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America as a One-Party State

Today's hard right seeks total dominion.

It's packing the courts and rigging the rules.

The target is not the Democrats but democracy itself.

By Robert Kuttner

America has had periods of single-party dominance before. It happened under FDR's New Deal, in the Republican 1920s and in the early 19th-century "Era of Good Feeling." But if President Bush is re-elected, we will be close to a tipping point of fundamental change in the political system itself. The United States could become a nation in which the dominant party rules for a prolonged period, marginalizes a token opposition and is extremely difficult to dislodge because democracy itself is rigged. This would be unprecedented in U.S. history.

In past single-party eras, the majority party earned its preeminence with broad popular support. Today the electorate remains closely divided, and actually prefers more Democratic policy positions than Republican ones. Yet the drift toward an engineered one-party Republican state has aroused little press scrutiny or widespread popular protest.

We are at risk of becoming an autocracy in three key respects. First, Republican parliamentary gimmickry has emasculated legislative opposition in the House of Representatives (the Senate has other problems). House Majority Leader Tom DeLay of Texas has both intimidated moderate Republicans and reduced the minority party to window dressing, rather like the token opposition parties in Mexico during the six-decade dominance of the PRI.

Second, electoral rules have been rigged to make it increasingly difficult for the incumbent party to be ejected by the voters, absent a Depression-scale disaster, Watergate-class scandal or Teddy

Roosevelt-style

ruling party split. After two decades of bipartisan collusion in the creation of safe House seats, there are now perhaps just 25 truly contestable House seats in any given election year (and that's before the recent Republican super gerrymandering). What once was a slender and precarious majority -- 229 Republicans to 205 Democrats (including Bernie Sanders of Vermont, an independent who votes with Democrats) -- now looks like a Republican lock. In the Senate, the dynamics are different but equally daunting for Democrats. As the Florida debacle of 2000 showed, the Republicans are also able to hold down the number of opposition votes, with complicity from Republican courts. Reform legislation, the 2002 Help America Vote Act (HAVA), may actually facilitate Republican intimidation of minority voters and reduce Democratic turnout. And the latest money-and-politics regime, nominally a reform, may give the right more of a financial advantage than ever.

Third, the federal courts, which have slowed some executive-branch efforts to destroy liberties, will be a complete rubber stamp if the right wins one more presidential election.

Taken together, these several forces could well enable the Republicans to become the permanent party of autocratic government for at least a generation. Am I exaggerating? Take a close look at the particulars.

I. Legislative Dictatorship

Political scientists used to describe America's Congress as a de facto four-party system. There were national Democrats, mostly liberals; "Dixiecrats," who often voted with Republicans (Congressional Quarterly called this the conservative coalition and tabulated its frequent wins); conservative Republicans; and moderate-to-liberal "gypsy moth" Republicans, who selectively voted with Democrats.

Ad hoc coalitions shifted with issues. Back-benchers and committee chairs alike often defied both the leadership and the party caucus. Party loyalty was guaranteed only in the biennial election of the speaker, to give the dominant party formal majority status and perquisites. Only at rare moments, such as the New Deal's first six years and Lyndon Johnson's storied 89th Congress of 1965-67 (295 Democrats, 140 Republicans), were majorities

so

large that one party had effective parliamentary discipline. Infrequently, there were other moments of centralized leadership and relative party unity, among them the 100th Congress (1987-89) under Democratic Speaker Jim Wright and the tenures of two autocratic Republican speakers, Thomas Reed and Joe Cannon, back in the Gilded Age. But the usual complaint, dating from political scientist Woodrow Wilson's 1885 text on Congress, was that the congressional party system was an unaccountable stew of freelancers. A famous 1950 report by the American Political Science Association argued that more responsible parties would make for more effective democracy.

Along with shifting coalitions and weak party discipline, there was usually reasonable comity between majority and minority party. Major legislation was the product of lengthy committee hearings. Both parties could call witnesses. On most bills (except tax legislation in the House) there could be floor amendments, with extensive debate. Recorded floor amendments allowed members to be held accountable by constituents. House-Senate conference committees included majority and minority party conferees, and their final product was a compromise between the House and Senate bills. Go to the official congressional Web site and you will learn that this is supposedly how a bill becomes a law.

