A Wish List for the New Administration

Early this spring, the YLR asked a handful of Law School faculty members to weigh in with their thoughts about the direction the next presidential administration could take. The op-eds below are their responses and constitute a “wish list” for the next administration.

Heather Gerken
Create a Democracy Index
Heather Gerken is Professor of Law at Yale Law School.

One of the puzzles in my field, election law, is that we spend a great deal of time thinking about what an ideal election system ought to look like, but almost no time figuring out how to get from “here to there” — that is, how reform actually can be done. After all, we know that it is extraordinarily difficult for reform proposals to get traction in this country, my hope is that the next administration will focus more on figuring out how to get from “here to there.”

The Democracy Index is a “here-to-there” solution. First, and most importantly, it changes the terms of the debate. Right now, it is extremely hard for voters to figure out whether the system is working or not. Problems occur routinely, but they become visible to most of us only when an election is so close that those problems threaten to affect the outcome of an election, and we have no comparative data that would tell us which states’ systems work and which don’t.

The Index would make the systemic problems in our election system visible to everyone. It gives voters a metric to hold elected officials accountable. Election administrators can defend their choices all they want, but they cannot get away from the stark reality of the bottom line: How is the system working? And why is the state next door doing so much better? The Democracy Index is a “here-to-there” solution in a second, key respect. One of the central obstacles to reform is political self-interest. The foxes are guarding the henhouse in this country—partisans make decisions about how elections are run — and it is difficult to persuade politicians to give up that power. Most reformers ask politicians to do just that — to act contrary to their self-interest. The Democracy Index realigns the political interests of politicians with the interests of voters.

The Index would concentrate on the issues that matter to all voters: How long did you spend in line? How many ballots got discarded? How often did voting machines break down? It should work for a simple reason: no one wants to be at the bottom of the list. The Democracy Index is a “here-to-there” solution. First, and most importantly, it changes the terms of the debate. Right now, it is extremely hard for voters to figure out whether the system is working or not. Problems occur routinely, but they become visible to most of us only when an election is so close that those problems threaten to affect the outcome of an election, and we have no comparative data that would tell us which states’ systems work and which don’t.

Jack Balkin
Choice Respecting Family Policy
Jack Balkin is Knight Professor of Constitutional Law and the First Amendment.

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For decades, one issue — abortion — has dominated and polarized discussions of reproductive rights and family policy. We need a new direction — a national policy that respects women as responsible decisionmakers as much as it does men, facilitates their choices, and views reproductive rights as integral to a larger family policy. Government can support the formation of strong, stable families by helping women and men avoid unintended pregnancies, and by helping those who want children to have them with less harm to themselves and to their families.

What would family policy that respected women’s choices as much as men’s look like? First, it would provide young people with information about the risks of unprotected sex; and it would require states to provide contraception, especially for those most at risk for unintended pregnancies. Second, it would help women make decisions about unplanned pregnancies — providing information about adoption and abortion, material assistance for those struggling to raise children, legal procedures to help minors make difficult choices in troubled or hostile family environments, and resources to counter domestic violence. It would secure women’s right to an abortion free from government pressure designed to coerce, manipulate, intimidate, or shame women into continuing a pregnancy they wish to end. Third, it would support those choices after birth as well as before — through support for health care and nutrition for struggling families, through day care and workplace accommodation that would make it easier for both women and men to combine caregiving and wage work.

Sadly, family and reproductive rights policies are headed in the opposite direction. Most public support for women who give birth ends with birth, health care, day care, and workplace reforms have stagnated. Meanwhile, government interventions have done everything possible to restrict access to contraception and abortion, to deter health care providers from providing abortion and contraception services; to require pharmacists to deny services on religious grounds. The Supreme Court’s most recent abortion decision in Gonzales v. Carhart only made matters worse: it suggested that states could enact harsher restrictions on abortion and contraception because some women might not know what they really wanted and would regret...
The aging of the population, longer life expectancies, and rising health care costs will put enormous stress on our ability to fund our government in the years ahead. In the short-term, modest changes in spending or taxes can balance the budget. But going forward we must restructure our nation’s tax system. Our archaic tax system was designed when the United States had virtually all the money there was. Even a horrid tax system—with individual income tax rates up to 91 percent—could not stymie our economic progress then. Now the U.S. economy must compete worldwide for the investment capital necessary to produce rising living standards for Americans. How should we reform our nation’s tax system so that it is conducive to economic growth, fair, and simple for the American people to comply with?

