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Kentucky Law Journal

Volume 62 | Issue 1 Article 8

1973

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George S. McGovern
United States Senate

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Recommended Citation

McGovern, George S. (1973) "The Presidency and a Pluralism of Power," *Kentucky Law Journal*: Vol. 62 : Iss. 1 , Article 8.
Available at: https://uknowledge.uky.edu/klj/vol62/iss1/8

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SPECIAL COMMENT

The Presidency and A Pluralism of Power

By SENATOR GEORGE S. MCGOVERN*

In recent months, the focus of politics has shifted from a settled contest for the Presidency to a conflict of principle over the unsettled distribution of power among the branches of government. Daily this unfolds as some new episode in the battle between Congress and the President, each of which is resolved by the overriding or sustaining of a specific veto, or by a tactical maneuver on one side or the other.

But what is at stake here is more than the sum of the issues which have become the battleground. The real issue is the soundness and security of our political system itself. I am convinced that the United States today is closer to one-man rule than at any time in our history—and this paradoxically by a President who is not popular.

Fundamentally, we have experienced an exhaustion of important American institutions. Today only the Presidency is activist and strong, while other traditional centers of power are timid and depleted. This is why one man in the White House was able for so long to continue a conflict hated by so many of his countrymen.

The institution of Congress has been undermined by Executive encroachment and legislative paralysis. For a decade, a war was waged without Congressional approval; for years, that war raged on in part due to Congressional inaction. The representatives of the people proved unwilling to end a policy opposed by the people.

But the impotence of Congress and the omnipotence of the Presidency have deeper roots and a longer history. In 1933, the Senate and the House passed Administration bills almost before

* United States Senator from South Dakota.

they were printed or read. It was a time of crisis. But in the years since, the Congress has acted as though the crisis were permanent. We now appear to accept the curious notion that the legislative initiative rests with the Executive branch. Indeed, students of American government are themselves surprised at the startling fact that nearly 90 percent of the legislation the Congress considers originates with the Administration.

And in the last generation, presidential activity and congressional passivity have been even more pronounced in the field of foreign policy. Congress was not asked for approval in the 1950's before American troops were dispatched to Korea and Lebanon. The chairman of the Senate Foreign Relations Committee, who advised against the Bay of Pigs invasion, was ignored, while other members of Congress were not even consulted. The Senate was assured that the Gulf of Tonkin Resolution was no writ for a wider war; it was then used as an excuse for the widest war since 1945.

Now this tide—which has ebbed and flowed for four decades—has crested at a new high. Late in 1972, the President, in the flush of his electoral landslide, unleashed the most barbarous bombing of the Indochina war without even forewarning the Congress. He then refused to explain it or to permit any of his subordinates to explain it.

The President's defense for this silence was the doctrine of executive privilege, which developed to protect certain limited types of communication within the executive branch. In fact, he was abusing executive privilege, which was never designed to prevent review and the exercise of responsibility by the legislative branch.

Our Constitution is an organic document. Although the first Americans sketched the essential outlines of government, they wisely left the embellishment of the relationship among its three branches to experience. Thus, there are only a few instances of assignment of specific authority. But among the rights clearly assigned to the Congress are the powers of war and peace and the power of the purse. The power to make or unmake war, as I have already suggested, has been stripped almost completely from the Senate and the House. And now, for the first time, the Executive has mounted a serious challenge to the congressional

control of appropriations. Perhaps the Congress invited this attack by a complacent acquiescence in the Vietnam disaster; in any case, the struggle is on, and the Congress often has not even held its own.

Recently we submitted to the President a bill to clean up our nation's waterways. He vetoed the bill, and we passed it again over his veto. He then simply refused to spend the money as Congress directed. The success of this tactic was followed by the impoundment of funds for other domestic programs. Most incredibly, at the end of the last legislative session the President demanded that the Congress rubberstamp such impoundments in advance. He asked us to agree to set a budgetary ceiling within which the sole power of appropriation was reserved to the executive branch. Even more incredible was the speed with which the House of Representatives approved this request, and its relatively narrow defeat in the Senate. After Congress refused the President this authority, he just took it. One wonders why he even bothered to ask.

This is not the way of a government of laws or even of men, but of one man. Today the United States is moving dangerously in that direction. The Congress seems incapable of stopping what it opposes or securing what it seeks. It has been described by a Republican Senator as a "third or fourth rate power" in Washington. And it may be fairly asked whether the Congress of the United States in the seventh decade of this century is in peril of going the way of the House of Lords in the first decade. The difference is that the diminution of the Lords made English government more democratic, while the diminution of the Congress makes American government more dictatorial.

