The Microgovernment Monster

"Tunnel Vision" by Jonathan Rauch, in *National Journal* (Sept. 19, 1998), 1501 M St. N.W., Washington, D.C. 20005.

America knows all about government regulation, of course, but never before has it had to cope with anything this insidious, this intrusive, this irrational, wails Rauch, a *National Journal* senior writer. He calls it "microgovernment"—and he wants it tamed.

Unlike traditional regulation, carried out by "big, clunky agencies issuing one-size-fits-all rules aimed at making people better off, on average," microgovernment "comes as a steady drizzle of court decisions, seeping through the pores of civic life," he writes. Its basic premise: that every individual American is entitled to a safe, clean, and, above all, fair personal environment.

Microgovernment is the force behind such causes célèbre as a federal judge's 1998 decree that a golfer with a circulatory disorder has a right, under the Americans with Disabilities Act, to play the PGA Tour using a golf cart, while his competitors must tire themselves out walking, and the $2.7 million punitive judgment (later reduced to $480,000) against McDonald's won by a grandmother who was hospitalized after spilling hot coffee on herself. "America must be the only country in the world where juries regulate the temperature of coffee," observes Rauch.

America had two earlier great waves of regulation, Rauch writes: the economic regulation that began early in this century and lasted through the New Deal, and the "social" regulation of pollution and workplace safety that blossomed in the 1960s and 1970s. But the current wave, he contends, is "fundamentally different": more intrusive, less rational, and less accountable.

"For government, policing jokes at work, or ordering colleges to set up as many press interviews for female athletes as for males, or fining the producers of *Melrose Place* $5 million for refusing to allow a pregnant actress to play a bikini-clad seductress, represents a higher and stranger order of intrusiveness," Rauch maintains, than when, say, the Environmental Protection Agency requires steel makers to put scrubbers on their smokestacks.

Regulating through the courts has become, in effect, "Washington's default mode," he contends. "Why bother with a new bureaucracy to regulate health maintenance organizations, when you can just pass a 'patients' bill of rights,' meaning (in some versions) regulating HMOs through private litigation? No need to hire bureaucrats, make painful political choices or spend taxpayers' money; regulation by lawsuit is self-financing and self-propelled." As Pietro S. Nivola, a political scientist at the Brookings Institution, told Rauch: "It's really a shift to off-budget governance."

"The trouble," adds Rauch, "is that it is off-accountability, too." There is no city hall to fight, no bureaucrat to confront, no national forum in which microgovernmental policy is discussed. And, given the ad hoc nature of court rulings and responses to them, no way even of telling whether microgovernmental regulation works.

FOREIGN POLICY & DEFENSE

Democracies without Rights

A Survey of Recent Articles

A lively debate about the implications of "illiberal democracy" is stirring up the nation's foreign affairs specialists. From Peru to Pakistan and Sierra Leone, some democratically elected governments "are routinely ignoring constitutional limits on

their power and depriving their citizens of basic rights and freedoms," observes Fareed Zakaria, managing editor of *Foreign Affairs*, (Nov.-Dec. 1997). Democracy is flourishing: it now claims, by his count, 118 out of 193 countries. But about half of the newly "democratizing" countries are illiberal—more than twice the proportion in 1990.

In encouraging the spread of democracy around the world, Zakaria suggests, the United States has put too much emphasis on holding free and fair elections, and not enough on promoting liberal constitutionalism. (Exhausted by the Cold War, Americans have wanted to transform the world—but on the cheap, Zakaria writes in a more recent article, in the *New York Times Magazine* [Nov. 1, 1998]. In the 1990s, "few American statesmen—with the notable exception of Richard Nixon—ever wanted to make the transformation of Russia an American goal." Aid to Russia in the 1990s has been only one-sixth that given Europe under the Marshall Plan.)

The United States also has been too quick to criticize undemocratic but "liberalizing" countries, Zakaria argues. The absence of free and fair elections is "one flaw, not the definition of tyranny," he says. If a government with only limited democracy steadily expands economic, civil, and religious freedoms, it should not be branded a dictatorship. "Liberalizing autocracies" such as Singapore and Malaysia, and "liberal semi-democracies" such as Thailand "provide a better environment for the life, liberty, and happiness of their citizens than do either dictatorships like Iraq and Libya or illiberal democracies like Slovakia and Ghana. And the pressures of global capitalism can push the process of liberalization forward."

