelliscy, Assistant Professor, Stetson University College of Law,
Fellow, Brennan Center for Justice

OPPORTUNITIES FOR BIPARTISAN DEMOCRACY REFORM

February 12, 2014, 4:00 p.m. – 5:15 p.m.

After long lines marred the 2012 election, President Barack Obama appointed the bipartisan Presidential Commission on Election Administration to improve the voting experience of all Americans. Co-chaired by the top lawyers for the Obama and Romney campaigns, the panel reached broad agreement on reforms to modernize registration, shorten lines, and expand early voting. On an issue as highly fraught as voting, we will hear from these top election experts how they achieved strong bipartisan consensus. Can we take lessons from their success and apply them to other challenges?

Moderator: **Wendy Weiser**, Democracy Program Director, Brennan Center for Justice
Panelists: **Robert Bauer**, Partner, Perkins Coie
Benjamin Ginsberg, Partner, Patton Boggs LLP

DINNER KEYNOTE: “ANOTHER AMERICA”

February 12, 2014, 6:15 p.m. – 6:30 p.m.

Robert L. Gallucci, President, John D. and Catherine T. MacArthur Foundation

DINNER DISCUSSION: CULTURAL POLARIZATION

February 12, 2014, 7:00 p.m. – 8:00 p.m.

Are Americans as divided as our government? In our long rambunctious history, was it always this way? This dinnertime discussion will range beyond rules changes and reforms. We will consider the implications of demographic shifts, anger-fueled ideological media, ingrained distrust of government, and more. Can't we all just get along – and if not, why not?

Moderator: **Nicole Austin-Hillery**, Director and Counsel of the D.C. office, Brennan Center for Justice
Panelists: **Brooke Gladstone**, Host, On the Media, NPR
Reihan Salam, Contributing Editor, National Review, Senior Fellow, R Street Institute
Dianne Stewart, President & CEO, Public Works
Sean Wilentz, George Henry Davis 1886 Professor of American History, Princeton University

DAY TWO

POLITICAL PARTIES AND CANDIDATE SELECTION

February 13, 2014, 9.00 a.m. – 10:15 a.m.

While American political parties are more ideologically cohesive than in most of the 20th century, as organizations they are weaker, less able to manage their candidates or issue priorities. Has this erosion of party leadership contributed to broken government? Are stronger parties desirable? Is polarization a problem? Does it necessarily lead to gridlock? Is polarization asymmetric, affecting the right more than the left? Would reform of party primaries (open primaries, top-two) help? What about changes in the structure of conventions, the role of elites, the allocation of money? What changes would strengthen parties without stifling debate or risking a return to Tammany Hall?

Moderator: **Daniel Stid**, Senior Fellow, Hewlett Foundation
Panelists: **Heather Gerken**, J. Skelly Wright Professor of Law, Yale Law School
Jacob S. Hacker, Director of the Institution for Social and Policy Studies and Stanley B. Resor Professor of Political Science, Yale University
Richard Pildes, Sudler Family Professor of Constitutional Law, NYU School of Law

GEOGRAPHIC POLARIZATION AND THE ROLE OF REDISTRICTING

February 13, 2014, 10:30 a.m. – 11:45 a.m.

Pundits blame gerrymandering for recent polarization. True? Could reforms such as bipartisan redistricting commissions steer lawmakers to heed more than their own loyal voters? Can we ensure the preferences of all voters, especially historically disenfranchised groups, are heard? Would other approaches, such as multi-member districts, do even more?

Moderator: **Keesha Gaskins**, Program Director, Democratic Practice, Rockefeller Brothers Fund
Panelists: **Kathay Feng**, Executive Director, California Common Cause
Michael P. McDonald, Associate Professor of Government and Politics, George Mason University
Rob Richie, Director, FairVote
Thomas A. Saenz, President and General Counsel, MALDEF

POLITICAL STRATEGIES

February 13, 2014, 1:00 p.m. – 2:15 p.m.

Any solutions require an effective political strategy. How can we build a strong democracy movement? How can we kindle broad public enthusiasm for often arcane reforms? What opportunities exist for bipartisan coalition building? Can reforms energize a progressive base and garner cross-party support? How important is it to reform and modernize the conservative movement? Are state initiatives a path to lasting change? We will hear from thinkers and political strategists who have grappled with these issues.

Moderator: **Michael Waldman**, President, Brennan Center for Justice
Panelists: **Deepak Bhargava**, Executive Director, Center for Community Change
David Frum, Contributing Editor, *The Daily Beast*
Trey Grayson, Director, Harvard Kennedy School's Institute of Politics
Elaine C. Kamarck, Senior Fellow, Brookings Institution
Richard Kirsch, Senior Fellow, Roosevelt Institute

NEXT STEPS AND THE ROLE FOR PHILANTHROPY

February 13, 2014, 2:30 p.m. – 3:45 p.m.

This concluding panel will ask philanthropic leaders how they envision their role in improving the functioning of democratic governance. What kinds of additional research or idea-development does the reform community need to pursue? How can we best engage new and additional funders — with varying and diverse agendas — on issues of democracy reform?

Moderator: **Patricia Bauman**, President, Bauman Foundation
Panelists: **Ellen Alberding**, President, Joyce Foundation
 Jay Beckner, President, Mertz Gilmore Foundation
 Larry Kramer, President, Hewlett Foundation
 Kenneth H. Zimmerman, U.S. Programs Director, Open Society Foundations

CLOSING

February 13, 2014, 3:45 p.m. – 4:00 p.m.

John Kowal, Vice President for Programs, Brennan Center for Justice

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Diana Kasdan

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Lawrence Norden

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Alicia Bannon

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Rachel Levinson-Waldman

A Proposal for an NYPD Inspector General

Faiza Patel and Andrew Sullivan

Domestic Intelligence: Our Rights and Our Safety

Faiza Patel, editor

National Security and Local Police

Michael Price

Reforming Funding To Reduce Mass Incarceration

Inimai Chettiar, Lauren-Brooke Eisen, and Nicole Fortier

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BRENNAN
CENTER
FOR JUSTICE

at New York University School of Law

161 Avenue of the Americas
12th Floor
New York, NY 10013
646-292-8310
www.brennancenter.org