All that has radically changed. Seeds of the change began appearing during the speakerships of both Democrat Jim Wright (1987-89) and Republican Newt Gingrich (1995-99), which produced more centralized leadership and party discipline. But the more radical changes, at the expense of democracy itself, have occurred since 2002 under Tom DeLay. Here are the key mechanisms of DeLay's dictatorship:

Extreme Centralization. The power to write legislation has been centralized in the House Republican leadership. Concretely, that means DeLay and House Speaker Dennis Hastert's chief of staff, Scott Palmer, working with the House Committee on Rules. (Hastert is seen in some quarters as a figurehead, but his man Palmer is as powerful as DeLay.) Drastic revisions to bills approved by committee are characteristically added by the leadership, often late in the evening. Under the House rules, 48 hours are supposed to elapse before floor action. But in 2003, the leadership, 57 percent of the

time,
wrote rules declaring bills to be "emergency" measures, allowing them
to be
considered with as little as 30 minutes notice. On several measures,
members
literally did not know what they were voting for.

Sorry, No Amendments. DeLay has used the rules process both to write
new
legislation that circumvents the hearing process and to all but
eliminate
floor amendments for Republicans and Democrats alike. The Rules
Committee,
controlled by the Republican leadership, writes a rule specifying the
terms
of debate for every bill that reaches the House floor. When Democrats
controlled the House, Republicans complained bitterly when the
occasional
bill did not allow for open floor amendments. In 1995, Republicans
pledged
reform. Gerald Solomon, the new Republican chairman of the committee,
explicitly promised that at least 70 percent of bills would come to the
floor with rules permitting amendments. Instead, the proportion of
bills
prohibiting amendments has steadily increased, from 56 percent during
the
104th Congress (1995-97) to 76 percent in 2003. This comparison
actually
understates the shift, because virtually all major bills now come to
the
floor with rules prohibiting amendments.

DeLay has elevated votes on these rules into rigid tests of party
loyalty,
on a par with election of the speaker. A Republican House member who
votes
against a rule structuring floor debate will lose committee assignments
and
campaign funds, and can expect DeLay to sponsor a primary opponent.

How does this undermine democracy? As the recent Medicare bill was
coming to
a vote, a majority of House members were sympathetic to amendments
allowing
drug imports from Canada and empowering the federal government to
negotiate
wholesale drug prices. But by prohibiting floor amendments, DeLay made
sure
that the bill passed as written by the leadership, and that members
were
spared the embarrassment (or accountability) of voting against
amendments
popular with constituents.

One-Party Conferences. The Senate still allows floor amendments, but
Senate-passed bills must go to conference with the House. Democratic
House

and Senate conferees are increasingly barred from attending conference committees, unless they are known turncoats. On the Medicare bill, liberal

Democratic Senate conferees Tom Daschle and Jay Rockefeller were excluded.

The more malleable Democrats John Breaux and Max Baucus, however, were allowed in. [See Matthew Yglesias, "Bad Max," page 11.] All four House Democratic conferees were excluded. Republican House and Senate conferees

work out their intraparty differences, work their respective caucuses and

send the (nonamendable) bill back to each house for a quick up-or-down vote.

On the Medicare bill, members had one day to study a measure of more than

1,000 pages, much of it written from scratch in conference.

Legislation Without Hearings. Before the DeLay revolution, drafting new legislation in conference committee was almost unknown. But under DeLay,

major provisions of the Medicare bill sprang fully grown from a conference

committee. Republicans got a conference to include a weakened media-concentration standard that had been explicitly voted down by each

house separately. Though both chambers had voted to block an administration

measure watering down overtime-pay protections for workers, the provision

was tacked onto a must-pass bill in conference. The official summary of House procedures, written by the (Republican-appointed) House parliamentarian and updated in June 2003, notes: "The House conferees are

strictly limited in their consideration to matters in disagreement between

the two Houses. Consequently, they may not strike out or amend any portion

of the bill that was not amended by the other House. Furthermore, they may

not insert new matter that is not germane to or that is beyond the scope of

the differences between the two Houses." Like the rights guaranteed in the

Soviet constitution, these rules are routinely waived.

