

Europe On The Brink

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by James Galbraith

Athens this October was a city on the edge, and not just because of the protests. Rather it was the empty storefronts, the addicts sprawled on the sidewalks, the beggars and the squeegee men that caught my eye. And there was the polite conversation with working professionals about their 40% pay cuts, their escalating taxes, and moving their money out of the country while they can. The data show total output falling at a 5% annual rate but specialists are sure the final figures will be worse. The business leaders I spoke with all said there is no hope at all.

Greece is a country with weak public institutions and they are being destroyed. It is a country with fairly low wages and they are being driven down. The government has accepted the terms imposed upon it, but the cuts and tax increases are never enough, and the "troika" comes back time and again for new measures, such as breaking the national wage bargain or (as I heard) using up funds held in reserve to protect the banks. Looming in the background is a plan to place all of Greece's public assets under private management from abroad. Though floated by a consultant, this was described to me, by a high European official, as the "secret German plan."

It is obvious that nothing happening today in Greece will produce economic recovery or forestall default. On the contrary, even though the Greek government refuses to take the step of defaulting, it will be forced into that position when- ever the Germans and French pull the plug on new loans. This they are plainly preparing to do. Meanwhile, they are punishing Greece and the Greeks — not for any specific crimes, but in order to make sure that when Greece is permitted to default and restructure, the other peripheral countries and especially Italy will not be tempted down the same path. This is called "ring-fencing." It is also called the principle of collective guilt, destroying the livelihoods of 13 million people for political reasons.

This is economic policy as moral abomination. It is not designed to succeed as economics. And it will also fail as object lesson. What it may achieve, is stringing out the destruction, as it proceeds eventually from Greece to Ireland and on to other countries, so that the effect of the popular rebellion now getting under way does not shake the foundations of the Eurozone. But then again, maybe it won't even do that.

There are technical solutions; these were discussed and debated at a workshop at the LBJ School on November 3-4, sponsored by the European Center of Excellence, with participation from faculty in the Government Department. These proposals involve European bonds, bank recapitalization and an investment program. But the obstacles are political, insofar as important constituencies in Germany and France oppose them, and then financial, insofar as they would require recognition of losses to European banks that the banks would like to deny. The issue is therefore whether the political leadership in Berlin and Paris is interested in technical solutions. It may be that Europe's leaders place their political survival in first place, the survival of the European project second, and the people of the periphery dead last.

That being so, it is only a matter of time before desperate populations erupt in revolt, forcing a change of course — or a crack-up.

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Edward C. Prado

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Edward C. Prado received his B.A. in 1969 (and J.D. in 1972). In 1984, Ronald Reagan appointed Prado to the U.S. District Court for the Western District of Texas. In 2003, George Bush appointed Prado to the U.S. Court of Appeals for the Fifth Circuit. In 2009 Prado received the Texas Exes Distinguished Alumnus Award; you can watch his acceptance speech at: http://www.youtube.com/watch?v=7IC_gUN0m-w

In 2009 you heard an appeal of a case brought by LULAC of Texas and the Mexican-American Bar Association of Houston, et. al. against the Texas Democratic Party (TDP). The plaintiffs had sued the TDP under the Voting Rights Act over concerns with how the TDP selected delegates for participation in the party's nominating conventions. You began your opinion with some strong language about the significance of the Voting Rights Act (VRA). What does the VRA mean to you?

Parts of the VRA do not apply to the whole country, just certain states. There has been recent criticism of the VRA that it is either illegal or should be done away with because times have changed. Some groups argue that certain parts of the VRA have served their purpose and are no longer needed. When the Supreme Court ruled on *Brown v. the Board of Education*, it fell on the courts of the South to take care of lots of civil rights issues. The Fifth Circuit played a major role on lots of civil rights issues, including the VRA. I am very proud to be part of a court that played such a major role in deciding civil rights law for the country. Whether it was a poll tax, voting rights, schools, transportation — these things came out of the Fifth Circuit and mostly white conservatives courageous enough to make rulings that needed to be made. There is such a great, rich history about the role of the Fifth Circuit in the civil rights era, I am sometimes in awe of sitting there.

What is the most challenging issue facing the federal courts today?

The financial crunch. The judicial branch makes up less than two-tenths of 1% of the federal budget, yet so much important work gets done by courts with such few resources, and government is in such critical economic straits that we've been asked to cut back. How do we continue doing the work we are doing with less resources? We don't dictate how many cases we get. Cases keep coming. People keep filing lawsuits. We can't control the work that falls on us. People on probation with drug problems, or people in trouble for child pornography — these people need to be supervised. Without probation officers to go visit them at work or at home, you can't keep up with these people, and some people will regress into crime because we don't have the resources to supervise. Or if someone files a lawsuit and the judge tells them the case cannot be heard for one-and-a-half years — some people can't wait that long for their day in court.

