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The Tree of Democracy Requires the Sunlight of Service

Rolando T. Acosta, Presiding Justice of the Appellate Division, First Department, writes: These fraught and fractious times might tempt some to turn their backs on “the system” as corrupt or dysfunctional or broken beyond repair. Just the opposite reaction is required, however.

By **Rolando T. Acosta, Presiding Justice, Appellate Division, First Department** | January 14, 2022



Justice Rolando Acosta, Photo: Rick Kopstein

There has been much discussion of late about whether our democracy is in decline. It is a valid and pressing question. Battered by discord, distrust, and disaffection, our collective faith and common bonds have been put to the test. Recent developments and disinformation have raised doubts about the fairness, integrity, and effectiveness of our democratic institutions. These concerns are heightened by those who fan the flames of polarization for political gain; who shamelessly sow unfounded doubts about the reliability of our electoral processes; and who, in the grip of a pandemic and an existential climate crisis, choose to weaponize science fiction over science—all to our great peril. These fraught and fractious times might tempt some to turn their backs on “the system” as corrupt or dysfunctional or broken beyond repair. Just the opposite reaction is required, however.

Thomas Jefferson famously observed in 1787 that “[t]he tree of liberty must be refreshed from time to time with the blood of patriots and tyrants” *The Tree of Liberty... (Quotation)* (<https://www.monticello.org/site/research-and-collections/tree-liberty-quotations>), Monticello.org. Perhaps, over 200 years later, Jefferson’s statement needs updating: The tree of democracy—which safeguards our liberty—must be nurtured by the shared sacrifice and commitment of fellow citizens; bloodshed is not required. It is clear that today, more than ever, the tree of democracy which sustains us requires our citizens to become more involved in our public institutions and government, to feel genuinely engaged in the political process and concerned about the wellbeing of others. The roots of our tree are strengthened through selflessness, service to those less fortunate, and shared experiences. To that end, I join with many others who advocate for a large-scale expansion of civilian national service opportunities for young Americans.

There is a long history in this country of our citizens rising to the responsibility of national service during times of crisis. Many young patriotic Americans answer the call through voluntary military service, with far too many having given the last full measure of their devotion. There is also a significant appetite in this country for opportunities to participate in civilian public service. Yet, this desire to serve far exceeds what current programs can accommodate.

A poll conducted last January by Change Research showed that 62% of Americans would recommend civilian service to young people in their lives and 44% of all young Americans are potentially interested in serving, including 60% of young people of color. Currently, there are only about 65,000 positions available. 77% of respondents to the poll, including majorities of both Democrats and Republicans, said they strongly or somewhat support Congress passing legislation that would expand national service opportunities, such as AmeriCorps and the Peace Corps. *New Poll: As President Biden Calls for National Unity, Majority of Americans Support National Service To Bridge Divides* (https://www.serveamericatogether.org/new_poll_as_president_biden_calls_for_national_unity_majority_of_ar ServeAmericaTogether.org).

These poll numbers tell me that, to paraphrase President John. F. Kennedy’s immortal speech, there are millions of young Americans who are asking not what their country can do for them, but what they can do for their country. They just need the means to do it.

In my view, national service need not be mandated as it is in other democracies such as Denmark and France. Constitutional Act of Denmark (https://www.thedanishparliament.dk/-/media/pdf/publikationer/english/my_constitutional_act_with_explanat §81; Casey Quackenbush, *French President Emmanuel Macron Is Reinstating National Service for All 16-Year-Olds* (<https://time.com/5324514/france-reinstates-national-service-macron/>), TIME (June 28, 2018). Indeed, a 2017 Gallup poll showed that only half of Americans currently support mandatory national service, and 57% of those age 18-29 oppose the idea. Jim Norman, *Half of Americans Favor Mandatory National Service*

(<https://news.gallup.com/poll/221921/half-americans-favor-mandatory-national-service.aspx>), Gallup (Nov. 10, 2017). But it can be incentivized through loan forgiveness, scholarships, and other means; and given the significant interest in voluntary service, it would be sensible to make serving easier and more appealing.

This is the approach taken by the Cultivating Opportunity and Recovery from the Pandemic through Service (CORPS) Act, which was introduced in the U.S. Senate in June 2020 on a broadly bipartisan basis and in the House earlier this year. S. 3964, 116th Cong. (2020); H.R. 4100, 117th Cong. (2021). Its purpose is to, among other things, expand national service programs administered through the Corporation for National and Community Service to help the country respond to and recover from the public health, economic, and social crises that emerged due to the COVID-19 pandemic.