Historically, argues Zakaria, democracy grew out of constitutional liberalism, as in Western Europe, a course that East Asia appears to be following today. But beginning instead with democracy does not seem to lead to constitutional liberalism, he says. Democracy has come to Latin America, Africa, and parts of Asia during the last two decades, but "the results are not encouraging." In many parts of the Islamic world, such as Morocco, Egypt, and some of the Persian Gulf states, he says, elections held tomorrow would almost certainly usher in regimes more illiberal than the current ones. Democracy "has actually fomented nationalism, ethnic conflict, and even war" in societies with no experience with constitutional liberalism, such as Bosnia, Azerbaijan, and Georgia.

Adrian Karatnycky, president of Freedom House, writing in *Journal of Democracy* (Jan. 1999), has a more optimistic view. The Freedom House survey for 1998, he reports, shows a net gain of six liberal democracies during the year. "There are signs that electoral democracy eventually does have a positive effect on freedom." The rise in the number of illiberal democracies that worries Zakaria, writes Karatnycky, apparently "peaked in the first half of the 1990s—a period of rapid democratic expansion in the wake of the collapse of Marxist-Leninist regimes." Since then, the number has fallen. The record in recent years, says Karatnycky, shows that it is precisely the flawed, illiberal democracies that have "the greatest potential for the expansion of freedom." Even the 30 electoral democracies that Freedom House deems only partly free, he points out, "are not states that brutally suppress basic freedoms. Rather, they are generally countries in which civic insti-

Celebrating the opening of the new parliament in 1996 in Sierra Leone, which Freedom House now considers "partly free"

tutions are weak, poverty is rampant, and intergroup tensions are acute."

"Despite Zakaria's talk of constitutionalism and individual rights," contends Marc F. Plattner, coeditor of the *Journal of Democracy,* writing in *Foreign Affairs* (Mar.–Apr. 1998), "he seems to wind up taking the much more familiar view that authoritarian capitalist development is the most reliable road to eventual liberal democracy." It is implausible to think that autocracies such as Singapore and Malaysia "more reliably protect individual rights or have more independent and impartial judiciaries than the Latin American democracies that Zakaria describes as 'illiberal.'"

Zakaria overstates the disjunction between democracy and constitutional liberalism, Plattner maintains. "While many new electoral democracies fall short of liberalism, on the whole, countries that hold free elections are overwhelmingly more liberal than those that do not, and countries that protect civil liberties are overwhelmingly more likely to hold free elections than those that do not. This is not simply an accident."

Deforming Foreign Policy

"The Protestant Deformation and American Foreign Policy" by James Kurth, in *Orbis* (Spring 1998), Foreign Policy Research Institute, 1528 Walnut St., Ste. 610, Philadelphia, Pa. 19102–3684.

Though scholars often have completely ignored its influence, Protestantism has long shaped U.S. foreign policy. But today, argues Kurth, a political scientist at Swarthmore College, a heresy of the original religion holds sway—and under its spell, U.S. foreign policy is provoking "intense resistance and even international conflict."

In the three centuries after the Reformation began in 1517, the Protestant rejection of hierarchy and community with regard to salvation spread—particularly in the United States—to the economic realm (the free market) and the political realm (liberal democracy), Kurth says. A written contract and a written constitution, each "a version of the written covenant among individual Protestant believers," provided order in the respective secular domains.

Driving this expansion, Kurth contends, was a dynamic within Protestantism itself, as the original idea of salvation through grace gradually gave way to increasingly secular beliefs. By the early 20th century, even the genteel abstraction of Divine Providence (itself a substitute for Christ and the Holy Spirit) disappeared, and "the various Protestant creeds were replaced by the American Creed," a secular vision of "free markets and equal opportunity, free elections and liberal democracy, and constitutionalism and the rule of the law."

Overseas, Kurth says, this translated after World War I into a peacetime foreign policy of "realism" (or "isolationism") toward strong powers, and "idealism" toward weak ones, whom the United States "sought to remake . . . in the image of the American Creed."

In the 1970s, maintains Kurth, Protestantism's inner decline reached its final stage, with the transformation of the American Creed into a creed of universal human rights. American political and intellectual leaders promoted this notion as a fundamental goal of U.S. foreign policy. In the decades since, America has become "a new kind of political society," with "expressive individualism" as its ideology. "The Holy Trinity of original Protestantism, the Supreme Being of Unitarianism, and finally the United States of the American Creed have all been dethroned and replaced by the imperial self," Kurth declares. He calls this the "Protestant Deformation."

Today, freed by the end of the Cold War from the need "to show some respect for and make some concessions to the particularities of hierarchy, community, traditions, and customs in the countries that it needed as allies," the United States is pursuing a foreign policy of emphasizing universal human rights. That policy has created conflicts with other nations, notably those with Islamic or Confucian traditions. But Kurth points to another danger: "The Protestant Deformation, because of its universalist and individualist creed, seeks the end of all nation states and to replace loyalty to America with gratification of oneself." As