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# **Supporting Liberal Democracy on Both Sides of the Atlantic: A Test of the Checks and Balances Available in Consolidated and Unconsolidated Democratic Systems**

Event Analysis

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# Supporting Liberal Democracy on Both Sides of the Atlantic: A Test of the Checks and Balances Available in Consolidated and Unconsolidated Democratic Systems

Valery Perry\*

## Introduction

I had been worried since the summer that Trump could possibly be elected. From a distance, I could see that he was tapping into a dark vein of American dissatisfaction and sub-culture. The “I alone can fix it” mantra in his acceptance speech at the Republican National Convention, building on a week of divisive and negative rhetoric, gave me chills. My mother was disturbingly confident he would win, as she saw a preponderance of Trump lawn signs in upstate New York but very little similar excitement among Clinton supporters. We all hoped that the polls would be right, that if nothing else the famous “Access Hollywood” tapes demonstrating Trump’s prehistoric view of women and other factors would lead to the expected electoral result. Of course, it did not.

In the wake of the election, I went through the stages of grief familiar to many Democrats, progressives and liberals. This was particularly acute, however, concerning the role that the notion of a liberal democratic peace has played in my professional and academic life. My career has been focused on the notion that societies built on liberal, progressive values are not only good for people in that society, but in fact contribute to a global system of increasingly liberal democracies which share the same values and are less likely to become involved in violent conflict with other democracies. One writer has noted that, “the absence of war between democracies comes as close as anything we have to an empirical law in international relations.”<sup>1</sup> This belief has been a foundational principle of US and Western foreign and development policy for decades, leading to support for so-called “democratization” strategies and activities: the organization of contested multi-party elections; capacity building for governments and institutions, from the local municipality to the

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<sup>1</sup> Jack S. Levy. 1989. *Domestic Politics and War*, in *The Origin and Prevention of Major Wars*, edited by Rotberg, Robert I. and Theodore K. Rabb. Cambridge University Press, 88; as cited in Brown, Michael E. 1996. *Debating the Democratic Peace*, edited by Sean M. Lynn-Jones and Steven E. Miller. The MIT Press May.

parliamentary level; support in the development of an independent justice sector, from policing to the courts; support for an independent media; promotion of human rights, in theory and in practice; the implementation of civic education.

Has this been perfectly and consistently implemented? Of course not; other strategic priorities, blunders and hubris have each played a role, as they have done throughout history. Democracies may not go to war with one another, but they do go to war with non-democratic states. Has there been a tendency for economies to be liberalized in the “spirit of free market capitalism” faster and more completely than governments and structures have been liberalized for “democratic and accountable governance”? Yes, and perhaps one of the great lessons of the post-Cold War economic liberalization and privatization frenzy has been that, in the absence of the consistent and independent rule of law and accountable governance, unfettered capitalism can in fact make it that much harder for *unfettered democracy* to emerge.

My friends in Sarajevo who know about my work on these issues can be grouped into three general categories in terms of their response to the election results. Some offered sympathy, with a knowing, “trust us, we’ve been there” look. Others incredulously said, “we didn’t think this could happen there.” A third group was full of *schadenfreude*, glad to see the US suffer the consequences of the arbitrary nature of the democratic system, telling me, “see, I told you democracy is a bad form of governance if this can be the outcome. Serves you right for trying to bring it over here.” These are the guys (and yes, mostly guys) who regularly remind me that, “everything was better when Tito was alive.”

I have increasingly been concerned about the lack of progress in Bosnia, but also in the region as a whole, as, particularly over the past decade, there seems to be little left other than a façade of reform. Linear and consistent progress in the transition to democratic systems is a myth. Citizens’ lack of faith and trust in the system and its structures is palpable, and understandable. For a while I thought that Western promoters of democracy promoters has misread the process, putting too much stake in the relatively “easy” democratization processes in places like Estonia, Poland or the Czech Republic. But then we began to witness reactionary trends even in this first European wave of transition darlings, most notably in Hungary. And of course Brexit, and then Trump. What could these trends and outcomes mean in terms of both the actions and motivations of individual voters in all of these places, and what could they mean in terms of the notion of liberal democracy as a system of government?

I needed to think more about these issues, but now in the context of the US as well as the Balkans. So, as a first step, I ordered a load of books and started reading. I read *Hillbilly Elegy*, *McMafia*, *Jihad vs. McWorld*. I dusted off *What’s the Matter with Kansas?* I’ve got Rorty, Fromm and Sztompka’s *The Sociology of Social Change* in the reading pile.

Then, following renewed alarm after the “American Carnage” Inaugural Address, I decided it was time to practice what we have been preaching over

two decades of workshops, training session, summer camps, study trips and conferences: how the checks and balances in a liberal democratic system should work. This has been a humbling reminder of how to participate in the systems, processes and structures of the country of my birth; it was also a useful opportunity to consider the viable options my peers have in *their* countries throughout the Balkans, and particularly that country with which I am most familiar, Bosnia and Herzegovina.