The income tax law is four times longer than War and Peace and considerably harder to parse. Americans waste $150 billion each year just to calculate and administer the tax. Incentives for unproductive expenditures, along with tax-planning efforts, are estimated to cost our economy an additional $1 trillion a year. These costs are we cannot afford.

The only way to wean politicians from thinking that tax benefits are the way to solve our nation’s problems is to get most Americans out of the income tax system altogether. We can do this and have a tax system that is much simpler and more conducive to economic growth by replacing the income tax for most Americans with a value-added tax (VAT), a broad-based tax on consumption used in every other Organization for Economic Cooperation and Development country and by nearly 150 countries around the world.

Here is the general scheme: Enact a value-added tax at a 10–14 percent rate to finance an exemption of $100,000 from the income tax, and substantially lower the individual and corporate income tax rates on income above that. This would free 150 million Americans from having to deal with the income tax at all. Use a smart card or employer-based refunds to offset the regressivity of the VAT for low and moderate income people and to replace the Earned Income Tax Credit.

Unlike many other tax reform plans that have been advanced, this system would not shift the tax burden away from our wealthiest citizens down the income scale. It would be far simpler and less costly to comply with and more favorable to business investments, and economic growth than our current tax system. It would fit well with international arrangements and improve the competitiveness of American businesses and workers.

If we choose to replace the income tax with a consumption tax, the government’s revenue problems would be cured, allowing it to increase spending on education, health, transportation, and other social programs. The only way to proceed is for the president and Congress to agree on a VAT.

**“The proper way to deal with all of these addictive substances is to legalize, tax heavily, ban all forms of marketing, and fund efforts to restrain consumption and provide treatment for abusers.”**

**John J. Donohue**

**Rethink the “War on Drugs”**

Crime is an issue that often seems into Presidential elections in one form or another. Indeed, the Bush Administration has rolled back or undermined the two programs to start-up companies, they often have no choice but to line up a merger deal with an old-line competitor that removes the authority of the SEC to regulate not only corporations, but also public securities offerings. The legislation should also offerings. The legislation should also offer tax credits to small businesses that hire veterans.

The political spoils from regulating U.S. capital markets are a crisis in situation and that this crisis is caused by federal overregulation of public companies and initial public offerings, and runaway private litigation. Second, it should sponsor sweeping legal reforms that would remove the authority of the SEC to regulate not only internal corporate governance of U.S. corporations, but also public securities markets and exchanges and initial public offerings. One reform that could bring large dividends in terms of crime reduction would be to change tactics in the quagmire of the American war on drugs. With blind fidelity to a failed policy, we continue to fritter away scarce law enforcement resources fighting sale and possession of drugs and to put hundreds of thousands in prison at enormous cost to taxpayers and their families. Many substances from alcohol and nicotine to marijuana, cocaine, and heroin impose high social costs on American society, but only the illegal drugs lead to mass incarceration, corruption of police, street killings, and other acts of violence in the effort to market them to a desirous American population. Just as the end of prohibition generated enormous crime reductions, legalization of the above drugs would likely bring about similar crime drops, while risking increases in the high costs attending the likely increase in consumption and abuse.

The proper way to deal with all of these addictive substances is to legalize, tax heavily, ban all forms of marketing, and fund efforts to restrain consumption and provide treatment for abusers. Instead, following the sclerotic European universal banking model, they simply try to line up a merger deal with an old-line established competitor that removes the authority of the SEC to regulate not only corporations, but also public securities offerings. Therefore, the legislation should also offer tax credits to small businesses that hire veterans.

