

authority are inherently suspect.”

Lilla suspects that the Tea Party will peter out after a few symbolic victories, because it has “no constructive political agenda. . . . [It] only exists to express defiance against a phantom threat behind a real economic and political crisis.” But though it may not last, its libertarian, anti-government underpinnings are here to stay.

POLITICS & GOVERNMENT

Judges for Sale

THE SOURCE: “Economic Crisis and the Rise of Judicial Elections and Judicial Review” by Jed Handelsman Shugerman, in *Harvard Law Review*, March 2010.

IT’S ONE OF THE UGLIEST warts on the U.S. body politic: About 90 percent of America’s state judges are chosen in elections. Inevitably, some of them wander into the political swamps. One successful candidate for the West Virginia Supreme Court in the 1990s accepted \$3 million in contributions from a corporate executive seeking to overturn a multimillion-dollar verdict. Elected magistrates also tend to be reluctant to enforce principles that antagonize the voting public. The irony is that when it swept the nation in the 19th century, the movement to make state judgeships elected positions was seen as a way to create a more independent judiciary.

The movement gained strength after the Panics of 1837 and 1839 sent many heavily indebted state governments reeling and exposed the often corrupt ways of state leg-

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islatures at a time when states were spending heavily on canals, roads, and other “internal improvements.” Populists were already clamoring to subject judges to the people’s will, according to Jed Handelsman Shugerman, a professor at Harvard Law School, but now they were joined by moderates and conservatives, who wanted to make judges independent of the legislatures in order to “embolden [them] and legitimize judicial review by connecting them to ‘the people.’” New York led the way in 1846, when a state constitutional convention approved a switch from appointed to elected judgeships. (Only Mississippi elected its state judges at the time.) By 1853 most of the other states—19 in all—had followed New York’s example.

The reformers got at least one of the results they wanted: “Elected judges in the 1850s struck down many more state laws than had their appointed predecessors,” Shugerman writes. The shift toward elected judges was “a turning point in establishing a more widespread practice and acceptance of judicial review in America.”

In other respects, however, things did not go as the reformers had intended. Far from defending “the people,” the judges took an increasingly counter-

majoritarian tack, defending individual rights against what one court called the “hasty and ill-advised zeal” of the voting public. In 1856, for example, a New York court struck down a ban on liquor sales as an infringement of individual rights. Shugerman says there is a straight intellectual line from this decision to broader U.S. Supreme Court decisions that sharply restricted government efforts to regulate business before the New Deal, such as *Lochner v. New York* (1905).

What motivated the counter-majoritarians? Chiefly, Shugerman believes, they wanted to fend off “legislative encroachment” on their domain and carve out a distinct role for the judiciary. He likens the state constitutional conventions of 1844–53 to the wave of democratic revolutions that swept Europe in 1848. One heartening lesson of that era, in Shugerman’s view, is that badly needed judicial reform can occur with surprising speed.

POLITICS & GOVERNMENT

Political Generals

THE SOURCE: “The Role of the Military in Presidential Politics” by Steve Corbett and Michael J. Davidson, in *Parameters*, Winter 2009–10.

THE AMERICAN MILITARY HAS a proud and long-standing tradition of political neutrality, but in recent presidential elections a “disturbing trend” has emerged: Retired generals have taken to endorsing candidates, write retired

Army officers Steve Corbett and Michael J. Davidson. If this continues, the military risks “legitimizing the spread of partisan politics within the active-duty force.”

The culture of a politically neutral military took hold in the years following Reconstruction. After the presidential election of 1880, no professional military officer was nominated for the presidency until 1952. By custom, most officers did not even vote. General George C. Marshall epitomized the ethos of the era—he never voted, avoided all political participation, and upon becoming secretary of state in 1947, foreswore ever running for office. He discouraged General Dwight D. Eisenhower from pursuing the presidency, but, of course, Eisenhower did not heed his advice. Eisenhower’s election was “a water-

shed event,” marking the start of an era of increased military involvement in politics.

Since then, the deterioration of the military’s political neutrality has only continued. President Ronald Reagan actively courted military voters in the 1980s. The Clinton administration politicized the senior officer selection process. Today, officers regularly vote, and usually for Republicans. Endorsements by retired officers, once considered bad form, are run of the mill (two prominent examples: Tommy Franks’s backing of George W. Bush in 2004 and Colin Powell’s of Barack Obama in 2008).

The authors say that within the military today there is no consensus on the propriety of such endorsements. They quote one retired Army colonel as saying, “A retired

four-star general represents the institution that produced him and by definition should remain apolitical.” In contrast, others argue that once they leave active duty, officers should be free to participate in politics like any other citizen.

Corbett and Davidson would like to see this problem fixed, but all approaches are fraught with difficulty. Expanding restraints on active-duty members to retired officers in an attempt to quiet political speech would run up against the protections of the First Amendment. For now, they say, the best that can be done is for the military itself to try to create a consensus that endorsements by retired officers are out of bounds. Anyone who achieved flag rank would be sensitive to a stronger institutional taboo against getting involved in politics.

FOREIGN POLICY & DEFENSE

Reaching Out to the Russians

THE SOURCE: “NATO’s Final Frontier” by Charles A. Kupchan, in *Foreign Affairs*, May–June 2010.

LORD HASTINGS ISMAY, THE first secretary-general of the North Atlantic Treaty Organization, reportedly once said that the organization’s purpose was “to keep the Russians out, the Americans in, and the Germans down.” But times have changed. Today, NATO is making a strategic mistake by not integrating Russia into the alliance,

argues Charles A. Kupchan, a professor of international affairs at Georgetown University.

Since the end of the Cold War, NATO has embraced the countries of Central and Eastern Europe but has “treated Russia as an outsider.” The West needs to be sure it has Russia squarely on its side, Kupchan asserts, particularly as it attempts to tackle global concerns such as terrorism, nuclear proliferation, climate change, cybersecurity, and inter-

national crime. Moreover, Russia’s help will be crucial in negotiations with Iran and North Korea; Moscow also has considerable sway with Beijing.

Europe could reach out to Russia through a variety of other means, such as a treaty between NATO and the Russian-led Collective Security Treaty Organization, but NATO’s formidable size (28 member-states) and its military strength mean that other international collaborations are “merely strategic sideshows”—what matters is whether a country is a NATO insider or outsider.

A complicating factor is that protecting the allied European-Atlantic countries from external threats such as terrorism is only