Appropriations Abuses. Appropriations bills are must-pass affairs, otherwise

the government eventually shuts down. Traditionally, substantive legislation

is enacted in the usual way, then the appropriations process approves all or

part of the funding. There has long been modest abuse in the form of earmarked money for pet pork-barrel projects and substantive riders being

tacked onto appropriations bills. But since Gingrich, a lot of substantive

bill drafting has been centralized in House leadership task forces

appointed
by the majority leader. And under DeLay, Appropriations subcommittee
chairs
must now be approved by the leadership, as well as by the
Appropriations
chairman.

But didn't the Democrats commit the same abuses during their 40-year
House
majority? Basically, no. The legislation written by stealth in the
Rules
Committee and in conference, and the exclusion of the minority party
from
conferences, are new. In 1987-89, Speaker Jim Wright occasionally used
closed rules restricting floor amendments, but DeLay has made the
railroading systematic.

Before 1975, conservative Democratic committee chairs often blocked
liberal
legislation, despite nominal Democratic House majorities. In 1975,
rules
changes supported by the large and idealistic "Watergate class" allowed
the
caucus to elect committee chairs, overturning the system of seniority.
During the speakerships of Tip O'Neill (1977-86) and Wright, the caucus
gradually strengthened both the leadership and itself at the expense of
committee chairs. As speaker, Wright gained control of the Rules
Committee
and occasionally used his powers to frustrate floor amendments. He
devised
complex rules that permitted nonbinding preliminary votes to be
overridden
by the final vote. This maneuver, bitterly criticized by Republicans at
the
time, was the germ of the rules abuses that DeLay has taken to
dictatorial
levels.

To enforce party discipline, the DeLay operation has also perfected a
technique known as "catch and release." On close pending votes, the
House
Republican Whip Organization, with dozens of regional whips, will
target,
say, the 20 to 30 Republican members known to oppose the legislation.
When
the leadership gets a final head count and determines just how many
votes
are needed, some will be reeled in and others let off the hook and
given
permission to vote "no." According to Michigan Republican Nick Smith,
the
leadership threatened to oppose his son's campaign to succeed him
unless he
voted for the Medicare bill. Basically, Republican moderates are
allowed to
take turns voting against bills they either oppose on principle or know
to

be unpopular in their districts. On the Medicare bill, 13 Republican House members voted one way on the House-passed bill and the other way on the conference bill. That way they could tell constituents whatever they needed to. As one longtime House staffer observes, "They can say, 'I would have voted to amend it, but I didn't get the opportunity.'"

Here again, some previous House and Senate leaders were adept at squeezing wavering members with rewards or punishments. The difference is that today's tight caucus discipline is used to enforce broader anti-democratic abuse. On the Medicare bill, the final roll-call vote was held open a full three hours well after midnight so that the leadership could keep pressuring Republican legislators who wanted to vote "no." Back in 1987, Republicans went ballistic when then-Speaker Wright held a vote open for a then-record extra 15 minutes. Dick Cheney, at the time a Wyoming representative, termed the move "the most arrogant, heavy-handed abuse of power I've ever seen in the 10 years that I've been here."

In short, some of these maneuvers had embryonic antecedents, but under DeLay differences in degree have mutated into an alarming difference in kind. Wright's regime lasted just one congressional session. It ended unceremoniously when a minor ethics breach (Wright's bulk sales of his book) was bootstrapped into a major scandal by a Republican back-bencher named Gingrich, leading to Wright's resignation and his replacement by the far less partisan Tom Foley, and then to the Democrats' loss of the House in 1994. DeLay's regime shows every sign of going on and on and on -- with abuses of which the Democrats never dreamed.

Why is there no revolt of the Republican moderates? They are split along issue lines, too intimidated and too few to mount a serious challenge, and almost never vote as a bloc. The only House Republicans who openly challenge DeLay as a group are those to his right, almost all of whom voted against the Medicare bill as too expensive.

And why has this anti-democratic revolution aroused so little general attention or indignation? First, Democrats are ambivalent about taking this issue to the country or to the press because many are convinced that

nobody
cares about "process" issues. The whole thing sounds like inside
baseball,
or worse, like losers whining. If they complain that big bad Tom DeLay
keeps
marginalizing them, as one senior House staffer puts it, "It just makes
us
look weak." But when Joe Cannon, the Republican House speaker a century
ago,
played similar games, it was a very big deal indeed. Press
investigation and
popular outrage toppled him. Today's abuses are hidden in plain view,
but
the press doesn't connect the dots.