The exhaustion of the Congress is matched by the exhaustion of the political parties. The Republican Party, reduced to utter vassalage by the White House, offers little more than an administrative program. They offer the politics of efficiency—but to what end and impact? Their answer to the transportation crisis is to rearrange the Department of Transportation. Their answer to desperate social needs is to reduce and rename social programs. And their answer to the threat of racism is the malignancy of benign neglect.

At the same time, the loyal opposition is neither loyal to a

specific set of ideas nor effective in its opposition. The Democratic Party is in peril of becoming a party of incumbency out of power, much like the Whigs of the 19th Century—a party with no principles, no programs, living only from day to day, caring only for the prerogatives of office, doing nothing, and worse, not caring that nothing is done.

Though important and, I believe, enduring reforms have opened the Democratic Party to broader citizen participation, the purposes for which it stands remain disputed and undefined. For twenty-eight of the last forty years, those purposes were set by Democratic Presidents in the White House. Today, the party consists largely of fragments and factions, often still divided along the same lines as in 1968, when pro-administration and antiwar forces contended for its soul.

At the same time, the Democratic constituency has declined; in both of the last national elections, the Democratic candidate could count only 40 percent of the vote. I believe the party is still the best hope and help of the unprivileged majority of Americans. Yet I know that we have failed to convey the Democratic appeal to millions who are not racist, but afraid; who do not seek a George Wallace, but will settle for him if no one else seems to hear or heed them.

And what is the response of the Democratic Party? Not a determined effort to shape a constituency for change, but an exhausted armistice with the status quo. In 1973, the party itself is no longer a challenging source of ideas and innovation in society. Indeed, in the midst of the quarrels and the contention, the safest course for party officials has been to emphasize that they are interested, not in the ideology, but in the technology of politics.

Without principles, there is no party. And a nation cannot be led nobly or even decently by a collection of politicians whose highest purpose is power.

But perhaps the most discouraging development of recent years is the exhaustion of the institution of the press. With the election over, the executive branch has tightened the pressure on the media. For example, the administration has expressed an intention to punish offending television networks by depriving their stations of licenses. Already, the White House has dis-

mantled the Public Broadcasting System, whose public affairs presentations the President found irritating. And some of the press have responded by retreating; they have catalogued the slashes in domestic programs and the plans for conservative, insensitive government, but they do not seem to notice anything amiss in the fact that these steps were concealed or denied before the election. There are, of course, brave reporters, newspapers, and television channels ready to take the heat; but there are others who have left the kitchen for a more comfortable, uncritical existence in the antechamber of this Administration. They are trying to get along by going along.

Moreover, the exhaustion of American institutions is matched by an exhaustion of the American spirit. This languor even touches some liberal intellectuals, traditionally the most tireless group in America. Today you often hear such liberals say that government cannot make any real difference for good in the lives of people—that whatever it touches will inevitably induce failure. Many of those who supported the advances of the 1960's so fervently now denounce with equal fervor the setbacks of the 1960's; they are reluctant to resume the imperfect but important march interrupted by the war. Instead they seem almost happy to fulfill the prophecy of W.R. Inge, the Gloomy Dean, that he who would marry the spirit of the age soon finds himself a widower.

Indeed, these so-called liberals now tell us that we should not try to save our cities, cure the causes of crime, or eradicate poverty. They say that if we are part of the solution, then we are also part of the problem. Their motto appears to be: "Nothing ventured, nothing lost."

The same dispirit envelops millions of other Americans. They have followed a bloody trail of disappointment from a sunny street in Dallas to a hotel kitchen in Los Angeles. Three times they have voted for peace; at least twice, they have been given more war. They were oversold on the social experiments of the 1960's; now they are wary of buying even sensible and essential social progress from any political leader. They see government at best as an annoyance, at worst an enemy, and they wish it would just leave them alone. Broken promises have ended in broken power. Public officials are viewed principally as annoying tax collectors.

This mood was central to the outcome of the 1972 election. For example, the commentators have suggested that credibility was among my principal difficulties during the campaign. I agree, but not with the proposition that people did not believe me. I think they did believe that I would do what I said, and they were afraid. Many Americans looked back at the debris of the last decade, and they feared that once again, they were about to face a hard effort and harvest nothing from it.

So to me the central challenge for the future of American politics is to end the paralysis of institutions and ease the apprehensions of the electorate. The United States must find a way to replace exhaustion with energy, cynicism with hope, resignation with determination, destructive anger with constructive activism.

That is so easy to say, yet so hard to do.

