

Beware the Erosion of Competition

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Competition is a fact of life--the driving force of biological evolution and a constant presence in all human interactions. It is also a method of organization, used to promote efficiency and excellence and to resolve conflict peaceably. Competition is the key to the success of private-market economies and is used in many other areas; for example, the Nobel and Pulitzer prizes spur competition in the sciences and in journalism. Even when we don't like competition when we face it in our personal lives, we appreciate its benefits and admire it in action--from Steve Jobs to Li Na.

The American Constitution uses competition to promote good government. Regular democratic elections limit incumbents' hold on power and open succession to outside competition. The "separation of powers" in our national government forces Congress and the president to compete for public favor and to balance each other's excesses; the 2010 election is only the latest to demonstrate that Americans like their government divided.

Under our federalist system, states compete for citizens and employers by offering different mixes of schools, transportation, public amenities, regulations, and taxes--think of booming Texas versus bankrupt California. And the federal and state governments compete with each other, as in the current state challenges to the Affordable Care Act (Obamacare) and the federal challenge to Arizona's immigration law.

The Constitution also protects and promotes private competition. The First Amendment is more than a matter of individual rights: it also ensures unbridled competition in the supply of news, religious faiths, political creeds, and information of all kinds. These are great goods in themselves and also keep political officials relatively honest and well-informed. And out of mischief: the First Amendment averts political-religious violence, stemming from the prospect of a state religious monopoly, of the sort that was common in England and Europe when the Constitution was drafted and that remains a terrible problem in the Arab Muslim world today.

Finally, the Constitution contains many provisions protecting private property and free economic competition. The Founders regarded competitive enterprise as a critical source of prosperity and national strength. They also hoped that numerous competing and conflicting interests would cancel each other out politically, thereby weakening demands for special-interest favoritism.

The competitive nature of the American system means that our government is

often fractious, muddled, and indecisive. As a result, we hear frequent calls for a parliamentary system where the executive is a handmaiden of the legislature. But parliamentary systems are prone to instability--especially in the face of crises, when legislative divisions can cause the government to fall at the worst possible time. Also, authoritarian governments such as China's are sometimes envied (sotto voce) for their superior decisiveness and orderliness. But authoritarian governments become corrupt, sclerotic, and insular over time. The American regime, now 222 years old, has outlasted hundreds of regimes that looked stronger for a time but came to ignominious and often ruinous ends. In government as in biology, competition promotes resilience and adaptability.

Our political system is, however, becoming markedly less competitive. State policy competition is being supplanted by "cooperative federalism"--as a result of federal policies (such as Medicaid) that encourage state uniformity and judicial policies that permit states to "export" taxes and regulatory requirements to citizens of other states. The National Labor Relations Board's current effort to prevent Boeing from opening a new plant in South Carolina rather than Washington state is a conspicuous effort to inhibit state policy competition.

But the most worrisome instance of declining political competition is the weakening--collapse might be a better word--of the separation of powers.

Our national government is now, in many critical respects, a unilateral Executive government with occasional oversight by the Congress and Judiciary. Most domestic discretionary policy-making is now conducted by regulatory agencies. The agencies are executive-legislative hybrids that write and enforce rules--de facto laws which often have enormous economic consequences--under very broad delegations of authority from the Congress. The migration of law-making from the Congress to regulatory agencies has been underway for many decades, but has accelerated dramatically since the financial crisis of 2008.

In the course of the financial crisis, the Federal Reserve Board and Treasury Department made financial commitments of more than \$2 trillion, used regulatory powers aggressively to arrange mergers of private banks, and bailed out and acquired substantial control over scores of major financial institutions and two automobile companies. The major decisions were all made within the executive branch, with scant congressional involvement. Congress was outraged--yet promptly acquiesced through supporting legislation.

And then, a year later, Congress passed two laws--the Dodd-Frank Act and Affordable Care Act--which set new standards of legislative delegation. Although both statutes are very long, they decide very little; instead they create new regulatory agencies and launch many hundreds of new rule-making proceedings, under extraordinarily vague standards that leave the serious policy choices to the agencies.

The new structures of national policy in the financial and health-care sectors are still largely unknown, to be determined as the agency proceedings run their course. But one thing is certain: both sectors will become much less competitive. A few large financial institutions will be designated "systemically important" and thereafter operate under the government's protection. When power is concentrated in government, it becomes concentrated in the private sector as well.

The causes of the decline of competitiveness in our political institutions are many and complex. But certainly one of them is a decline in public appreciation for the virtues of competition, amounting in many cases to a vain desire to be released from its demands.

Before we continue much further, we should consider whether the world we are headed for--featuring numerous monopolies of power in the government regulating dependent economic monopolies in the private sector, with little in the way of democratic accountability--is likely to be better than the one we inherited.

This article is a preview of Christopher DeMuth's 2011 John M. Templeton Jr. Lecture on Economic Liberties and the Constitution, to be delivered at the National Constitution Center at 6:30 p.m. Thursday. The public is invited to the free discussion, which will include Michael L. Wachter, Penn professor of law and economics, but reservations are required. Call 215-409-6700 or visit www.constitutioncenter.org

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