In the Senate, Democrats still have the filibuster as a weapon of last
resort, though the Republicans want to abolish it for judicial
nominations.
The Senate also continues to permit recorded floor amendments. But
there is
far less unity among Senate Democrats than among House Democrats, and
Senate
Republicans are learning anti-democratic tactics from the House. Most
notably, they are complicit in the abuse of conference committees.

II. A Permanent Legislative Majority

It may feel like an eternity, but wall-to-wall one-party government has
been
in place only since Republicans took control of the Senate briefly
during
2001 -- they lost it when Vermont Senator Jim Jeffords quit the party
that
May -- and again since January 2003. During Bill Clinton's first term,
Democrats nominally controlled Congress, though with weak discipline.
Clinton himself practiced bipartisan "triangulation," which further
weakened
the Democrats. Bush's presidency, by contrast, has produced a near
parliamentary government, based on intense party discipline both within
Congress and between Congress and the White House. It helps that Senate
Majority Leader Bill Frist literally owes his job to Karl Rove.

In one sense, parliamentary discipline is good for democracy: It
enables
voters to hold the party of government accountable. If they don't like
the
results, they can throw the rascals out. But today, it has become far
more
difficult to oust the congressional in-party. One big reason is the
vanishing swing district.

If the current abuse of parliamentary processes were operating in
ordinary
times, the opposition party would soon be returned to power and a cycle
of
reform would ensue. The 1903-11 dictatorship of the aforementioned Joe
Cannon abruptly ended when widespread outrage produced an alliance

between

Democrats and Progressive Republicans to weaken the speaker's powers in 1910, and then a landslide repudiation that November in which Republicans lost 57 seats and Democrats took control for the first time since 1895.

But since the early 1980s, the number of contestable House seats has come down and down. It's not that voter preferences have become more stable; there are actually more registered independent voters than ever. Rather, in state legislatures both parties have worked to create unprecedented numbers of safe congressional seats. Sometimes the two parties have cut deals, redrawing district lines to make Republican House seats more Republican and Democratic ones more Democratic. In other cases, a state party with a legislative majority -- Republicans in Texas today, Democrats in California in 1981 -- will redraw district lines that create the maximum number of safe seats for their party. Both courses are profoundly undemocratic because each leaves most members with little to fear from voters and reinforces the underlying pro-incumbent bias of Congress.

Both parties are partly to blame, but as the recent super-gerrymandering caper in Texas illustrates, Republicans have played dirtier. Historically, districts are redrawn only after each decennial census. The unprecedented gerrymandering between censuses, carried out by the Texas legislature but orchestrated by Rove and DeLay, will likely shift seven seats from Democrats to Republicans. (The press paid far more attention to the jollity of Texas Democratic state representatives fleeing to Oklahoma and New Mexico to temporarily deny Republican legislators a quorum than to the deadly serious consequences when Republicans eventually prevailed.) A three-judge federal appeals court panel has upheld this caper, which will eventually come before the same Supreme Court that wrote Bush v. Gore.

Many Democrats thought themselves clever to collude in the safe-seat game. But this particular bout of musical chairs has ended with a nearly frozen House that is structurally tilted Republican. In combination with the DeLay parliamentary dictatorship, the consequence is a near permanent partisan lock. So today's Republican Party is more disciplined and accountable to

party leaders but far less accountable to voters.

Here are the numbers: With 229 Republicans and 205 Democrats (counting Sanders), it would take a net Democratic pickup of just 13 seats (that's 13 Democratic gains equaling 13 Republican losses for a net swing of 26 seats) for the House to change control. Historically, that's a small swing. In the nine elections between 1968 and 1984, the median swing was 42 seats. In the nine elections since 1986, the opposition party enjoyed a swing of 26 or more only once (the Gingrich landslide of 1994), and the median swing was just 10 seats. So normally the current Republican majority would be vulnerable to a below-average election-year swing. Today, however, with only about 25 effectively contestable seats, Democrats would have to win about three-quarters of the contestable races to take control, i.e., 19 Democratic wins to just six Republican wins, which in turn would require a tidal shift of public opinion.

