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Commentary on: Robert C. Rowland's "The debt ceiling and the liberal public sphere"

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Robert Rowland begins his excellent analysis and evaluation of the recent United States debt ceiling debate with a quote from the current US president, Barack Obama. In discussing the role of the US Constitution and its relation to the liberal public sphere, Rowland quotes the President as saying the following, "the most important feature of the Constitution [is] to 'organize the way by which we argue about our future,' creating 'a conversation...in which all citizens are required to engage in a process of testing their ideas against an external reality, persuading others of their point of view, and building shifting alliances of consent.'" Rowland provides this quote in order to help make at the outset a crucial distinction between the constitutional structure within which a society might operate and through which collective decisions are formally enacted and a broader, interpenetrating collection of structures, commitments, and relationships – some formal, others informal – that constitute a society's so-called public square, where a citizen populace, to quote Mann and Ornstein, are engaged in "reconciling diverse interests and beliefs" through "adversarial debates and difficult negotiations."

That such a distinction exists is clear. And Rowland's characterization of the public square side of it, helped by the work of Habermas, Goodnight, and others, is persuasive. The same can be said of his detailed examination of the argumentative thrusts and counter-thrusts of the major parties involved in the tortured and highly volatile debt ceiling negotiations and of his final judgment regarding the extent to which each of these parties discharged their respective responsibilities. But it seems to me that if we are going to have a clearer picture of why it is that we in the United States are having this apparent breakdown in the health of the US body politic that we cannot do so by focusing merely on the one side of this distinction. We must talk more about that formal framing structure that the President refers to in his comments: the constitutional order through which the liberal public sphere is able to make manifest through formal votes and official enactments some of the fruits of its turbulent negotiative process. For as I see it, this order, as it is currently structured, is in fact warping the ways in which the liberal public sphere is operating in the United States. It is providing some truly perverse incentives for all of the actors involved in the liberal public sphere's processes for reconciling diverse interests and beliefs.

Let us begin with the simple fact that in the last election for the US House of Representatives, one of the two major political parties in the United States won a

nation-wide plurality of almost one-and-a-half million votes over the other party, but that at the same time the latter party was able to maintain a thirty-three seat majority in the lower house of the US Congress due to their advantage at the state level in congressional redistricting following the decennial 2010 US Census (Klein, 2012). (This has happened only once before in the last seventy years (Wang, 2013).) For those who live in a constitutional system in which proportional representation in some form is employed, such as Australia, New Zealand, the Netherlands, Germany, Japan, etc., etc., etc., such an outcome is truly astonishing. One would have to chalk it up to the fact that the United States is one of the few purportedly democratic countries left in the world that does not use a list system, an alternate vote system, a single transferable vote system or something of the like. But the primary reason is even more astonishing than that. Citizens of the United States live in a constitutional system that, in the overwhelming majority of its sovereign jurisdictions, allows the shape and character of electoral districts to be largely determined by whichever party happens to be in power at the conclusion of the decennial census (*League of United Latin American Citizens v. Perry*, 2006). As a result, savvy legislators, employing complex computer modeling, have the ability to create essentially safe districts for those who are in their own political party. They do this by finding ways of sprinkling within each of the districts they have created a somewhat smaller number of individuals who are likely to vote for the opposing party (this is called “cracking”) or, where possible, they unite such individuals into a single district or small set of districts, thereby taking them out of neighboring districts where their presence could pose a challenge to the dominant party’s electoral hegemony.

The perverse incentives that such a system provides for actors within the public sphere are obvious and many commentators have remarked upon them. The public becomes disengaged, seeing no connection between their activities and the legislative process—out of 22 major democracies, the United States is twenty-first in terms of total voter turnout (Dahl, 2001, p. 169)—representatives perceive no disadvantage in holding onto positions that are disapproved of by significant minorities and often majorities of the population, and media opinion and expert advice can as a consequence perform no informative, moderating, or mediating function with respect to either the public or the members of the national legislature.

But that is not all. For when we consider not just the ways in which representatives are elected to the country’s national legislative bodies, but the character of those bodies themselves, their strikingly unrepresentative nature becomes even more obvious. For example, the number of members in the United States House of Representatives, the intentionally more representative branch of the US Congress, has not increased for over a century, when the Apportionment Act of 1911 set it at 435. Perhaps this number made sense in 1911. After all, the 1910 Census reported the population of the United States to be 92,228,496. But a few things have changed in the interim. In 2010, the population of the United States was reported to be 308,745,538 (University of Virginia Library, Historical Census Browser). Such a ratio of representatives to population not only compares unfavorably to nations such as the United Kingdom (630 members of the British House of Commons for a population of 63,181,775), France (577 members of the

French National Assembly for a population of 65,350,000) and even Canada (308 members of the Canadian House of Commons for a population of 33,476,688), but because of the federal nature of representation in the United States, with each state getting at a minimum one representative no matter what its population, rapid growth in larger states means that states in the middle of the population pack lose representatives over time despite continued growth in their populations. One hundred years ago, my now home state of Wisconsin had twelve representatives to the United States Congress. It now has seven. Yet Wisconsin has only increased in population during this time.

Notice that I am not even bringing up what a lot of other popular and scholarly commentators have remarked upon when discussing these issues: for example, the giant disparities between states in the US Senate, where both the state of California and the state of Wyoming have the same level of representation, despite the fact that the population of the former is almost seventy times greater than that of the latter (a ratio never contemplated by the Founding Fathers when they created this body); the various insidious forms of senatorial privilege that can be used on no more than a whim to bring all legislative discussions to an absolute screeching halt; and the tremendous amounts of cold hard cash that are required to run for public office in the United States.

Now, I am by no means suggesting that Rowland is unfamiliar with the above facts. Nor am I maintaining that his analysis suffers from their absence. But when we think of the character of the liberal public sphere in the United States, when we think of the ways in which the various roles within it are formed, cemented, regularized, incentivized, we must consider too the various characteristics of the particular constitutional order in which they are embedded. We know that a certain kind of constitutional order is not sufficient to produce genuine social engagement and debate. But appropriate formal structures are necessary for those roles to form and flourish in anything like an effective way. A liberal public sphere that is this disconnected from the actual process of law-making is one in which, it seems to me, pretty much anything goes because only a sub-set of what is said is likely to result in any practical formal outcomes or to have any serious repercussions.

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