

Hail, Paulson

We the people beseech you to remember us.

BY DAVID REISS

The Roman Republic had an effective response to extreme crisis. The Senate would authorize the selection of an individual to serve as the *magister populi*. He would have extraordinary powers over the three branches of government to respond to the crisis (a rebellion perhaps) and was the only officer who was excepted from legal accountability for his official actions.

The *magister populi* (the “people’s master”) was known colloquially in the Roman Republic as the dictator, the one who dictates to everyone else. The office served that Republic well for about 450 years—until the last dictator, Julius Caesar, decided he’d rather have an empire (and be declared a god, to boot).

We do not have a similar crisis-management tradition in our Republic, but we grant the executive branch wide latitude in times of emergency. Secretary of the Treasury Henry Paulson Jr. has asked Congress to grant him the power to spend \$700 billion of the public’s money to respond to what may be the greatest American financial crisis since the Great Crash of 1929.

And, though as of press time the situation remains unsettled, our Senate and House of Representatives seem prepared to go along, at least in significant part. Sure, Congress is reportedly insisting that Paulson have an oversight board, and the money may be handed out in installments, but in the end, \$700 billion speaks for itself.

Just about everyone, myself included, agrees that bold action is needed—no one thinks we should be fiddling around while Wall Street burns. Yet, beyond whatever specific bill may pass initially, it behooves the citizens of our Republic to think carefully about Paulson’s initial request and what it means for how this financial crisis will ultimately be handled.

NONREVIEWABLE

Paulson’s initial proposal of Sept. 20 shows the tendency to find an unfettered savior to handle the crisis. The pro-

posal would authorize him to purchase for a period of two years and “on such terms and conditions as determined by” himself as Treasury secretary, “mortgage-related assets from any financial institution having its headquarters in the United States.” Paulson would be authorized to take any actions that he “deems necessary to” execute this task, including owning up to \$700 billion worth of mortgage-related obligations.

Paulson’s decisions would have been “non-reviewable and committed to agency discretion, and may not be reviewed by any court of law or any administrative agency.”

This proposal builds on the broad authority that the Treasury successfully sought to address the problems with Fannie Mae and Freddie Mac. That bailout provides a precedent for legislation that the Treasury was able to push through Congress in what seems to be record time, measured in days and not months.

Paulson’s decision to place Fannie and Freddie in conservatorship soon after he had the authority to do so also shows that he is a man of decisive action: He came, he saw, he conquered the threat posed by the two companies.

Although clearly contemplating a narrower grant of power than that given to a *magister populi*, Paulson’s proposal was as extraordinary in terms of the unfettered discretion it would vest in him, its budgetary implications, and the absence of any legal accountability for the actions Paulson takes to further his proposal.

SPECIAL INTERESTS

Nonetheless, Paulson’s proposal had its attractions. Paulson can act faster than Congress, and unlike elected senators and representatives, he can act to address the acute systemic risk without being overwhelmed by the agendas of every interest group hurt by the slow-motion meltdown of the financial sector over the last year and a half.

We all know what can happen in Congress. As professor Cass Sunstein has noted, one of the main criticisms of regulation

is that it is “only purportedly in the public interest.” Instead, it “turns out on inspection to be interest-group transfers designed to protect well-organized private groups—such as business interests or unions—at the expense of the rest of the citizenry.”

Indeed, immediately after the bailout was made public, lobbyists for a broad range of constituencies descended on Congress to make the case for the special circumstances of their clients.

When Congress listens to these lobbyists, as it often does, the result can be that a new regulatory regime ends up functioning largely as a trough from which certain favored interests get to feed. Here, the very financial services firms and professionals who helped to bring about this crisis are salivating over the possibility of profiting from its solution.

ABOVE SUSPICION

It is not easy to choose between a Treasury dictator and a lobbyist feeding frenzy. To go with the first option, Paulson himself must be above suspicion.

There is general agreement that his personal motives are pure and that he is acting in what he sees as the best interests of the financial system (even though he let Lehman Brothers, a competitor of his former employer, Goldman Sachs, fail and acted just in time to save Goldman from the worsening crisis).

Nonetheless, Paulson is a product of and clearly identifies with the financial services sector. He has no history of addressing the concerns of taxpayers, consumers, or homeowners except to the extent that their concerns are met as a byproduct of a well-functioning financial system.

Congress, which is justly maligned for taking steps that have exacerbated this crisis (eviscerating consumer protections on the Republican side; running interference for the Fannie and Freddie duopoly on the Democratic side), is currently focusing on the concerns of the long-suffering taxpayer, consumer, and homeowner. These are three over-

lapping groups that are more blameless than not in this crisis. Their concerns were in the backseat before the crisis, as the mortgage industry sold them a bill of goods.

Paulson wants to keep them in the backseat during the crisis to ensure that the focus remains on systemic risk. But that will certainly mean that they remain in the backseat after the crisis subsides. If their interests are not addressed now, it is unlikely they will ever be.

ORDINARY AMERICANS

And their concerns should be consistently addressed as the government responds to this unfolding crisis. And so, the Democratic response, tempered by the very real fear of a spiraling systemic risk, is the right one under these circumstances. Although mightily imperfect, it is the best way to go in all but the most threatening circumstances. The times don't call for a people's master, but rather a man of the people, one who will lead everyone through to safety from the whirlwind confronting us.

Paulson and Congress should supplement his initial proposal with provisions that ensure accountability and transparency. Paulson should also address the legitimate concerns of his current employers, the citizens of the United States, and provide explicit and appropriate relief for homeowners through widely available programs of workouts, loan modifications, and bankruptcy reforms.

Such a response, though open to the all-too-typical abuses of our system of government, is the right one for today's crisis. If he can both restore faith in the financial system and address the needs of the citizenry, history will hail Paulson as one of our Republic's greatest Treasury secretaries and cover him, figuratively at least, in the laurel garlands that will be his due.

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