All told, there are as many as 60 swing seats. But many potentially competitive seats become contestable only after the current incumbent retires or dies. Conversely, swing seats often become safe seats once an incumbent is re-elected and entrenched. Because not all incumbents retire at once, at any given time the number of effective contestable seats does not exceed about 25.

Note also the interplay between the legislative dictatorship and the dwindling number of swing districts. In previous eras, a majority leader with a margin of just 26 seats would have to carefully broker compromises both with his own moderates and with the opposition party. But the DeLay dictatorship and the ever fewer swing districts have combined to produce the opposite result. Individual legislators with safe seats needn't worry about swing voters, and DeLay needn't worry about losing swing districts because so few are left. Accordingly, the congressional Republican Party has become more militantly conservative. Like Bush, who also had no real mandate for radical change, DeLay is governing as if his party had won by a landslide. The country may be narrowly divided, but precious few citizens can make their votes for Congress count. A slender majority, defying gravity

(and democracy), is producing not moderation but a shift to the extremes.

Here again the senate is a variation on the theme, but with the same essential consequence: long-term one-party control. Senators are of course elected statewide. By definition, there is no gerrymandering of the Senate.

(The republic's Founders achieved that in advance by giving big states and small ones the same number of senators.) But for a variety of other reasons, Democrats are unlikely to retake the Senate anytime soon.

One reason is the increasingly solid Republican South, something that New Democrats hoped their centrist formula could stave off. In the 1980s and early '90s, several southern Democrats did get elected as pro-development, pro-defense, racial moderates. But this trend has now collapsed [see Kevin Phillips, "All Eyes on Dixie," page 24]. Lately, Democrats have lost Senate seats they held in Georgia, Tennessee and Virginia. In 2004 they will very likely lose seats held by retiring incumbents in North Carolina, South Carolina and Georgia, and could also lose closer races in Louisiana and Florida. Democrats do have a couple of pickup opportunities elsewhere. But the likely southern losses make it almost a statistical impossibility for Democrats to take back the Senate in 2004. These losses are not the result of any direct Republican assaults on democracy per se, though holding down black southern turnout could be considered a kind of assault. But the consequences of such losses will reinforce one-party government.

III. Thumbs on the Electoral Scale

In the aftermath of the Republican theft of Florida's electoral votes and the 2000 presidential election, Congress passed the Help America Vote Act.

Many states are using HAVA funds to shift from now-prohibited punch cards or old-fashioned voting machine systems to ATM-type computer terminals. However, the three biggest makers of such computerized voting systems have financial ties to the Republican Party, and there is already evidence that the biggest manufacturer, Diebold, has had trouble designing tamper-proof systems. Some Democrats, led by Rep. Rush Holt of New Jersey, have proposed that all such machines be backed up by "verifiable paper trails," but

this suggestion has gotten almost no Republican support. Moreover, millions of the poorest Americans have no experience with ATMs, and could well be deterred from voting.

A second potential for mischief is the provision put into HAVA, at Republican insistence, requiring voters who register by mail to show a government ID at the polls. This sounds innocent enough. Republicans, however, have a long and sordid history of "ballot security" programs intended to intimidate minority voters by threatening them with criminal prosecution if their papers are not technically in order. Chief Justice William Rehnquist got his political start running a ballot-security program for the Republicans in the 1962 elections in Arizona. Many civil-rights groups see the new federal ID provision of HAVA as an invitation to more such harassment. The Department of Justice's rights division was once a bulwark against these tactics, but that division currently reports to an attorney general named John Ashcroft.

The latest semi-reform of our system of money and politics could also backfire. The Supreme Court recently upheld the McCain-Feingold law, which prohibits unlimited donations to political parties. Democrats have taken comfort from the ability of Howard Dean to raise large sums of small money, while major liberal donors like George Soros can donate vast funds to voter-registration, get-out-the-vote and issue-advocacy organizations. But McCain-Feingold also dramatically raised the ceiling on permissible hard-money donations and allowed unlimited sums for independent groups and state parties. The Democrats have one George Soros; the Republicans have dozens, and many thousands more donors capable of reaching the new \$2,000 hard-money ceiling than the Democrats have.

Money also goes disproportionately to incumbents. For a generation Democrats offset Republican financial dominance by inviting wealthy donors to invest in their incumbency. When they didn't have Congress, Democrats had the presidency, and vice versa. No more. Now the Republicans can combine their natural financial dominance with wall-to-wall incumbency. This financial superiority further helps cement the Republican lock on Congress by dissuading challenges and also discourages potentially strong Democratic candidates from running.