I no longer think it can be done merely by calls to greatness or appeals to idealism, no matter how eloquent. Americans have been told until they are tired of hearing it that they shall overcome, that they can move their country forward, that they can have a great society, that they can seek a newer world or find the lift of a driving dream—or even bring America home to its founding ideals. This kind of summons has value; indeed, in my view, Americans are desperately anxious to believe in a transcendent, almost mystical purpose. But they are also skeptical now of any such summons unless there are signs of progress already existing.

As I discovered in the last campaign, it is not even enough to outline proposals in specific detail. The only way to reawaken faith in the system is for government and politicians to restore it step by step, through substantive advances that mean something to people. They must see their sons home from Vietnam, their neighborhood crime rate reduced, their taxes used to build better lives instead of bigger bureaucracies, their children educated in decent schools, and their illnesses cared for at reasonable cost. The progress must be visible, sure, and steady.

This requires above all else a determined effort to improve and strengthen the institutions in America that are supposed to serve the citizens of America. After a decade of disillusion, institutions may be unfashionable things. But institutions are not evil, they are neutral; and they are indispensable instruments

of change in society. More often than not, the ebbs and tides of history are determined by the nuts and bolts of governments.

In modern times, when American liberals have recognized that truth, they have tended to see it in terms of the Presidency. Only a few years ago, liberal scholarship still celebrated the strong executive and sought to strengthen it even more. Now we have learned that the Presidency, too, is a neutral instrument—that power in the White House can be abused as well as used—that a reactionary or a war maker can also read Richard Neustadt and James McGregor Burns.

Twice now our answer has been attempts to change the person in the Presidency. Both times we have ended in at least as much difficulty as we were in before. It is now almost four years until the next national election, but it is also time to ask whether American progressives should continue to rely on a quadrennial chance to capture what threatens to become an elective dictatorship.

We may lose again as we have before. And liberty is the real loser when so much authority is vested in a single office.

There will be plenty of time to prepare for the next campaign. But now is the time for a determined effort to change, not the person in the White House, but the power of the Presidency. American liberals must reverse the forty-year trend toward a stronger President and return to the two hundred year old tradition of truly *shared* power.

The Supreme Court is subject to fate and executive appointment; only the Senate stands between the Court and an ideological coup. So the true priority is to protect the place of the Congress in the federal system. We must seek a pluralism of power, where Congress and the President guard and prod each other.

Some political scientists claim that this is the wrong aim, saying that "only the President can lead because only the President has a mandate." But Congress has a constructive mandate, made by a blend and balance of the regional interests reflected in each member's election. And that constructive mandate can be as effective as the President's universal mandate. The Congress can work to check the Executive and to move the country. It can seek cooperation with the President; it can also shape a kind of cooperative tension with him that can make change

happen. In the words of an ancient philosopher: "That which is in opposition is in concert, and from things that differ comes . . . harmony."

So the Congress must exert its authority to achieve a full measure of influence. It should mount a consistent and coherent effort, founded on its foremost power—control over appropriations. James Madison wrote in *The Federalist Papers*, number 58:

> The power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.

The insight is borne out in the history of a struggle for liberty still older than our own Revolution. For five centuries, from Edward I to George III, English liberty was purchased piece by piece by the parliamentary power of the purse. And in 1973, the congressional power of the purse can sustain American liberty.

It can be used to stop the abuse of executive privilege. Part or perhaps all of an appropriation could be conditioned on the Administration's consent for the appropriate officials to testify before House and Senate Committees.

It can be used to stop executive wars by whim. The Congress must refuse to fund conflicts it has not declared or even decided to fight. From the tragedy and travail of Vietnam, the Congress at least must learn the truth of Edmund Burke's warning: "The thing you fight for is not the thing which you recover; but depreciated, sunk, wasted and consumed in the contest." American ideals have been depreciated. American wealth has been sunk. Human lives have been wasted, and Indochina itself has been consumed in the contest. The United States must fight when the cause is right. But never again should the Congress allow young American lives to be lost for the defense of a corrupt dictator anywhere in the world.

These steps are only a beginning. For if the Congress is to assume a role of leadership, it must have not only the negative power to review and reverse policy, but also the positive power to make policy in the first place. It must know enough—so it will not hear the reply that the President always knows best. It must be structured for integrated decision making—so it will not hear

the reply that only the President can pull all the pieces together.

First, the Congress should create a unified budget assessment mechanism. The Senate and House should have a committee to estimate revenues, to set a general level of expenditures, and to establish priorities to relate specific appropriation decisions to that general level. This committee should have sufficient resources of expertise and information. There is no reason to let the President control the budget because he has the only Office of Management and Budget.

