

BREXIT AND THE FUTURE OF LIBERAL DEMOCRACY

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I write this short Essay as one who is not an expert on the causes of Brexit or of its American near-equivalent, the election of Donald Trump. My piece is purely an exercise in armchair speculation, quite possibly wrong, but also quite possibly correct. And if it is correct, I leave it to others to answer Lenin's famous question: "What is to be done?"¹

My speculative thesis is that Brexit and the Trump election expose the limits of liberal self-government. When the effective government, the one that makes the rules and regulations that are most consequential in the lives of those subject to them, is large, remote, and not averse to complexity, self-government by the polity becomes an impossibility. Yes, the forms of self-government may remain—the election of representatives and a chief executive, for example. But even the elected officials will have little control over the ever-increasing bureaucracy and its thousands of edicts.

Part of the problem is that those who are elected have failed to understand that, as Richard Epstein has so eloquently argued, even a highly complex world can be most effectively governed by a few simple rules.² As a consequence, more and more legislative authority has been delegated by the elected to the unelected³; and the latter see it as their mandate to regulate the complex world by means that match the world's complexity with their own. Even if each individual regulation is relatively simple, the sheer volume of such regulations introduces enormous complexity. No human being can know more than a small fraction of the regulations that apply to him, much less those that apply to others. And that excusable and indeed justifiable ignorance means

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¹ V. I. LENIN, *WHAT IS TO BE DONE?: BURNING QUESTIONS OF OUR MOVEMENT* (Victor J. Jerome ed., Joe Fineberg & George Hanna trans., Int'l Publishers rev. ed. 1969) (1901).

² See, e.g., RICHARD A. EPSTEIN, *THE CLASSICAL LIBERAL CONSTITUTION: THE UNCERTAIN QUEST FOR LIMITED GOVERNMENT* (2014); RICHARD A. EPSTEIN, *SIMPLE RULES FOR A COMPLEX WORLD* (1995).

³ Gary Lawson, *Changing Images of the State: The Rise and Rise of the Administrative State*, 107 HARV. L. REV. 1231 (1994).

that citizens cannot assess whether their elected officials are working for, or against, their benefit. A responsible citizenry might intelligently decide between guns and butter, but can citizens understand, much less assess, the multitude of regulations issued by the Environmental Protection Agency (EPA) or by the Department of Health and Human Services as commentary on the one thousand page Affordable Care Act? The question answers itself.

Bureaucratic hyper-regulation by an essentially unaccountable staff in Brussels was surely one contributing cause of Brexit. (Brussels apparently believes that even the size of cucumbers is a matter fit for it to control.)⁴ And the mess that is the complex dog's dinner of the Affordable Care Act and its accompanying regulations surely accounted for some of Trump's support, along with overreaching by the EPA, the Internal Revenue Service, and the Office for Civil Rights of the Department of Education.

So, virtually uncontrollable bureaucracies and their penchant for hyper-regulation are surely not only causes of Brexit and Trump; they are also causes for concern if one endorses the ideal of liberal democracy.

But they are not the only causes of concern regarding that ideal that the Brexit and Trump phenomena expose. One such cause is that of the remoteness of government. I do not mean physical remoteness, though that too can be a worry. After all, Brussels is closer to almost anywhere in Great Britain than Sacramento—my state capital—is to me. What I mean principally is remoteness that is a product of size and centralization. The United States presently has a population of about 320 million⁵; and when decisions are increasingly made, not at the local level—or in the United States, not at the state level, or in the European Union, not at the national level—but in Washington or Brussels, then fewer and fewer consequential matters will be decided at the level at which citizens can comprehend them and also believe they have some real ability to influence them. Unless one is a lobbyist working on behalf of a major industry or union, one has little chance of perceiving one's effects on public policy.

Thus, size matters for liberal democracy; and size is a function of both population and the degree of centralization. When the national government deals only with defense, foreign relations, and a few other issues, and most matters are left to states and localities, liberal self-

⁴ See Stephen Castle, *EU Relents and Lets a Banana Be a Banana*, N.Y. TIMES (Nov. 12, 2008), <http://www.nytimes.com/2008/11/12/world/europe/12iht-food.4.17771299.html>; see also Commission Regulation 1677/88 of 15 June 1988, Laying Down Quality Standards for Cucumbers, 1988 O.J. (L150) 21.

⁵ See *U.S. and World Population Clock*, U.S. CENSUS BUREAU, <https://www.census.gov/popclock> (last visited Dec. 31, 2017).

government remains viable. But as de Tocqueville opined over 180 years ago, democracy requires consequential local governments.⁶ For only they can motivate citizens to get involved in governmental affairs. Local governments with nothing of real importance to decide produce an enervated polity. And as more and more consequential matters are decided more and more remotely, the enervation of the polity becomes an enervated citizenry, one that no longer sees itself as the authors of its lives. The Brexit vote is surely in part an attempt to bring government closer to home.

The final element in putting liberal democracy on life support is multiculturalism. Up to a point, multiculturalism can be a positive force. But both the United States and Britain are likely beyond that point.

A viable liberal democracy can accommodate many races, ethnicities, and religions. It can accommodate them, however, only if most share allegiance to a set of basic norms and customs and a loyalty to the welfare of all their fellow citizens. When shared allegiance to that set of basic norms and customs is weak or is totally absent, and when the welfare of one's group rather than the welfare of all becomes the dominant aim, the trust of one's fellow citizens, essential to democratic rule, will erode, and liberal values, such as freedom of speech, freedom of religion, and equality before the law, will be undermined.

In Britain, the influx of large numbers of immigrants—hostile to British values and norms, including some willing to engage in violence against their fellow countrymen—was surely a major cause of Brexit.⁷ And in the United States, the influx of millions of undocumented immigrants from decidedly non-liberal cultures, as well as the prospect of admitting thousands of refugees—many of whom are likely to reject liberal values and some of whom will probably endorse violence—surely assisted Trump's victory.

To conclude, bureaucratic hyper-regulation, centralization of power, and multiculturalism erode self-government and threaten liberal freedoms. Brexit and Trump are arguably attempts to thwart and reverse these trends. If they fail to do so, I worry that liberal democracy will succumb to bureaucratic and illiberal rule or to truly illiberal reaction.

⁶ 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (Henry Reeve trans., Project Gutenberg 2013) (1840) (ebook), <http://www.gutenberg.org/files/815/815-h/815-h.htm>.

⁷ See Kimiko De Freytas-Tamura, *After 'Brexit' Vote, Immigrants Feel a Town Turn Against Them*, N.Y. TIMES (July 9, 2016), <https://www.nytimes.com/2016/07/10/world/europe/brexit-immigrants-great-britain-eu.html>; Simon Tilford, *Britain, Immigration and Brexit*, CER BULL. (Ctr. for European Reform, London, U.K.), Dec. 2015, http://www.cer.eu/sites/default/files/bulletin_105_st_article1.pdf.