What is the most challenging issue you personally have faced as a federal judge?

A lawsuit was brought by minorities claiming that the standardized test required to get a high school diploma in Texas is discriminatory and therefore unconstitutional. It was a personal struggle for me. I came from a barrio school, and initially college was challenging for me because I don't think I had an equal high school education. Personally I felt it not fair to require a person who had gone to a poorer school to have to take the same test, and I thought the answer was that you need to give those kids a better education. But I had

to set that aside and look at it from a legal perspective and see if it was in fact unconstitutional, and I found that there were problems beyond that. Often parents were not around and there was nobody at home to help. There were social-economic problems beyond school that the school could not control. I determined that there were adequate opportunities given to students to pass the test, and the test was therefore constitutional, despite my personal qualms about requiring the test — I had a personal disagreement with my legal conclusion.

What is the most rewarding thing about being a federal judge?

The opportunity of resolving some very challenging issues. Knowing, hoping you are doing something that needs to be done. Answering questions that no one else can resolve. Answering difficult questions left open to resolve disagreements. Working so that people are given their rights and are treated fairly. There is great power, but great responsibility to do what is fair.

There is often frustration, and people lose patience, because people want justice, and I have to give it to them, but the law does not always give a remedy for every unfair situation, and I have to follow the law. Sometimes I cannot fix a wrong. Sometimes there is just no remedy available in the law. Let's say there is a car accident and it's the other guy's fault, but there are no witnesses. Just because it's his fault doesn't mean you're going to win. Sometimes you lose and it's unfair.

Does the U.S. legal system live up to its promise as adjudicator of a free society with liberty and justice for all?

I have had the opportunity of going to different countries and working with judges throughout Latin America, South America, Mexico, and it makes you appreciate our system. Our system isn't perfect, but compared to everything else there is, our system is pretty darn good. We are way ahead of everyone else. There is a lot of envy out there of our system. People generally have faith in the system. People do not always understand the system, but they generally respect the decisions and respect the system, and we are fortunate and lucky to have the system we have.

There are lots of poor people who can't afford a lawyer and who have issues and need legal representation. We have a segment of society that can't afford legal representation, so we don't have too many lawyers; we have not enough lawyers where we need them.

Can you give examples of how politics does and/or does not interfere with the work of the federal judiciary?

There is the issue of elected versus appointed judges. Politics enters into both, but the appointed system less. Once appointed a judge is free to make opinions that need to be made without fear of losing a job or being elected out of office. About 95% of the decisions we make are based on law and what is just and in the judge's mind right and correct. But judges come to the bench from different backgrounds. We each come with different experiences and we bring them to our jobs as judges, and they can't help but influence how we interpret the law. We must reach the right decisions anyway, but there is one teeny bit of law that could go either way. How can judges disagree? It's background, education, personal life — these are all brought to the table and some see it different than others.

What should the University of Texas be doing to ensure we are training the next generation of leaders?

A good quality education is so vital to people moving on in life. If you learn what has worked and what has not worked, when it has worked and when it has not worked, why it has worked and why it has not worked, it can make tomorrow's leaders well-equipped with the knowledge of how to conduct government business and how to get things accomplished.

What is the greatest attribute of the U.S. constitution?

It established our system of government and gave us all these rights that many times we take for granted. Over 200 years ago this document that set up this country is still there running our country, giving us basic rights and a government still in existence. It's amazing — how did they write this over 200 years ago? Could it be written today?

What advice do you have for young lawyers?

Your reputation is very important. In your advocacy for a client, don't sacrifice your reputation and your ethics. If you are dishonest, unethical, it will take a long time for you to undo that reputation. You want to be known as an ethical, good person. Don't sacrifice that for the sake of a client or the sake of a case.

Can you comment in general on issues such as search and seizure, individual liberties and freedoms, constitutional freedoms, drug cases, drug epidemics, violence, violent crimes, issues that come before you?

It concerns me with today's society that by the time someone comes before me it is almost too late. We concentrate all our resources to fight crime and charge criminals and send them to jail, and if we were to readjust and instead spend the money on this person in elementary or middle school, and maybe if we can get to these people before they start getting into problems, it will cost us less than the money we spend later. It's two or three times harder to turn them around when we have a high school dropout with a drug problem, and we have a low success rate. If there had been someone there earlier, maybe we could turn them around at an early age. Maybe we can save time, trouble and money by building better schools and fewer penitentiaries. I'm an example of how education can be the answer to a lot of issues. Poverty and discrimination — with education comes opportunities to move out.

Are crimes more heinous today than they once were?

Criminals and crime are more sophisticated today — there is more advanced criminal activity with the use of technology. And our kids are exposed to so much more than they used to be, and that causes new problems.

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