Second, the Congress should establish a similar mechanism for national security policy. With members drawn from the Appropriations, Foreign Relations and Armed Services Committees, such a unified committee could offer a thoughtful and sensible alternative to executive proposals. This committee, too, should have the necessary resources. If the President can have two State Departments, the Congress can have at least one agency to provide information and recommendations about foreign affairs and defense policy.

Third, Congress should adjust the seniority system. No other legislative body in the Western World uses length of service as the sole standard for place and power in its committees. If the Congress is to carry out its constructive mandate, it must indeed follow the mandate to produce the results desired by the people, and not act to procure what a few individuals from safe districts want. An activist, effective Congress must reflect the popular will. It cannot do so unless the members freely elect committee chairmen.

Finally, the Congress should defend its powers as it extends them. It must consider and choose from a number of alternatives to cancel or control the impoundment of its appropriations. Only then can the Congress assure the execution of the policies it has enacted.

So if the Congress has the will, there is a way to exercise positive leadership. For the long term, the question is—in what direction will this leadership be exercised?

I am convinced still that the society to which America should aspire is a liberal one. To those who charge that liberalism has been tried and found wanting, I answer that the failure is not in the idea, but in the course of recent history. The New Deal

was ended by World War II. The New Frontier was closed by Berlin and Cuba almost before it was opened. And the Great Society lost its greatness in the jungles of Indochina.

Of course, liberal programs will sometimes fail anyway, for human decisions are frail always. Government is the creation of men and encompasses the weaknesses of men. Plans can be poorly conceived or poorly executed—though a Congress with sense and a bit of intelligence can work to prevent that. But that government is best, I still believe, that best serves the demands of justice. So what Americans should seek is a system in which the principles of civil equality and individual liberty have the highest claim on statesmanship. We must strive to provide a decent standard of life for all citizens and to redistribute wealth and power so each citizen has a fair share. And along with this must come a foreign policy which puts humanity and morality ahead of cold war myths and the prestige of leaders who would rather compound error than face reality.

An institutional revival of the Congress not only can lead America in a new direction; it can also spark a similar institutional revival outside government. For example, where power is pluralistic rather than presidential, the press will not have so much to fear from the executive branch.

There are already hopeful signs of a reawakening in the Democratic Party. The Party is scheduled to hold biennial conferences to set national policy, with the first one next year.

As Democrats look ahead to 1976, they can be encouraged by the enduring gains of 1972. For I believe my campaign set the manner in which future candidates must seek the Democratic nomination—openly, not with the traditional strategy of saying as little as possible, but with a pledge to seek and speak the truth. I believe we also set a standard for the conduct of future campaigns—which will have to reveal their contributors and represent the people rather than the politicians. And never again will Americans accept wiretapping, Watergates, and the spectacle of a candidate hiding in the White House. Instead, they will expect at least a commitment to correct rather than commit wrongs. Finally, I believe our campaign set forth the great issues that will command the debate of the 1970's, ranging from tax reform to a rational military budget.

And millions of Democrats, whether they are ordinary citizens or Senators, are anxious to carry the banner. I have faith that their energy and efforts can end the exhaustion of the electorate, enlist the country in a coalition of conscience as well as self interest, and expand the 28 million votes the national ticket won in 1972 into a majority that is right as well as new.

But as I have noted, the next election is four years away. For the immediate future, the key is the Congress. It must take the initiative and provide the inspiration. It must cure the paralysis and procrastination that have earned it the doubt, the disrespect, and the cynicism of the American people. The *New York Times* recently described the President as a leader who "behaves with the aloofness of a Roman emperor." It is useful to remember that no Roman emperor was crowned until the Roman Senate abdicated.

More than three decades ago, Henry Luce described this time in history as the American century. Since then, the United States has learned the hard way that you cannot colonize centuries any more than you can colonize countries. But I would still like to believe that our country has something of value to offer to a beleaguered world.

It is not just our wealth and our technology—though that we should share in peace with those who need it. And it is not the terrible gift of another Guernica in Indochina. And surely it is not our power to unleash a nuclear reign of terror, to give the earth a last shimmering moment of light before the endless night.

Throughout our history, America's greatest offering—as I said in accepting the Democratic presidential nomination—has been as "a witness to the world for what is noble and just in human affairs." This is what summoned the workers of the world to support Abraham Lincoln and the cause of liberty during our Civil War. And this is what America must restore. If we fail, other generations who are not truly free will look back and say that things cannot be any other way.

So in my mind, the greatest challenge of the American future is to revive our institutions and resume our progress at home, while we act abroad with "a decent respect for the opinion of mankind."