When you add it all up, there is still far more conservative money than

progressive money. The fewer the firewalls between big money and the electoral process, the more systematic advantage the right has in maintaining a permanent lock.

IV. Rubber-Stamp Courts

Recently, several close court decisions have defended democracy and due process. In December, a federal appeals panel in New York ruled that President Bush lacked the authority to define an American citizen arrested in the United States as an "enemy combatant" and to deny him or her due process. Another appeals court, in San Francisco, held that the indefinite imprisonment of 660 noncitizens at Guantanamo Bay, Cuba, violated both the U.S. Constitution and international law. A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit blocked, at least temporarily, the Bush administration's efforts to gut major portions of the Clean Air Act by administrative fiat.

However, if George W. Bush is re-elected, a Republican president will have controlled judicial appointments for 20 of the 28 years from 1981 to 2008. And Bush, in contrast to both his father and Clinton, is appointing increasingly extremist judges. By the end of a second term, he would likely have appointed at least three more Supreme Court justices in the mold of Antonin Scalia and Clarence Thomas, and locked in militantly conservative majorities in every federal appellate circuit.

How would such a Supreme Court change American democracy? We already know from *Bush v. Gore* that even the current high court is a partisan rubber stamp for contested elections. A Scalia-Thomas court would narrow rights and liberties, including the rights of criminal suspects, the right to vote, disability rights, and sexual privacy and reproductive choice. It would countenance an unprecedented expansion of police powers, and a reversal of the protection of the rights of women, gays and racial, religious and ethnic minorities. An analysis of Scalia's and Thomas' rulings and dissents suggests that a Scalia-Thomas majority would also overturn countless protections of the environment, workers and consumers, as well as weaken guarantees of the separation of church and state, privacy, and the right of states or Congress to regulate in the public interest. (For a full and thoroughly chilling account, see "Courting Disaster II: How a Scalia-Thomas Court Would Endanger Our Rights and Freedoms," People for the American

Way,

June 2003. The most predictable public-policy result of extended one-party rule would be the completion of the Bush/radical-right project: the dismantling of social investment, regulation, progressive taxation, separation of church and state, racial justice and trade unionism. The administration's opportunistic version of federalism would continue to preempt the ability of states and localities to enact progressive policies of their own.

Even more insidiously, the radical right would likely use its wall-to-wall control of government to reduce liberties, narrow electoral democracy and thereby minimize the risk that it would ever lose power. Republican one-party rule would also strategically target progressive habitats, changing laws that currently tolerate or incubate oases of progressive political power and build liberal coalitions, such as the labor movement, universal social insurance, and an effective and valued public sector.

Is this one-party scenario inevitable? For a variety of structural reasons noted above, Democrats are unlikely to take back Congress this decade, absent a national crisis or massive scandal that overwhelms the governing party. But, contrary to the views of some of my colleagues, I think a Democrat could well win the White House in 2004. The Democratic base is aroused in a fashion that it has not been in decades, and swing voters may yet have second thoughts about George W. Bush. It's not at all clear what the economy and the foreign-policy scene will look like next fall, or what scandals will ripen.

Democrats have also begun fighting back against legislative dictatorship, and this may yet become a public issue. When the Republican Senate leadership unveiled rules changes to make it effectively impossible for Democrats to block extremist judicial nominees with a filibuster, the Democratic leadership threatened to use parliamentary tactics to shut the place down. House Democrats are now almost as unified as their Republican counterparts, and, if anything, even angrier. Tom DeLay may be sowing a whirlwind. And if a variation of the 2000 Florida theft is attempted in 2004, it is inconceivable that Democratic leaders and activists would show the same docility that Al Gore displayed.

We've seen divided government before, with a Democratic president and a fiercely partisan Republican Congress. It is not pretty. But it is much more attractive than a one-party state.

Benjamin Franklin, leaving the Constitutional Convention in Philadelphia, was asked by a bystander what kind of government the Founders had bestowed. "A republic," he famously replied, "if you can keep it." There have been moments in American history when we kept our republic only by the slenderest of margins. This year is one of those times.

Robert Kuttner

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