

Washington University Law Review

Volume 68

Issue 3 *Federalist Society Symposium: The Presidency and Congress—Constitutionally Separated and Shared Powers*

January 1990

Address: Thoughts on Restructuring Government

Allen Weinstein
Center for Democracy

Charles Robb
United States Senate

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview



Part of the [Law and Politics Commons](#)

Recommended Citation

Allen Weinstein and Charles Robb, *Address: Thoughts on Restructuring Government*, 68 WASH. U. L. Q. 589 (1990).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol68/iss3/10

This Symposium is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

ADDRESS

**THOUGHTS ON RESTRUCTURING
GOVERNMENT**

ALLEN WEINSTEIN,* INTRODUCTION

It is a pleasure and a privilege this morning to introduce the co-chairman of this conference to keynote this day in which the focus shifts from the executive branch, where it resided most of yesterday, to at least a morning's worth of close attention to Capitol Hill, with panels on congressional control of the administration of government and on the appropriations power and the necessary and proper clause.

The details of Senator Charles Robb's distinguished career need no repetition at this time by me. Chuck is, among other things, a living bridge between the executive and legislative functions of this country, having served as the most successful governor in modern Virginia's history, and for a stint as lieutenant governor, before coming to the U.S. Senate. Chuck asked me earlier this morning whether he knew anybody here and I said that I could only speak for my dinner table last night, with Lloyd Cutler to my left and Griffin Bell to my right—geographically speaking, of course. Were there any Republicans in the room, Chuck wanted to know, concerned lest this be seen as anything but a bipartisan talk. I told him that it was my impression that there were one or two Republicans.

Senator Robb is a special person and political leader to me, not simply because both in war and peace he has embodied the highest standards of civic virtue for Americans, nor alone because of his exemplary record as governor, but for one other reason. He is a political leader committed within his party to asserting the fundamental concerns of the American people. To cite the trio, which I recall reading somewhere in the past day, we would surely count those of individual liberty, traditional values, and the rule of law.

Even before becoming a senator, Charles Robb had helped organize the Democratic Leadership Council to confront the extremist demagogues within his party and to assert his mainstream commitments.

* President, Center for Democracy.

Now, in the Senate, he represents the type of political figure one could hear both Lloyd Cutler and Richard Epstein calling for; someone capable of mobilizing a party and sufficiently adept at conducting sound and coherent public policies, whether or not the government was unified—in short, a *party* leader, in Cutler's view. At the same time, he is someone who is strong and confident enough to take principled stands on behalf of those policies, whatever political fashion might dictate, someone surely, as Professor Epstein was suggesting, who is in short supply in this country.

Chuck will speak this morning on "random constitutional thoughts with some particular bellyaching about the budget process." Without further comment I present to you the co-chairman of this conference, Senator Charles S. Robb.

CHARLES S. ROBB*

In just a few days, the 101st Congress begins its second session, and so it is appropriate to pause and reflect on the nature of shared responsibility between the Congress and Presidency, to take the temperature of the body politic as Congress and the President continue in this third century of sharing power.

Montesquieu's notion of a tripartite body sharing power over the government, but not over each other, was a fundamental philosophical precept of our Constitution. John Jay's simple response to General Washington's entreaty to the leaders of the time to describe the best post-revolutionary government succinctly and accurately describes today's government: "Let Congress legislate. Let others execute. Let others judge."

The framers were nearly unanimous in believing that a lack of separation of powers was one of the primary disadvantages of the Articles of Confederation. Thomas Jefferson, ever mistrustful of an Executive that could manipulate or influence the judiciary, found the equilibrium of the three great powers the most appealing aspect of the new Constitution. His first comment upon reading the document while at his post in France was, "I much like the organization of the government into legislative, judiciary and executive."

Jefferson's chief objection to the new Constitution was that the Execu-

* United States Senator and Co-chairman of the conference.

tive, because he could be re-elected for life, was perhaps too powerful. "The President," he observed to Adams, "seems a bad edition of a Polish king."¹ Without some check on the number of terms he could serve, the President would, Jefferson feared, become a monarch.

History proved that even the sage of Monticello could be wrong. Indeed, power has ebbed and flowed between the two bodies over the last two hundred years as the tenor of the times has demanded. Just twenty years after Abraham Lincoln exercised nearly supreme power in the White House, Woodrow Wilson would write that "our present form of government is simply a scheme of congressional supremacy."

A quarter century later, Wilson himself led America into greater participation in international affairs. The economic and political upheavals of the thirties and forties made many observers believe that Congress had become superfluous. But by 1960, the pendulum had swung so far in the opposite direction that some of those same pundits complained that not only was Congress dominant in national affairs, but a single committee chairman, Howard Worth Smith of Virginia, Chairman of the House Rules Committee, was controlling the direction of the nation.

Over the last decade, however, this natural ebb and flow has seemed to stall. In my view this is partially because of reaction to perceived Presidential excesses in the conduct of the Vietnam War and in the Watergate scandal, and partially because neither political party has been able to do much to loosen the stranglehold the other party has on a particular branch of government.

Victory by the same party in five of the last six Presidential elections has helped institutionalize a form of stasis in our government that reflects an equilibrium in American politics that was unpredictable when the founders met in Philadelphia. And it is becoming abundantly clear that divided government, when the Democrats control the Congress and the Republicans the Presidency, can be a formula for timid, passive, and in some cases purposeless governance.