The benefits of providing a large proportion of young Americans with the opportunity for civilian public service would be many. It would instill a sense of shared purpose and individual commitment to our society. It would enlighten those who serve through exposure to people with different backgrounds and perspectives. And it would teach them about the inner workings of our government and reinforce that, for all the bad news we hear every day, there is an awful lot of valuable, even noble, service being performed in support of the common good.

Democracy is not self-executing. It requires constant care and commitment and cannot be taken for granted. Through public service programs—in addition to robust civic education initiatives like the ones I wrote about earlier in the year (Rolando T. Acosta, *A Crisis of Faith (in the Rule of Law)* (<https://www.law.com/newyorklawjournal/2021/04/30/a-crisis-of-faith-in-the-rule-of-law/>), NYLJ (April 30, 2021))—we can provide the youth of America, the future leaders of our country, with an understanding and appreciation of our democratic systems, and in so doing, reduce the ignorance and apathy that can form a breeding ground for distrust, unfounded conspiracy theories, and authoritarianism. Expansion of national service programs should not be limited to responding to the COVID-19 crisis but should become a permanent and important part of this country's fabric, like the “social contract” envisioned by Jean-Jacques Rousseau, where our collectively held will aims at the common interest.

Importantly, public interest work is promoted by both law firms and law schools in New York through stipends and scholarships, which encourage young law students and lawyers to work in government or public interest jobs that they could not otherwise afford to take. For example, during the 2020-21 academic year, my alma mater, Columbia Law School, provided funding for 308 students to work at domestic public interest, government, or judicial internships—including for one student through the Judge Sheila Abdus-Salaam Public Service Internship Fund, named for one of my most cherished former colleagues—and for 22 students to engage in international human rights advocacy.

The New York State Unified Court system (UCS) also takes a keen interest in promoting pro bono participation for law students. The Pro Bono Scholars Program, introduced in 2014 by then-Chief Judge Jonathan Lippman, is an innovative program that is the first of its kind in the country—it enables law students to spend their final semester of law school performing pro bono service for the poor while receiving academic credit, and permits students to take the New York bar examination in February of their final year of study, before they graduate, accelerating the pace at which they can enter the job market as licensed attorneys *Pro Bono Scholars Program—A Legal Education Initiative* (<http://ww2.nycourts.gov/attorneys/probonoscholars/index.shtml>), nycourts.gov.

And, of course, New York's legal community can be rightly proud of its record when it comes to providing free legal services. Since 2015, New York has required prospective lawyers who have taken the bar exam to complete 50 hours of qualifying pro bono service before admission to practice law. Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law §520.16 (<http://www.nybarexam.org/Rules/Rules.htm#520.16>). Additionally, pursuant to the Rules of Professional Conduct, “[l]awyers are strongly encouraged to provide pro bono legal services to benefit poor persons” by

providing at least 50 hours of free legal services annually and by contributing financially to organizations that provide such services. 22 NYCRR §1200, Rule 6.1 ([//www.nycourts.gov/LegacyPDFS/RULES/jointappellate/NY-Rules-Prof-Conduct-1200.pdf](http://www.nycourts.gov/LegacyPDFS/RULES/jointappellate/NY-Rules-Prof-Conduct-1200.pdf)). At the First Department, we often have attorneys from law firms representing defendants pro bono in criminal appeals, and we greatly appreciate their efforts.

Moreover, UCS is one of the few court systems in the country that provides funding from its own budget to organizations that offer free civil legal services to low-income clients, since Judge Lippman launched the Task Force To Expand Civil Legal Services in 2010 (the Task Force was made the Permanent Commission on Access to Justice in 2015). Last September, Chief Judge Janet DiFiore announced that, in 2022 alone, the judiciary would provide a total of \$100 million to civil legal services providers throughout the state. Press Release, *Chief Judge Announces New Five-Year Grants for Judiciary's Civil Legal Services Program* ([//www.nycourts.gov/LegacyPDFS/press/pdfs/PR21_21.pdf](http://www.nycourts.gov/LegacyPDFS/press/pdfs/PR21_21.pdf)) (Sept. 8, 2021).

Serving others is immensely rewarding, enlightening, and inspiring. My parents taught me that a life well lived necessarily includes service to others, and that is something that I have experienced first-hand since my time as a young lawyer at the Legal Aid Society. The personal pride and enrichment I gained in helping others and the professional training I received were priceless. I want every young American to have the same opportunity and to be inspired to take advantage of it, whether it be interning in a court, teaching through AmeriCorps, or volunteering internationally through a program like the Peace Corps.

Service is good for the soul. It is good for the country. It is good for democracy. And without a shared commitment to service and understanding of our system of government, the tree of democracy may be felled not by the large axe of some outside authoritarian army, but by the slow rot of neglect, or by many blows from smaller axes wielded by our own fellow citizens who have been convinced that the tree never stood in the first place.

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