### **Civil Society - Advocacy**

First, I decided the US was going to need aggressive litigation both to protect civil/human rights, and to engage in strategic litigation to challenge some of the proposed changes in the implementation of laws on a number of fronts.

The best option for me was the American Civil Liberties Union (ACLU). I've been familiar with their work for years, and I know their reputation and respect their work and advocacy. Their web site was easy to use, and it was simple to make a donation. I found it interesting that they prefer regular small monthly donations rather than a lump annual sum; presumably this assists not only in their planning, but also in their own additional fundraising efforts. I became a member, and was apparently not the only one.<sup>2</sup>

Then, in an effort to both organize and commiserate among the like-minded, a group of us got together to re-start the BiH chapter of Democrats Abroad. Dems Abroad had been established as a part of a reaction to some of the policies of the George W. Bush administration, to *get-out-the-vote* of overseas Americans (particularly among Bosnian-Americans in BiH) and resist Republican policies largely viewed as out of step with the drivers that led many of us to become involved in international policy and affairs. We gathered a group of 10-15 people, started a mailing list, and discovered there is an informal regional coordinator in Belgrade. (Some people expressed their interest in principle, but objected to affiliation with the Democrats as a party, noting they felt the party is not sufficiently aggressive.) Will people be able to take time from work and their personal and family lives to actively use this forum? It's unclear. It's still in its embryonic stages, and it's been difficult to get people to volunteer to take on various tasks. Yet it's a structure and a starting point to try to get out the vote for the very important 2018 mid-term elections and to build a cohort of people with similar policy goals and interests.

When I made my first trip to the US after the inauguration, I went to a climate change protest in Rochester one cool, grey Saturday morning with my mother. I had learned about it through one of the mailing lists I had joined, which is linked to the zip code for my parents' home; while I get regular updates on national level issues, I also get specific emails on activities going on in that community. I Googled "climate change poster ideas," found some ready-to-print options and suddenly we had signs. There were around 3-400 people who marched across 10 city blocks and then met in an urban park where stands from various advocacy organizations were set up, and there was a small stage

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<sup>2</sup> Stack, Liam. 2017. Donations to ACLU and Other Organizations Surge After Trump's Order. *The New York Times*, 30. January 2017 (accessed: 01. July 2017).

for speeches. Did it work? Well, Trump recently pulled the US out of the Paris Climate Agreement, in spite of overwhelming support from environmentalists and business leaders alike. However, groups are newly motivated, and we're already seeing some interesting developments at the level of state and city. (Note to self: re-read Benjamin Barber's *If Mayors Ruled the World*.)

I began to think about parallels in the region. Which organizations have the scope and credibility to attract donations, small or large, from citizens in, say, Bosnia, Macedonia or Serbia? In Bosnia, *Vasa Prava* has quite a good reputation among people who follow legal aid and strategic litigation very closely, but to the vast majority of non-specialists it isn't relevant or even on their radar screens. In a fundraising environment focused on donors (either external or local government), there is little trust in or culture for such independent, member-driven advocacy efforts. Equally importantly, in countries where monthly wages and pensions are abysmally low, it's understandable that citizens simply do not have the means to participate in this way. I participated in a small "March for Science" in Sarajevo in April, meeting friends, concerned citizens and a Sarajevo-based science blogger. People do want to do *something*. The question is why should local elected representatives and decision makers need to listen to them? Is there accountability?

### **Accountable Representatives**

While I haven't been resident in the US for a long time, I do vote in national-level elections, in New York, where I was born, and where my parents live. I went online and found the emails and phone numbers for my two senators and my congresswoman. Each had easy-to-use web sites and multiple phone numbers for the constituency offices in Washington, DC as well as back in New York. I called them each, with staffers answering the phone and taking my comments. (One senator's phone number was quite often busy, and it took a while to get through to a human.) As I went down a list of issues I wanted to note, I had the sense that one staffer was writing everything down as she asked me to slow down a few times; I think one of the senators may have had a thematic checklist of commonly noted topics. Now, New York is solid Democratic territory, so I had little hope that my phone calls could help to "flip" a Republican or create pressure through that party. However, I did have a certain satisfaction in knowing that I knew who to call, and that as they want votes in the future, there is a need to answer the phone.

How would this scenario possibly work in BiH? Other than at the level of the mayor, people do not have a named representative who is accountable to a specific constituency; unless of course one assumes that any SDA representative in Parliament represents the interests of all Bosniaks, that any HDZ parliamentarian is personally and directly accountable to all Croats, etc. Above the level of municipality, where citizens know, at a minimum, where the office of the mayor is located and can in theory go there, there is no sense of an official-constituency relationship. There is no constituents' office in Visegrad, where an official representing that municipality in Banja Luka or in Sarajevo has staff to listen to and pass on citizen concerns about issues at the level of the entity or the state, respectively. There are political party offices; however,

this is a very different animal. It's easy to understand why people have low trust in their elected officials; there is simply no relationship, other than (possibly) patronage.