Under divided government, ideological conflicts frequently turn into institutional confrontations between a Republican President and a Democratic Congress. All too often, the result is governmental paralysis. This institutional stalemate leads to political complacency and escapism. Both sides concentrate on preserving their political domains rather than risk alienating anyone by daring to grapple with a thorny issue. "Long-

1. THE JEFFERSONIAN CYCLOPEDIA 712, quote 6879 (J. Foley ed. 1900).

term planning” becomes deciding how to get from one public opinion poll to the next.

And so we dissipate our political energies debating peripheral issues. In the last session we spent a week helping the National Endowment for the Arts set artistic standards, and nearly a week each on two personnel matters involving the impeachment of federal judges. But when it came to the really big issues, we lacked the will to confront them.

Instead, there has developed almost an inverse relationship between the emotional intensity of our political discourse and its relevance to what our nation needs. In a reflection of our institutional paralysis, symbolic issues like flag burning take precedence over the truly critical issues that our government faces.

We have no mechanism to ensure that the President and Congress are at least as accountable when doing the people’s business as we insist they are in their personal lives. Fiscal irresponsibility is, in my opinion, a serious breach of the public trust. I would make it an impeachable offense, were it not for the fact, as Jefferson observed, that “impeachment is not even a scare-crow.”²

Unfettered by accountability, we are free to display enormous ingenuity devising stratagems to defer decisions on the important issues of our time. Last year, for example, rather than attempting to deal with our budget deficit, in an astonishing display of head-in-the-sand-ism, we patched together a budget the principal feature of which was to make things worse in the upcoming year. Then the President and the leadership went out into the White House Rose Garden and congratulated themselves on a job well done. Later in the year, literally at the eleventh hour, Congress agreed to a debt limit extension, increasing the national debt to over three trillion dollars.

I would submit to you that our fiscal problems are at once both a symptom and a cause of American’s ideological paralysis. A massive national debt, well over half of which was incurred in the last decade, combines with continued huge deficits to preclude government spending as a solution to any problem. So we have a government that is unable to spend and unwilling to cut spending. Couple that with the widespread lack of public confidence in government’s ability to deal with problems, caused at least in part by the HUD and Savings and Loan scandals, and it is little wonder that America seems adrift in a sea of change.

2. *Id.* at 416, quote 3850.

The root cause of our institutional paralysis, I would submit to you, is not so much a lack of political will, but a lack of a set of relevant national priorities that reflects the needs and realities of a new era. Of course, we cannot establish priorities for the future unless we understand where we are in the world today. Economic policies forged in the Depression, a map of the world drawn at Yalta, and social and cultural patterns framed by the schisms of the sixties are poor tools to attack challenges facing America domestically, as well as internationally, as the twenty-first century dawns.

Nor can we continue defining progress in terms of marginal adjustments to the status quo. We are doomed if we accept the premise that the government of the next century will be a linear extension of the government of today.

I believe we need to wipe the slate clean—to ask and answer the question, “Why do we, as a government, exist?” We should ask ourselves, “What should tomorrow’s government do? What should it look like?” And we must be ready to tell the American people how we get from what we have—which in my opinion is woefully inadequate—to where we want to be.

So I would suggest beginning this exercise by rejecting the assumption that holds us in thrall, that all existing programs and policies are sacrosanct. Then, with a clean slate before us, we can become the architects of a fundamental redirection of national priorities.

Virginia’s constitution is not too dissimilar to our nation’s, and as a former Governor, I know that a principal responsibility of the Chief Executive over and beyond execution of the laws is to provide that kind of ideological and moral leadership. But if the executive branch will not lead, the legislative branch has the opportunity to break the current political impasse.

In order for that to come about, Congress has to recognize that it is not enough to offer a piecemeal patchwork of programs to the American people; America needs an all-encompassing blueprint for tomorrow. We have to define for the American people a moral framework or public philosophy that reflects our fundamental principles, our goals and, if you will excuse an overused expression, our vision for tomorrow.

I would suggest to you that the means to this fundamental redirection of policy may well be the budget. There are two reasons. First, the budget is, or should be, nothing more than an annual restatement of our national priorities. National spending ought, with some few exceptions,

to reflect the needs of the day. The second reason to start re-examining our priorities in the budget framework is simpler: unless we get our budget under control, little else we do can have much meaning. Already our options are severely limited. A few more years of out-of-control spending and we will not have any options left.

It is my hope and belief that the not-too-distant future will find both the President and the Congress considering a budget that reflects our national needs and desires rather than as an extension of a pattern of programs and promises, which may or may not be relevant today. Then, armed with an understanding of where we are and a sense of where we want to be tomorrow, we can begin to deal with issues like how we restore a sense of fiscal sanity to Washington, or rebuild America's productive capacity, or rescue children living in poverty, or reassure ourselves of clean air and water, or solve the health care crisis, or capitalize on the opportunities presented by the world's turn to democracy and free markets.

The genius of Madison and Hamilton was, in the often-quoted phrase, the creation of "a machine that goes of itself." Thomas Macauley wrote of the Constitution that it was "all sail and no anchor." The winds which propel such a machine are the hopes, the needs, and the aspirations of the people at a particular time in history. Today, we are becalmed by our ideological paralysis.

Once we identify today's priorities, the ideological calm in which we find ourselves as the 1990s begin will be lifted, and the Constitution will again operate, as Jefferson observed to Adams, to "render our fellow citizens the happiest and the securest on whom the sun has ever shone."³

3. *Id.* at 195, quote 1705.