The legislation should also offer tax credits to businesses that hire veterans. In the next administration, the public securities market will be a crisis in situation and that this crisis is caused by federal overregulation of public companies and initial public offerings, and runaway private litigation. Second, it should sponsor sweeping legal reforms that would remove the authority of the SEC to regulate not only internal corporate governance of U.S. corporations, but also public securities markets and exchanges and initial public offerings. One reform that could bring large dividends in terms of crime reduction would be to change tactics in the quagmire of the American war on drugs. With blind fidelity to a failed policy, we continue to fritter away scarce law enforcement resources fighting sale and possession of drugs and to put hundreds of thousands in prison at enormous cost to taxpayers and their families. Many substances from alcohol and nicotine to marijuana, cocaine, and heroin impose high social costs on American society, but only the illegal drugs lead to mass incarceration, corruption of police, street killings, and other acts of violence in the effort to market them to a desirous American population. Just as the end of prohibition generated enormous crime reductions, legalization of the above drugs would likely bring about similar crime drops, while risking increases in the high costs attending the likely increase in consumption and abuse.

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The key to America’s future is quality education for all youngsters. Governments at all levels have spent trillions of dollars on programs aimed at closing the vast educational achievement gap between low-income children and their more fortunate peers, but it remains.

We cannot close this gap until disadvantaged parents have the power, not just the right, to send their children to schools other than the low-performing ones to which they are now consigned. If parents had the choice and the wherewithal to exercise it, many would opt for alternate public schools such as magnets or operationally independent “charter” schools, while others would choose secular or religious private schools. The well-documented success of the Catholic schools in educating the same kinds of low-income children—whether Catholic or non-Catholic, minority or white, immigrant or American, urban or suburban—whom public schools have manifestly failed to reach is a strong indictment of the public system.

Every careful study of choice shows some benefits and no significant harm, with per pupil expenditures that are nearly half those in the public schools. For people who enjoy choice to argue that low-income children must be denied choice in order to “save” those schools is not simply wrong as an empirical matter (public schools that must compete for scarce dollars with private ones tend to improve), and as a historical matter (choice was common until the mid-19th century). It is also morally perverse, precluding the putative welfare of the school system to that of the children it is meant to serve.

Private schools and religious schools are often more successful than public ones in teaching civic virtues, community service, tolerance, and even feminism. In localities with choice, private schools tend to be more integrated, both racially and by income, than are their public schools, which reflect segregated housing patterns. Choice plans, by reducing the premiums paid for housing in areas with good public schools, make it somewhat easier for poorer families to move to those areas. No wonder voucher programs are most strongly supported by poor inner-city residents and most vigorously opposed by well-to-do suburbanites and their teachers unions.

The IRS should fill out your tax return for you. The IRS already has all the information it needs to fill out the complete forms for millions of wage income taxpayers who don’t itemize their deductions. Taxpayers wouldn’t be forced to use the IRS’s pre-completed form. They could revise it or they could just throw it away and start from scratch.

Joe Bankman, the man behind this idea, has shown that there are as many as 50 million Americans who would not need to change a thing and there are 50 million more where the IRS could make a darn good start. The feds even know enough to complete your state form for you while they’re at it. This isn’t some pie in the sky idea. California’s Ready Return Project already shows that it can work. In 2005, over 11,000 Californians used tax returns that the state had filled out for them in advance. The participants in the pilot program loved it. Almost all the users said they’d use it again next year.

But the Tax Preparation industry hates this idea and has been fighting it tooth and nail. Why pay a tax preparer to do your taxes if the government has already done it for you? Intuit, the maker of TurboTax, last year poured more than $1 billion into the California comptroller’s race in an attempt to seize control of the state’s Franchise Tax Board. They succeeded in killing the program for 2005 returns, but it is scheduled to expand in California to up to a million prepared returns in 2007.

John Edwards has got out in front on what should be a bipartisan issue. His “Forms 1” program would have the IRS do the deed for millions of taxpayers. It’s kind of crazy that the current system requires people to keep copies of their W2s and 1099 forms. This would be like Visa requiring us to keep copies of all our charges, and then to fill in a bland form reporting how much we spent. Customers expect Visa to start the ball rolling by sending them a bill. We should expect no less from the IRS.

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