### Media

Next, I realized that I've gotten lazy in terms of supporting a free and independent media. I've been a subscriber to the (digital) *New York Times* and *The Economist* for years, but now I decided to support more investigative journalism through *The Washington Post*, *The New Yorker* and *The Guardian*, and regional reporting through *Balkan Insight* and *Transitions Online*. The online tools and varying subscriber options made it easy. I updated my podcasts, and added *The Wall Street Journal* to my bookmarks bar in my browser, to make it easier to get the view from "the other side" of the political spectrum.

I pondered which regional mainstream dailies or weeklies are providing this kind of quality and scope of coverage and investigative long-form journalism. *Balkan Insight* and *Transitions Online* operate both on the basis of subscriptions and donor support. Organizations like the Center for Investigative Journalism (CIJ), or the Organized Crime and Corruption Reporting Project (OCCRP, which has a more global scope) provide options and in-depth coverage, but have difficulty crossing into mainstream print media, and in turn often don't get picked up by popular broadcast media. Much of the domestic high-level media is as divided as the political structure – by design.

People with little discretionary income will possibly buy a daily or a weekly, or read the copy left at a café or in a taxi, and the young will increasingly rely on online portals of varying credibility and quality. Years of "capacity building support" for journalists have failed to create a more independent and vibrant media, in part because the best journalists and editors are limited by the owners of news outlets, who are often directly affiliated with political parties. The democratization of the media has resulted in a plethora of commercial reality-style entertainment channels, but has not effectively resulted in independent and trustworthy news playing the role of a check on power at the local or state level.

It can be a bit better at the local level. I've often heard that local radio is a key way to reach people at the community level throughout the country, though activists often note that getting free airtime even there can be difficult. Local news portals provide more coverage of local community issues; the challenge then is how readers use this information on issues that matter to them, and whether or not they can actually use this information to hold their representatives accountable (see above).

We don't yet know what will be the outcome of the role of the press in the US. Consistent attacks on the media by Trump, and the impact of the President and others in not only not speaking out against, but actively promoting, entertainment programming masquerading as news, will have a negative effect on society for a generation to come. But to date, I'm heartened by the quality of

journalism in 2017, and glad to read that media literacy education (and civic education more broadly) is again on the agenda.

### **The Justice Sector**

Watching the checks and balances play out in the Justice Sector has been less personal, but to date it has been cautiously encouraging. The decisions by lower level and district courts regarding the travel ban have demonstrated (to date, at least) that the President cannot rule by fiat when independent and professional judges do their job. On the other hand, the appointment of Neil Gorsuch to the US Supreme Court represented the culmination of nine months of obstruction by Republicans, who refused to hold a hearing on former President Obama's nomination: not illegal, but revealing a troubling lack of respect for past norms and practices. We still don't know how his lifetime appointment could play out, and there is the possibility that this administration could enjoy more appointments.

On another side of the justice sector, we are witnessing an institutional checks and balances drama involving the office of the Presidency, the Federal Bureau of Investigation (FBI), the Justice Department and congressional judicial oversight committees as the investigations into Russian meddling in the 2016 elections play out in all of these separate fora. We don't yet know how this will unfold. However, it has – so far at least – illustrated the benefits of complicated, complementary and often inefficient checks and balances, and the critical role of both independent agencies and responsible oversight bodies.

I tried to imagine similar scenarios in Bosnia: the head of SIPA (the Bosnian FBI) testifying against the executive branch (all three members of the Presidency) about allegations brought to public light through institutional “leaks” in cooperation with the media. It can be hard to imagine, since so many institutions lack the independence they need. Constitutional court decisions (at the state and Federation level) go unfulfilled and ignored, now encouraging a sense that the rule of law is irrelevant, to deleterious effect. Liberalization of the justice sector in the transition process has perhaps been the most elusive, while it should also be the most foundational.

### **Concluding Remarks**

I could go on: we'll see a test of whistleblower protection laws; struggles between federal and states' rights; a critical discussion on proposals to further privatize the country's infrastructure; and a determination of whether or not lasting damage has been done to laws, norms and practices related to nepotism and conflicts of interest. No matter what happens in any of these issues, the US has suffered lasting damage, both in terms of the decline in civic trust and civil debate within the country, and in terms of its posture on the international stage. The Trump administration's foreign policy will be erratic globally, a net

negative in the Balkans,<sup>3</sup> and very damaging for global human rights promotion.

However, if the US system does prove to be resilient enough to eventually emerge from this stress test stronger, more inclusive, more accountable and more consultative, then it could be paradoxically easier to promote checks, balances and liberal values abroad. No country is led by angels; the worst predilections are held in check by systems and structures. No country has a perfect model; each can only strive for a more perfect union. And no citizenry can afford to get lazy in terms of their own responsibilities; holding officials to account can at times be easy, but at other times be difficult. Liberal democracy may be the worst system of government except for all of the others. Similarly, active promotion of liberal democratic values may be the worst way to shape an increasingly complex, changing and dynamic world, except for all of the other options.

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